

THE FINANCIAL CRIMES COMMISSION ACT 2023

Act No. 20 of 2023

I assent

PRITHVIRAJ SING ROOPUN, G.C.S.K.

21st December 2023

President of the Republic

ARRANGEMENT OF SECTIONS

Section

PART I – PRELIMINARY

1. Short title
2. Interpretation
3. Application of Act

PART II – ESTABLISHMENT OF FINANCIAL CRIMES COMMISSION

Sub-Part I – Establishment of Commission

4. The Commission
5. Divisions of Commission
6. Functions and powers of Commission

Sub-Part II – Administration and Management of Commission

7. Composition of Commission
8. Meetings of Commission
9. Secretary to Commission

Sub-Part III – Staff of Commission**Section A – Director-General of Commission**

10. Director-General
11. Functions and powers of Director-General
12. Vacancy in office of Director-General
13. Termination of appointment of Director-General

Section B – Director of Division, Chief Legal Adviser and Head of Unit

14. Director of Division
15. Chief Legal Adviser
16. Head of Unit

Section C – Other Officers of Commission

17. Officers of Commission
18. Use of independent professionals

PART III – FINANCIAL CRIMES**Sub-Part I – Corruption Offences**

19. Bribery by public official
20. Bribery of public official
21. Taking gratification to screen offender from punishment
22. Public official using his office for gratification
23. Bribery of, or by, public official to influence the decision of public body
24. Influencing public official
25. *Traffic d'influence*
26. Public official taking gratification
27. Bribery for procuring contracts
28. Bribery for procuring withdrawal of tenders
29. Conflict of interests
30. Treating of public official
31. Receiving gift for corrupt purpose
32. Corruption in private entities
33. Corruption to provoke serious offence
34. Bribery by, or of, foreign public official
35. Corruption in relation to sporting events

Sub-Part II – Money Laundering Offences

36. Money laundering
37. Limitation of payment in cash
38. Alleged proceeds of crime

Sub-Part III – Fraud Offences

39. Fraud by false representation
40. Fraud by failing to disclose information
41. Making or supplying articles for use in fraud offence
42. Failing to pay for goods and services
43. Fraud by abuse of position
44. Electronic fraud

Sub-Part IV – Financing Drug Dealing Offences

45. Financing of drug dealing

Sub-Part V – Other Offences

46. Making or supplying articles
47. Possession of articles
48. Conspiracy
49. Aiding, abetting or counselling
50. Attempt
51. Penalty for breach of guidelines

Sub-Part VI – Obligations and Liability of Legal Persons

52. Obligations of legal persons
53. Liability of legal persons

PART IV – DETECTION OF, AND INVESTIGATION INTO, FINANCIAL CRIMES AND OTHER OFFENCES**Sub-Part I – Detection of Financial Crimes and Other Offences**

54. Notification of financial crimes and other offences
55. Duty to report financial crimes and other offences
56. Referrals to Commission

Sub-Part II – Investigation into Financial Crimes and Other Offences

57. Preliminary investigation by Commission
58. Further investigation by Commission
59. Power of examination
60. Power of entry and search

61. Seizure of property
62. Power of arrest
63. Disclosure of financial transactions and any other information
64. Order to search specified premises
65. Telecommunication Order
66. Special investigative techniques
67. Discharge or variation of Order under Part IV

PART V – ASSET RECOVERY

Sub-Part I – Application of Part V

68. Application of Part V

Sub-Part II – Criminal-Based Asset Recovery

Section A – Criminal Attachment Order

69. Application for Criminal Attachment Order
70. Issue of Criminal Attachment Order
71. Management of property under Criminal Attachment Order
72. Judge’s further Orders
73. Exclusion of property from Criminal Attachment Order
74. Registration of Criminal Attachment Order
75. Contravention of Criminal Attachment Order
76. Duration of Criminal Attachment Order

Section B – Criminal Confiscation Order

77. Application for Criminal Confiscation Order
78. Service of Criminal Confiscation Order application
79. Issue of Criminal Confiscation Order
80. Determination of value of benefit
81. Amount recoverable
82. Discharge of Criminal Confiscation Order
83. Appeal against Criminal Confiscation Order
84. Realisation of property under Criminal Confiscation Order
85. Application of monetary sums
86. Contravention of Criminal Confiscation Order

Sub-Part III – Civil-Based Asset Recovery**Section A – Civil Attachment Order**

87. Application for Civil Attachment Order
88. Issue of Civil Attachment Order
89. Management of property under Civil Attachment Order
90. Exclusion of property from Civil Attachment Order
91. Order in respect of immovable property
92. Variation and rescission of Civil Attachment Order
93. Duration of Civil Attachment Order
94. Contravention of Civil Attachment Order

Section B – Civil Confiscation Order

95. Application for Civil Confiscation Order
96. Issue of Civil Confiscation Order
97. Failure to notify
98. Exclusion of property from Civil Confiscation Order
99. Appeal against Civil Confiscation Order
100. Enforcement of Civil Confiscation Order

Section C – Tracing of Assets

101. Recoverable property
102. Property indirectly obtained or used
103. Property not recoverable

Sub-Part IV – Compensation Order

104. Application for Compensation Order
105. Issue of Compensation Order

Sub-Part V – International Cooperation

106. Foreign request in connection with civil asset recovery
107. Foreign request for enforcement of foreign Civil Attachment or Civil Confiscation Order
108. Effect of registration of foreign Order
109. Foreign request for the location of tainted property
110. Disposal of proceeds of crime
111. Proceedings in foreign State

PART VI – UNEXPLAINED WEALTH**Sub-Part I – Application of Part VI**

112. Application of Part VI

Sub-Part II – Proceedings in Relation to Unexplained Wealth

113. Reporting of unexplained wealth

114. Investigation into unexplained wealth

115. Application for disclosure order

116. Inscription of privilege or lien

Sub-Part III – Unexplained Wealth Order

117. Application for Unexplained Wealth Order

118. Service of Unexplained Wealth Order application

119. Issue of Unexplained Wealth Order

120. Appeal against Unexplained Wealth Order

121. Enforcement of Unexplained Wealth Order

122. Reward

PART VII – PROTECTION OF, AND ASSISTANCE TO, INFORMERS AND WITNESSES

123. Protection of informers

124. Protection of witnesses

125. Witness Protection Scheme

PART VIII – THE OPERATIONS REVIEW COMMITTEE

126. Operations Review Committee

127. Proceedings of Operations Review Committee

128. Functions and powers of Operations Review Committee

PART IX – THE PARLIAMENTARY COMMITTEE

129. Parliamentary Committee

130. Proceedings of Parliamentary Committee

131. Functions and powers of Parliamentary Committee

PART X – COORDINATION AND COOPERATION FOR COMBATING FINANCIAL CRIMES**Sub-Part I – Setting Up of National Coordination Committee**

132. National Coordination Committee

133. Functions of National Coordination Committee

134. Meetings of National Coordination Committee

Sub-Part II – Setting Up of Public-Private Partnership Task Force

135. Public-Private Partnership Task Force
136. Functions of Public-Private Partnership Task Force
137. Meetings of Public-Private Partnership Task Force
138. Sharing of information and intelligence

Sub-Part III – Cooperation between Relevant Bodies

139. Memorandum of Understanding for mutual cooperation
140. Memorandum of Understanding for sharing of information

PART XI – CRIMINAL PROCEEDINGS AND COMPOUNDING OF OFFENCES**Sub-Part I – Criminal Proceedings**

141. Offences and jurisdiction
142. Prosecution
143. Acts committed outside Mauritius
144. Admissible evidence
145. Burden of proof with regard to corruption offence

Sub-Part II – Other Sanctions

146. Ordering deprivation of monetary benefits and property
147. Ordering compensation for loss or damage
148. Confiscation of property
149. Civil and administrative sanctions

Sub-Part III – Compounding of Offences

150. Compounding of offences

PART XII – FINANCIAL PROVISIONS, ACCOUNTS AND EXEMPTIONS**Sub-Part I – General Fund, Recovered Assets Fund and Accounts of Commission**

151. General Fund
152. Recovered Assets Fund
153. Accounts of Commission

Sub-Part II – Estimates and Annual Report

154. Estimates
155. Annual report
156. Audit report

Sub-Part III – Exemptions

- 157. Exemptions
- 158. Donations and legacies

PART XIII – MISCELLANEOUS

- 159. Recovery of damages
- 160. Disclosure of assets and liabilities
- 161. Confidentiality
- 162. Protection from liability
- 163. Directives
- 164. Regulations
- 165. Repeal
- 166. Consequential amendments
- 167. Employment of officers of ICAC, ARID and IRSA
- 178. Other savings and transitional provisions
- 169. Commencement

FIRST SCHEDULE

SECOND SCHEDULE

An Act

To provide for the establishment of the Financial Crimes Commission which will be the apex agency in Mauritius to detect, investigate and prosecute financial crimes and any other ancillary offence connected thereto

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY**1. Short title**

This Act may be cited as the Financial Crimes Commission Act 2023.

2. Interpretation

In this Act –

“account information” means information relating to the account held in a financial institution by a person solely or jointly with another person;

“ARID” means the Asset Recovery Investigation Division of the Financial Intelligence Unit set up under the repealed Asset Recovery Act;

“associate”, in relation to a person, means –

- (a) a person who is a nominee or an employee of that person;
- (b) a person who manages the affairs of that person;
- (c) a firm of which that person, or his nominee, is a partner or is in charge or in control of the business or affairs of that firm;
- (d) a company in which that person, or his nominee, is a director or is in charge or in control of the business or affairs of that company, or in which that person, alone or together with his nominee, holds a controlling interest, or shares amounting to more than 30 per cent of the total issued share capital; or
- (e) the trustee of a trust, where –
 - (i) the trust has been created by that person; or
 - (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than 20 per cent of the total value of the assets of the trust;

“bank” –

- (a) has the same meaning as in the Banking Act; and
- (b) includes –
 - (i) a non-bank deposit taking institution licensed under the Banking Act; and
 - (ii) a licensee under the National Payment Systems Act;

“benefit” –

- (a) means an actual or a potential advantage, gain, profit, benefit or payment of any kind that a person derives or obtains or is likely to derive or obtain, or that accrues or is likely to accrue to him; and
- (b) includes the benefit referred to in paragraph (a) that another person derives or obtains or is likely to derive or obtain, or that otherwise accrues or is likely to accrue to such other person, where the other person is under the control of, or is directed or requested by, the first person;

“cash” –

- (a) means money in notes or coins in Mauritius or in any other currency; and
- (b) includes any cheque which is neither crossed nor made payable to order, whether in Mauritius currency or in any other currency;

“cash dealer” has the same meaning as in the Banking Act;

“close person” –

- (a) means a household member to an endangered person; and
- (b) includes any other member designated by the endangered person to be included into the Witness Protection Scheme;

“Civil Attachment Order” means an Order issued under section 88;

“Civil Confiscation Order” means an Order issued under section 96;

“Commission” means the Financial Crimes Commission established under section 4;

“Commissioner” –

- (a) means a Commissioner of the Commission; but
- (b) does not include the Chairperson of the Commission;

“Compensation Order” means an Order issued under section 105;

“competent authorities” –

(a) means –

- (i) an investigatory authority;
- (ii) a supervisory authority;
- (iii) the Financial Intelligence Unit; and
- (iv) the Counterterrorism Unit; and

(b) includes such other authority as may be prescribed;

“computer system” means any device or group of interconnected or related devices, including portable or wireless telephone devices, one or more of which, pursuant to a program, performs automatic processing of data;

“corruption offence” means an offence as described in Sub-part I of Part III;

“Counterterrorism Unit” means the Counterterrorism Unit referred to in section 18 of the Prevention of Terrorism Act;

“Court”, for the purpose of Part V, means the Supreme Court;

“crime” –

(a) has the same meaning as in the Criminal Code; and

(b) includes –

- (i) an activity carried outside Mauritius but which, had it taken place in Mauritius, would have constituted a crime;
- (ii) any act or omission occurring outside Mauritius, but which, had it taken place in Mauritius, would have constituted a crime;

“Criminal Attachment Order” means an Order issued under section 70;

“Criminal Confiscation Order” means an Order issued under section 79;

“criminal enquiry” –

- (a) means an enquiry carried out by the Police or any other person or authority for the purpose of detecting whether a criminal offence has been, is being or is likely to be committed, and, if so, by whom; and
- (b) includes an investigation carried out by the Commission under this Act;

“customer information” means –

- (a) information as to whether a person holds or has held an account at a financial institution solely or jointly with another person;
- (b) information relating to any evidence obtained by the financial institution under, or for the purposes of, an enactment relating to a financial crime; and
- (c) such particulars, relating to the account or the holder as may, in the opinion of the Commission, be relevant;

“dangerous drug” has the same meaning as in the Dangerous Drugs Act;

“dealing with property” includes –

- (a) making or receiving a gift of the property;
- (b) removing the property from Mauritius;
- (c) where the property is a debt owed to a person, making a payment to that person in reduction or full settlement of the amount of the debt;
- (d) using the property to obtain or extend credit, or using credit that is secured by the property; or
- (e) where the property is an interest in a partnership, doing anything to diminish the value of the partnership;

“defendant” means a person against whom a Criminal Confiscation Order is sought or is made;

“Director-General” means the Director-General of the Commission;

“Division” means a Division of the Commission;

“document” includes information recorded in written, electronic or any other form, together with access to the technology enabling information in electronic form to be retrieved;

“drug dealing offence” means an offence as described in Sub-part IV of Part III;

“emoluments” has the same meaning as in the Income Tax Act;

“endangered person” means a person whose inclusion into the Witness Protection Scheme is justified due to danger and threat to life, health, freedom or property, to that person or to persons related to him, because of importance of information known to him for the criminal proceedings for any offence under this Act and the Dangerous Drugs Act;

“financial crime” –

(a) means –

- (i) an offence as described in Part III; or
- (ii) any crime committed under the law of any financial or competent authority which, in view of its financial implications, complexity, scope, nature or in the public interest, the Commission decides, after consultation with that authority, that it shall investigate into the matter; and

(b) includes any ancillary offence under paragraph (a);

“financial institution” –

(a) has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act; and

(b) includes a bank;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under the Financial Intelligence and Anti-Money Laundering Act;

“financial statements”, in relation to a financial year –

- (a) means –
 - (i) a statement of financial position;
 - (ii) a statement of financial performance;
 - (iii) a statement of changes in net assets or equity;
 - (iv) a cash flow statement; and
 - (v) a statement of comparison of annual estimates and actual amounts; and
- (b) includes notes, comprising a summary of significant accounting policies and other explanatory notes;

“foreign public official” means –

- (a) a person holding a legislative, an executive, an administrative or a judicial office of a foreign country, whether appointed or elected; or
- (b) a person exercising a public function for a foreign country, including for a public body or public enterprise and any official or agent of a public international organisation;

“fraud offence” means an offence as described in Sub-part III of Part III;

“gain” –

- (a) means, for the purpose of an offence under Part III of this Act, money or any property, whether temporary or permanent; and
- (b) includes such gain by keeping what one has or even benefitting what one does not have;

“General Fund” means the General Fund referred to in section 151;

“gift” –

- (a) means property given by one person to another person; and

- (b) includes any direct or indirect transfer of property –
 - (i) after the carrying out of an unlawful activity by the first person; and
 - (ii) to the extent of the difference between the market value of the property at the time of its transfer and –
 - (A) the consideration provided by the second person; or
 - (B) the consideration paid by the first person, whichever is greater;

“gratification” –

- (a) means a gift, a reward, a discount, a premium or any other advantage, whether pecuniary or non-pecuniary, other than lawful remuneration; and
- (b) includes –
 - (i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;
 - (ii) the offer of an office, employment or other contract;
 - (iii) the payment, release or discharge of a loan, obligation or other liability;
 - (iv) the payment of inadequate consideration for goods or services;
 - (v) the offer or promise, whether conditional or unconditional, of a gratification; and
 - (vi) any favour or service;

“ICAC” means the Independent Commission Against Corruption established under the repealed Prevention of Corruption Act;

“included person” means an endangered person or a close person who has agreed to be included into the Witness Protection Scheme;

“instrumentality” –

- (a) means any property used or intended to be used in any manner in connection with a criminal offence or unlawful activity; and
- (b) includes a benefit;

“interest”, in relation to property, means –

- (a) a legal, an equitable interest or any other interest that may attach to the property; or
- (b) a right, power or privilege, including the exercise of effective control, or making of a gift, in connection with the property;

“investigatory authority” means the Commission, the Mauritius Police Force, the Mauritius Revenue Authority, the Financial Services Commission or such other authority as may be prescribed, as the case may be;

“IRSA” means the Integrity Reporting Services Agency established under the repealed Good Governance and Integrity Reporting Act;

“Judge” means a Judge in Chambers;

“judicial officer” means a Judge, the Master and Registrar, a Deputy Master and Registrar or a Magistrate;

“legal person” means any entity, including a private entity, other than a natural person;

“local authority” has the same meaning as in the Local Government Act;

“loss”, for the purpose of an offence under this Act –

- (a) means temporary or permanent loss, in respect of money or any property; and
- (b) includes a loss by not getting what one might get, or even by parting with what one has;

“material” includes any document, object or thing or electronic or digital record;

“member of a private entity” means a director, shareholder or secretary of the private entity;

“member of relevant profession or occupation” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

“Minister” means the Minister to whom responsibility for the Commission is assigned;

“money laundering offence” means an offence as described in Sub-part II of Part III;

“National Coordination Committee” means the National Coordination Committee set up under section 132;

“officer” –

(a) means an officer of the Commission; and

(b) includes –

(i) the Director-General;

(ii) the Director of each Division;

(iii) the Chief Legal Adviser; and

(iv) the Head of each Unit of a Division of the Commission;

“official of public international organisation” means an international civil servant or any person who is authorised by that public international organisation to act on its behalf;

“Official Receiver” has the same meaning as in the Companies Act;

“Operations Review Committee” means the Operations Review Committee referred to in section 126;

“Parliamentary Committee” means the Parliamentary Committee referred to in section 129;

“person” means a natural person or legal person;

“principal” includes –

- (a) an employer;
- (b) a beneficiary under a trust;
- (c) a person beneficially interested in the succession of a person; and
- (d) in the case of a person serving in or under a public body, the public body;

“private entity” –

- (a) means an association, a company, a foundation, a limited liability partnership, a partnership, a *société*, a trust or such other private entity as may be prescribed, incorporated or registered in Mauritius; and
- (b) includes a body of persons incorporated in Mauritius or an unincorporated body operating in Mauritius;

“proceeds” means any property or economic advantage, wherever situated, derived from or obtained, in whole or in part, directly or indirectly, through or in connection with a criminal offence or unlawful activity;

“property” includes –

- (a) an asset of any kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, however acquired;
- (b) a legal document or instrument in any form, including electronic or digital, evidencing title to or interest in such asset, including but not limited to currency, bank credits, deposits and other financial resources, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit, wherever situated, or any other negotiable instrument or any instrument capable of being negotiated which is payable to bearer or endorsed payable to bearer;
- (c) a real or an equitable interest, whether full or partial, in any such asset;

-
- (d) any balance held in Mauritius currency or in any other currency in accounts with any bank which carries on business in Mauritius or elsewhere;
 - (e) any balance held in any currency with any bank outside Mauritius;
 - (f) a motor vehicle, a ship, an aircraft, a boat, works of art, jewellery, precious metals or any other item of value;
 - (g) any right or interest in the property; and
 - (h) a virtual asset and virtual token under the Virtual Asset and Initial Token Offering Services Act 2021;

“public body” –

- (a) means –
 - (i) a Ministry or Government department;
 - (ii) the Rodrigues Regional Assembly;
 - (iii) a body established or set up under any enactment which performs judicial or adjudication functions;
 - (iv) a commission or any other body established or set up under the Constitution or under any other enactment;
 - (v) a local authority; or
 - (vi) a statutory body; and
- (b) includes such State-owned enterprise or State-controlled enterprise as may be prescribed;

“public official” –

- (a) means –
 - (i) a Minister;
 - (ii) a Member of the National Assembly, including the Speaker of the National Assembly and the Attorney-General;

- (iii) a member of the Rodrigues Regional Assembly, including the Chairperson of the Rodrigues Regional Assembly;
 - (iv) a public officer;
 - (v) an employee or a member of a public body;
 - (vi) a local government officer or a member of a local authority;
 - (vii) a member or an employee of such Commission or body as may be established or set up under the Constitution or under any other enactment; or
 - (viii) an employee or a member of a statutory body; and
- (b) includes –
- (i) a judicial officer;
 - (ii) an arbitrator;
 - (iii) an assessor;
 - (iv) a member of a jury; or
 - (v) a member of a Tribunal or of a committee set up by the President, the Government or by the Chief Justice;

“Public-Private Partnership Task Force” means the Public-Private Partnership Task Force set up under section 135;

“recoverable”, in relation to any property, means property that may be recovered from a person pursuant to an Order issued under Part V;

“Recovered Assets Fund” means the Recovered Assets Fund referred to in section 152;

“Registrar-General” means the Registrar-General appointed as such pursuant to the Registrar-General Act;

“relative”, in relation to a person, means –

- (a) a spouse or conjugal partner of that person;

- (b) whether adopted or not –
 - (i) a brother or sister of that person;
 - (ii) a brother or sister of the spouse or conjugal partner of that person;
 - (iii) any lineal ascendant or descendant of that person or the spouse or conjugal partner of that person;
 - (iv) son or daughter of either the brother or sister of that person or the spouse or conjugal partner of that person; or
 - (v) brother or sister of either the mother or father of that person or the spouse or conjugal partner of that person;

“repealed Asset Recovery Act” means the Asset Recovery Act repealed under section 165(a);

“repealed enactments” –

- (a) means the enactments repealed under section 165; and
- (b) includes, for the purpose of section 168(3), Part II of the Financial Intelligence and Anti-Money Laundering Act repealed under section 166(9)(b);

“repealed Good Governance and Integrity Reporting Act” means the Good Governance and Integrity Reporting Act repealed under section 165(b);

“repealed Prevention of Corruption Act” means the Prevention of Corruption Act repealed under section 165(c);

“reporting person” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

“respondent” means a person against whom an application for an Unexplained Wealth Order is made;

“Revenue Law” has the same meaning as in the Mauritius Revenue Authority Act;

“sporting event” has the same meaning as in the Gambling Regulatory Authority Act;

“statutory body” has the same meaning as in the Statutory Bodies (Accounts and Audit) Act;

“supervisory authorities” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

“suspicious transaction” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

“terrorist property” has the same meaning as in the Prevention of Terrorism Act;

“transaction” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

“unexplained wealth” includes any property –

- (a) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;
- (b) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of, the property; or
- (c) held by a person for another person to an extent which is disproportionate to the emoluments or other income of another person and which cannot be satisfactorily accounted for;

“Unexplained Wealth Order” means an Order issued under section 119;

“Unit” means a Unit of a Division;

“virtual asset” has the same meaning as in the Virtual Asset and Initial Token Offering Services Act 2021;

“Witness Protection Scheme” means the Witness Protection Scheme referred to in section 125.

3. Application of Act

- (1) This Act shall bind the State.
- (2) A person shall commit an offence under this Act where –
 - (a) the act or omission constituting the offence occurs in Mauritius or committed outside Mauritius but is connected to Mauritius; or
 - (b) the act constituting the offence is committed by that person, or for him, by another person.

PART II – ESTABLISHMENT OF FINANCIAL CRIMES COMMISSION

Sub-Part I – Establishment of Commission

4. The Commission

- (1) There is established, for the purposes of this Act, a Commission to be known as the Financial Crimes Commission.
- (2) The Commission shall be a body corporate.
- (3) Subject to this Act, the Commission shall, in the discharge of its functions and exercise of its powers, not be under the direction or control of any person or authority.

5. Divisions of Commission

- (1) There shall be, within the Commission –
 - (a) an Investigation Division, which shall comprise –
 - (i) the Financial Crimes Investigation Unit; and
 - (ii) the Financing of Drug Dealing Investigation Unit,and shall discharge the functions and powers conferred upon it pursuant to section 6(1)(c) and (d);

- (b) an Asset Recovery and Management Division, which shall comprise –
 - (i) the Asset Recovery Unit;
 - (ii) the Declaration of Assets Unit; and
 - (iii) the Unexplained Wealth Unit,and shall discharge the functions and powers conferred upon it pursuant to section 6(1)(e), (f) and (g);
- (c) an Education and Preventive Division, which shall discharge the functions and powers conferred upon it pursuant to section 6(1)(h);
- (d) a Legal Division, which shall discharge the functions and powers conferred upon it pursuant to section 6(1)(i); and
- (e) such other Division as the Commission may, with the approval of the Minister, set up, and such Division shall have such functions and powers as the Commission may determine.

(2) The Director-General may set up any other Unit within a Division.

(3) The Director-General may direct a Division or Unit to discharge such functions and exercise such powers as may have been assigned to another Division or Unit.

(4) No act done by a Division or Unit shall be void or impeachable by reason that a matter should have been dealt with by another Division or Unit.

6. Functions and powers of Commission

- (1) The Commission shall –
 - (a) be responsible to combat financial crimes in Mauritius and abroad to the extent that the financial crimes are connected to Mauritius;

-
- (b) be responsible for receiving and considering any allegation or complaint of any financial crime and any other offence under this Act and the Declaration of Assets Act, and referring such allegation or complaint to the appropriate Division for investigation and report;
 - (c) through the Financial Crimes Investigation Unit of the Investigation Division, be responsible for detecting and investigating into financial crimes and other offences under this Act and the Declaration of Assets Act, except offences related to the financing of drug dealing, and any other offence under this Act;
 - (d) through the Financing of Drug Dealing Investigation Unit of the Investigation Division, be responsible for detecting and investigating into offences related to the financing of drug dealing;
 - (e) through the Asset Recovery Unit of the Asset Recovery and Management Division, be responsible for conducting investigation regarding asset recovery and for recovering and managing assets which are proceeds or instrumentalities, including terrorist properties, of offences committed under this Act and under any other enactment;
 - (f) through the Declaration of Assets Unit of the Asset Recovery and Management Division, be responsible for monitoring the assets and liabilities of any declarant under the Declaration of Assets Act;
 - (g) through the Unexplained Wealth Unit of the Asset Recovery and Management Division, be responsible for detecting and investigating into unexplained wealth;
 - (h) through the Education and Prevention Division, be responsible for preventing and educating the public against financial crimes and any other offence under this Act and the Declaration of Assets Act;

- (i) through the Legal Division, prosecute financial crimes and any other offence under this Act and the Declaration of Assets Act;
- (j) be responsible to do such other things as may be necessary to combat financial crimes and any other offence under this Act and the Declaration of Assets Act.

(2) In the discharge of its functions and exercise of its powers under subsection (1), the Commission shall –

- (a) develop a strategic vision and national policy regarding the fight against financial crimes;
- (b) cooperate, collaborate and establish links with local, regional and international institutions, agencies, organisations or bodies with a view to fostering local, regional and international cooperation in the fight against financial crimes, more particularly concerning, but not limited to –
 - (i) the identification, determination of the whereabouts and activities of persons suspected of being involved in financial crimes;
 - (ii) the identification, tracing and movement of proceeds and instrumentalities;
 - (iii) the exchange of personnel or other experts;
 - (iv) the investigation of financial crimes having international ramifications; and
 - (v) the conduct of joint investigation with national and international investigatory authorities;
- (c) establish and maintain a system to monitor international financial crimes in order to identify suspicious transactions and persons involved;
- (d) maintain data, statistics, records and reports on persons, organisations, assets, proceeds, instrumentalities, properties, documents or other items or assets involved in financial crimes;

-
- (e) carry out research and similar works with a view to determining the manifestation, extent, magnitude and effects of financial crimes;
 - (f) ensure coordination with law investigatory authorities in respect of parallel and complex investigations into financial crimes in order to ensure effectiveness;
 - (g) ensure coordination and collaboration with competent authorities in the fight against financial crimes;
 - (h) facilitate prompt exchange of intelligence, scientific and technical information and the conduct of joint operations geared towards the eradication of financial crimes;
 - (i) enquire into possibilities of financial crimes within a public body;
 - (j) examine and review practices and procedures of any public body in order to facilitate the detection of financial crimes and ways by which financial crimes may be eliminated;
 - (k) monitor, in such manner as it considers appropriate, the implementation of any contract awarded by a public body, with a view to ensuring that no irregularity or impropriety is involved therein;
 - (l) undertake and assist in research projects in order to identify the causes of financial crimes and its consequences on, inter alia, the social and economic structure of Mauritius;
 - (m) carry out public campaigns to alert the public on the dangers of financial crimes and the manner by which complaints against financial crimes shall be made;
 - (n) assist in enhancing the school curriculum so as to educate children on the dangers of financial crimes;

- (o) liaise with private sector organisations and trade unions for the setting up of anti-financial crimes practices;
- (p) organise workshops and other activities to promote campaigns for the prevention and elimination of financial crimes;
- (q) carry out regular impact assessments of different aspects of its work in order to monitor its outcome and performance;
- (r) exercise vigilance and superintendence over the integrity systems of public bodies and issue such guidelines where necessary;
- (s) protect and assist informers and witnesses;
- (t) develop and enforce a performance management system and code of conduct and discipline for its officers;
- (u) set up and oversee good governance and integrity reporting campaigns to enhance the standing of Mauritius as an international financial centre of excellence of unimpeachable integrity with the object of attracting investment;
- (v) report to the Parliamentary Committee, through the Director-General, regarding administrative issues;
- (w) set up such committee as it deems necessary on any matter pertaining to its functions; and
- (x) discharge such other functions and exercise such other powers as may be conferred upon it under this Act, the Declaration of Assets Act and any other enactment.

Sub-Part II – Administration and Management of Commission

7. Composition of Commission

- (1) The Commission shall consist of –
 - (a) the Director-General, as Chairperson; and
 - (b) 4 Commissioners.

(2) The Commissioners shall be persons having sufficient knowledge and experience in the field of law, banking, accountancy, finance, financial services, economics or fraud detection.

(3) The Commissioners shall be appointed –

- (a) by the President, acting in accordance with the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition; and
- (b) on a part-time basis and on such terms and conditions as the Prime Minister may determine.

(4) Every Commissioner shall hold office for a period of 3 years and shall be eligible for reappointment.

(5) The President shall, on the advice of the Prime Minister, at any time terminate the appointment of a Commissioner –

- (a) who is found guilty of any misconduct, default or breach of trust in the discharge of his functions;
- (b) who has committed an offence of such nature as renders it desirable that his appointment should be terminated; or
- (c) who is physically or mentally incapable of discharging his functions as a Commissioner.

8. Meetings of Commission

(1) The Commission shall meet as often as necessary but at least once every month.

(2) (a) Every meeting of the Commission shall be convened by the Director-General and at any such meeting, the Director-General and at least 2 Commissioners shall constitute a quorum.

(b) Where the Director-General does not attend a meeting of the Commission convened under paragraph (a), he shall designate a Director of a Division or the Chief Legal Adviser to chair the meeting.

(c) Where the Director-General, the Director of any Division and the Chief Legal Adviser are not present at a meeting of the Commission convened under paragraph (a), the Commissioners present shall elect amongst themselves a person to chair that meeting, provided there are at least 3 Commissioners present.

(3) Where, without reasonable excuse, the Director-General does not convene a meeting for more than 2 months, the matter may be reported to the Parliamentary Committee by at least 3 Commissioners.

(4) All matters shall be decided by a majority of the votes and in the event of equality of votes, the person chairing the meeting shall have a casting vote.

(5) The Commission may co-opt other persons capable of assisting it with expert advice but that person shall have no right to vote on any matter considered by the Commission.

(6) The Director-General, including any Director of a Division designated by the Director-General to chair a meeting, any Commissioner and the Secretary to the Commission, who has a direct or an indirect interest in a matter being considered or about to be considered by the Commission shall forthwith, or as soon as is practicable after the relevant facts have come to his knowledge, disclose in writing the nature of his interest to the Commission and shall not –

- (a) be present during the deliberations of the Commission with respect to that matter; and
- (b) take part in any decision of the Commission with respect to that matter.

(7) The Commission shall regulate its meetings and procedures in such manner as it may determine.

9. Secretary to Commission

(1) There shall be a Secretary to the Commission who shall –

- (a) prepare and attend every meeting of the Commission;

-
- (b) keep minutes of the proceedings of any meeting of the Commission;
 - (c) follow up on the implementation of the Commission's decisions;
 - (d) service the Commission and such other committees as may be set up by the Commission; and
 - (e) perform such other duties as may be conferred upon him by the Commission.
- (2) The Secretary to the Commission shall be an officer of the Commission.

Sub-Part III – Staff of Commission

Section A – Director-General of Commission

10. Director-General

- (1) There shall be a Director-General of the Commission, to be appointed by the President acting in accordance with the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition.
- (2) The Director-General shall be a person who –
- (a) has served as a Judge of the Supreme Court;
 - (b) has served as a Magistrate in Mauritius for a period of not less than 10 years;
 - (c) is, or has been, a practising barrister or a law officer for a period of not less than 10 years;
 - (d) for an aggregate period of not less than 10 years, has served as a Magistrate in Mauritius and has either been a practising barrister or a law officer, or both as a practising barrister and a law officer; or

- (e) has served in an anti-corruption body at a senior level for a period of at least 5 years and has wide knowledge and experience at national and international level in the field of financial crimes.
- (3) The Director-General shall –
- (a) be appointed for a term of not less than 3 years but not exceeding 5 years and on such other terms and conditions as the Prime Minister may determine; and
 - (b) be eligible for reappointment.
- (4) The Director-General shall occupy his office in a full-time capacity and shall not engage in any other activity for which he is remunerated in whatever form.

11. Functions and powers of Director-General

- (1) The Director-General shall, in furtherance of his functions and powers under this Act –
- (a) be responsible for the execution of the policy and functions of the Commission;
 - (b) be responsible for the control and management of the day to day business and operations of the Commission;
 - (c) have all powers relating to the administrative and operational issues pertaining to the roles and functions of the respective Divisions and Units;
 - (d) make recommendations to the Commission concerning policies and decisions regarding measures to fight financial crimes effectively;
 - (e) determine administrative and operational priorities in accordance with the strategic priorities set by the Commission;
 - (f) ensure effective coordination between the Divisions with a view to fulfilling the objectives of the Commission;

-
- (g) ensure effective cooperation with local and international institutions, agencies, organisations or bodies in the fight against financial crimes;
 - (h) make necessary recommendations to the Commission regarding the communication strategy and its implementation;
 - (i) be accountable to the Commission for the discharge of its functions in accordance with the strategic priorities;
 - (j) provide information to the Commission, if requested, about any aspect of the Commission's undertakings, including resources;
 - (k) be responsible for issuing an annual plan, at the start of every financial year, setting out the manner by which the Commission will deliver its strategic operational priorities, and an annual report at the end of the year on progress made;
 - (l) be the Commission's Accounting Officer and shall ensure the proper financial management of the Commission and its effective corporate governance in accordance with good governance principles and practice;
 - (m) consult with, seek assistance from, and coordinate with, such persons in Mauritius concerned with combating financial crimes, including competent authorities, financial institutions and the private sector;
 - (n) do such other things as may be necessary to meet the objectives of the Commission.

(2) The Director-General may delegate any of his functions and powers to any officer.

(3) Subject to this Act, the Director-General shall, in the discharge of his functions and exercise of his powers, not be subject to the direction or control of any person or authority.

12. Vacancy in office of Director-General

- (1) Where –
- (a) the office of the Director-General is vacant; or
 - (b) the Director-General is absent from duty or is, for any other reason, unable to perform the duties of his office,

the President may appoint the Director of any Division or the Chief Legal Adviser to act as Director-General.

- (2) An appointment made under subsection (1) shall not exceed 9 months.

13. Termination of appointment of Director-General

- (1) Where –
- (a) the Parliamentary Committee has reason to believe that the Director-General has been guilty of such gross negligence, irregularity or misconduct that his appointment ought to be terminated;
 - (b) the Parliamentary Committee is, pursuant to section 8(3), in receipt of a report that the Director-General has not convened a meeting of the Commission for more than 2 months and the Parliamentary Committee is satisfied that the Director-General has no reasonable excuse for not convening a meeting; or
 - (c) the Director-General is unable to discharge the functions of his office, whether such inability arises from infirmity of body or mind or any other cause,

the Parliamentary Committee may, by majority decision of its members, suspend the Director-General from office.

- (2) Where the Parliamentary Committee suspends the Director-General under subsection (1), it shall forthwith refer the matter to the Attorney-General.

(3) Where a matter is referred to the Attorney-General under subsection (2), the Attorney-General shall advise the Parliamentary Committee whether disciplinary proceedings or such other action as he thinks fit should be taken against the Director-General under this section.

(4) Where the Attorney-General does not, within 7 days of the date on which the Director-General was suspended, advise that proceedings be taken against the Director-General, the suspension shall be lifted and the Director-General reinstated forthwith in his office.

(5) Where the Attorney-General advises that proceedings be taken against the Director-General –

- (a) the Attorney-General shall forward to the Parliamentary Committee the charge which the Director-General will be required to answer, and designate a law officer to sustain the charge;
- (b) the Attorney-General shall, on such terms and conditions as he may determine, appoint any person who holds or has held judicial office to hear and determine, without delay, whether the charge has been established.

(6) The person appointed to hear and determine the charge under subsection (5)(b) shall, within 7 working days of the date on which the hearing is completed, forward his findings and the record of all his proceedings and evidence adduced before him to the Parliamentary Committee.

(7) Where the charge is established, the Parliamentary Committee shall, within 7 working days of the receipt of the findings and record referred to in subsection (6), examine the findings and record and decide whether the appointment of the Director-General should be terminated.

(8) Where the Parliamentary Committee decides to terminate the appointment of the Director-General, it shall forthwith inform the Director-General whose appointment shall forthwith terminate.

Section B – Director of Division, Chief Legal Adviser and Head of Unit

14. Director of Division

(1) Every Division, other than the Legal Division, shall be under the responsibility of a Director.

(2) The Director of a Division under subsection (1) shall be appointed by the Commission after consultation with the Prime Minister.

15. Chief Legal Adviser

(1) The Legal Division shall be under the responsibility of a Chief Legal Adviser who shall be a barrister with at least 10 years standing.

(2) The Chief Legal Adviser shall be appointed by the Commission.

(3) Every barrister of the Legal Division shall be responsible for tendering legal advice to the Commission and conduct any prosecution under this Act and the Declaration of Assets Act.

(4) Every barrister of the Legal Division shall have and enjoy all the rights and privileges of a barrister entitled to practise in Mauritius.

(5) Every attorney of the Legal Division shall have and enjoy all the privileges and rights of an attorney of the Supreme Court.

16. Head of Unit

(1) Every Unit of a Division shall be under the responsibility of a Head, who shall be appointed by the Commission.

(2) Every Head of a Unit shall report to the Director of his Division and comply with any directive issued by the Director.

Section C – Other Officers of Commission

17. Officers of Commission

(1) The Commission shall employ such other officers as may be necessary to enable it to discharge its functions and exercise its powers under this Act.

(2) Every officer shall be under the administrative control of the Director-General.

(3) The Commission shall, with the approval of the Parliamentary Committee, establish the salaries, wages, allowances and conditions of employment of its officers.

18. Use of independent professionals

The Commission may, where it considers it expedient to do so –

- (a) make use of the services of a police officer or other public officer designated for that purpose by the Commissioner of Police or the Secretary to Cabinet and Head of the Civil Service, as the case may be; and
- (b) retain the services of an independent professional or specialised body from Mauritius or abroad for such specific purpose as it may determine.

PART III – FINANCIAL CRIMES

Sub-Part I – Corruption Offences

19. Bribery by public official

(1) Any public official who solicits, accepts or obtains from another person, for himself or for any other person, a gratification for –

- (a) doing or abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;
- (b) doing or abstaining from doing, or having done or abstained from doing, an act which is facilitated by his functions or duties;
- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties;

- (d) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another public official, in the execution of that other public official's functions or duties;
- (e) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, another person in the transaction of a business with a public body,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Notwithstanding section 145, where in any proceedings against any person for an offence under subsection (1), it is proved that the public official solicited, accepted or obtained a gratification, it shall be presumed, until the contrary is proved, that the gratification was solicited, accepted or obtained for any of the purposes specified in subsection (1).

20. Bribery of public official

(1) Any person who gives, agrees to give, or offers a gratification to a public official or to another person, for that public official to –

- (a) do, or abstain from doing, or have done or have abstained from doing, an act in the execution of his functions or duties;
- (b) do, or abstain from doing, or have done or have abstained from doing, an act which is facilitated by his functions or duties;
- (c) expedite, delay, hinder or prevent, or have expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties;
- (d) expedite, delay, hinder or prevent, or have expedited, delayed, hindered or prevented, the performance of an act by another public official in the execution of that other public official's functions or duties;

- (e) assist, favour, hinder or delay or have assisted, favoured, hindered or delayed another person in the transaction of a business with a public body,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Notwithstanding section 145, where in any proceedings against any person for an offence under subsection (1) it is proved that the accused gave, agreed to give or offered gratification, it shall be presumed, until the contrary is proved, that the accused gave, agreed to give or offered the gratification for any of the purpose specified subsection (1).

21. Taking gratification to screen offender from punishment

(1) Subject to subsection (2), any person who accepts or obtains, or agrees to accept or attempts to obtain, a gratification for himself or for any other person, in consideration of his concealing an offence, or his screening any other person from legal proceedings for an offence, or his not proceeding against any other person in relation to an alleged offence, or his abandoning or withdrawing, or his obtaining or endeavouring to obtain the withdrawal of, a prosecution against any other person, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) This section shall not extend to any lawful compromise as to the civil interests resulting from the offence, but any such compromise shall not be a bar to any criminal proceedings which may be instituted by the State in respect of the offence.

22. Public official using his office for gratification

(1) Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) For the purpose of subsection (1), a public official shall be presumed, until the contrary is proved, to have made use of his office or position for a gratification where he has taken any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or indirect interest.

- (3) This section shall not apply to a public official who –
- (a) holds office in a public body as a representative of a body corporate which holds shares or interests in that public body; and
 - (b) acts or holds that capacity in the interest of that body corporate.

23. Bribery of, or by, public official to influence the decision of public body

(1) Any person who gives, agrees to give, or offers, to a public official, a gratification for –

- (a) voting or abstaining from voting, or having voted or abstained from voting, at a meeting of a public body of which he is a member, a director or an employee, in favour of or against any measure, resolution or question submitted to the public body;
- (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, or having performed or abstained from performing, or having aided in procuring, expediting, delaying, hindering or preventing, the performance of an act of a public body of which he is a member, a director or an employee;
- (c) aiding in procuring, or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any other person,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

-
- (2) Any public official who solicits or accepts a gratification for –
- (a) voting or abstaining from voting, or having voted or abstained from voting at a meeting of a public body of which he is a member, a director or an employee, in favour of or against any measure, resolution or question submitted to the public body;
 - (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, the performance of, an act of a public body of which he is a member, a director or an employee;
 - (c) aiding in procuring or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any person,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

24. Influencing public official

Any person who exercises any form of violence or pressure by means of threat, upon a public official, with a view to the performance, by that public official, of any act in the discharge of his functions or duties, or the non-performance, by that public official, of any such act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

25. *Traffic d'influence*

(1) Any person who gives, agrees to give or offers a gratification to another person, to cause a public official to use his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Any person who gives, agrees to give or offers a gratification to any other person to use his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(3) Any person who gives, agrees to give or offers a gratification to a public official to cause that public official to use his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(4) Any person who solicits, accepts or obtains a gratification from another person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(5) Any public official who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

26. Public official taking gratification

Any public official who accepts or receives a gratification, for himself or for any other person –

- (a) for doing or having done an act which he alleges, or induces any person to believe, he is empowered to do in the discharge of his functions or duties, although as a fact such act does not form part of his functions or duties; or

- (b) for abstaining from doing or having abstained from doing an act which he alleges, or induces any person to believe, he is empowered not to do or bound to do in the ordinary course of his functions or duties, although as a fact such act does not form part of his functions or duties,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

27. Bribery for procuring contracts

(1) Any person who gives or agrees to give or offers a gratification to a public official in consideration of that public official giving assistance or using influence in –

- (a) promoting, executing or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
- (b) the payment of the price provided for in a contract with a public body;
- (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Any public official who solicits, accepts or obtains from any other person, for himself or for any other person, a gratification for giving assistance or using influence in –

- (a) promoting, executing or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
- (b) the payment of the price provided for in a contract with a public body;

- (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

28. Bribery for procuring withdrawal of tenders

(1) Any person who, without lawful authority or reasonable excuse, offers a gratification to any other person as an inducement to, or a reward for, or otherwise on account of, the withdrawal of a tender or refraining from the making of a tender, in relation to any contract with a public body, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Any person who, without lawful authority or reasonable excuse, solicits, accepts or agrees to accept a gratification as an inducement to or a reward for, or otherwise on account of, the withdrawal of a tender or refraining from the making a tender, in relation to any contract with a public body, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

29. Conflict of interests

(1) Where –

- (a) a public body in which a public official is a member, a director or an employee proposes to deal with a private entity in which that public official or a relative or an associate of his has a direct or an indirect interest; and
- (b) that public official or his relative or his associate, or both of them, hold more than 10 per cent of the total issued share capital or of the total equity participation in such private entity,

that public official shall forthwith disclose, in writing, to that public body the nature of such interest.

(2) Where a public official, or his relative or associate, has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.

(3) Any public official who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

30. Treating of public official

Any person who, while having dealings with a public body, offers a gratification to a public official who is a member, a director or an employee of that public body shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

31. Receiving gift for corrupt purpose

Any public official who solicits, accepts or obtains a gratification, for himself or for another person –

- (a) from a person whom he knows to have been, to be or likely to be, interested or related to a person interested, in any proceedings or business transacted or about to be transacted; or
- (b) where he knows that, or ought reasonably to know, that the proceedings or business has a connection with his functions or duties or with the functions or duties of any public official to whom he is the subordinate or superior,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

32. Corruption in private entities

(1) Any employee or member of a private entity who solicits, accepts or obtains from another person for himself or for any other person, a gratification for doing or abstaining from doing an act in the discharge

of his functions or duties or in relation to the private entity's affairs or business, or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Any person who gives or agrees to give or offers, a gratification to an employee or a member of a private entity for doing or abstaining from doing an act in the discharge of his functions or duties or in relation to the private entity's affairs or business or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

33. Corruption to provoke serious offence

Where a person has committed an offence under this Sub-part with the object of committing or facilitating the commission of a crime, that person shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

34. Bribery by, or of, foreign public official

(1) A foreign public official who, whether directly or indirectly, solicits, accepts or obtains from a person, for himself or for any other person, a gratification for the foreign public official to use his position –

- (a) to do or to refrain from doing an act in the execution of his functions or duties; or
- (b) to do an act or to refrain from doing an act facilitated by his functions or duties,

in order to provide business to, or retain business for, a person or any advantage to a person, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude not exceeding 10 years.

(2) Any person who promises, offers or gives a gratification, whether directly or indirectly, to a foreign public official or for any other person for that foreign public official to use his position –

- (a) to do or to refrain from doing an act in the execution of his functions or duties; or
- (b) to do an act or to refrain from doing an act facilitated by his functions or duties,

in order to obtain or retain any business, or advantage in the conduct of international business, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

35. Corruption in relation to sporting events

Any person who –

- (a) solicits, accepts or agrees to accept any gratification, for himself or for another person, as an inducement or a reward of his influencing or having influenced the run of play or the outcome of any sport event; or
- (b) offers or gives or agrees to give to another person any gratification as an inducement to influence or as a reward for influencing or having influenced the run of play or the outcome of a sporting event,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

Sub-Part II – Money Laundering Offences

36. Money laundering

(1) Any person who –

- (a) engages in a transaction that involves property which, in whole or in part or directly or indirectly, is or represents the proceeds of a crime; or

- (b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which, in whole or in part or directly or indirectly is or represents the proceeds of a crime,

where he suspects or has reasonable grounds to suspect that the property is derived or realised, in whole or in part or directly or indirectly, from any crime, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) A bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it is capable of being used by a person to commit, or to facilitate the commission of, a money laundering offence or the financing of terrorism shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(3) Sections 150 and 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under subsection (1) or (2).

(4) In this Act, reference to concealing or disguising property which, or in whole or in part or directly or indirectly, is or represents the proceeds of a crime, shall include concealing or disguising its true nature, source, location, disposition, movement or ownership of or rights with respect to it.

37. Limitation of payment in cash

(1) Notwithstanding section 37 of the Bank of Mauritius Act but subject to subsection (2), any person who makes or accepts any payment in cash in excess of 500,000 rupees or its equivalent amount in foreign currency shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Subsection (1) shall not apply to an exempt transaction.

(3) Sections 150 and 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under subsection (1).

(4) In this section –

“exempt transaction” means a transaction –

- (a) between the Bank of Mauritius and any other person;
- (b) between a bank and another bank;
- (c) between a bank and a financial institution;
- (d) between a bank or a financial institution and a customer where –
 - (i) the transaction does not exceed an amount that is commensurate with the lawful activities of the customer, and –
 - (A) the customer is, at the time the transaction takes place, an established customer of the bank or financial institution; and
 - (B) the transaction consists of a deposit into, or withdrawal from, an account of a customer with the bank or financial institution; or
 - (ii) the chief executive officer or chief operating officer of the bank or financial institution, as the case may be, personally approves the transaction in accordance with any guidelines, instructions or rules issued by a supervisory authority in relation to exempt transactions; or
- (e) between such other persons as may be prescribed.

38. Alleged proceeds of crime

(1) A person may be convicted of a money laundering offence notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.

(2) A person may, on a single information or separate information, be charged with and convicted of both a money laundering offence and of the offence which generated the proceeds alleged to have been laundered, notwithstanding that the investigation into the money laundering offence and the predicate crime have not been carried out by the same investigatory authority.

(3) In any proceedings against a person for an offence under this Sub-part, it shall be sufficient to aver in the information that the property is or represents, in whole or in part or directly or indirectly, the proceeds of a crime, without specifying any particular crime, and the Court, having regard to all the evidence, may reasonably infer that the proceeds were, in whole or in part or directly or indirectly, the proceeds of a crime.

(4) Notwithstanding section 184(f) of the Courts Act, the Court may consider the past conviction of any person prosecuted for a money laundering offence, to find or to reasonably infer that the proceeds subject matter of the money laundering offence emanates from a crime which that person has already been convicted of.

Sub-Part III – Fraud Offences**39. Fraud by false representation**

(1) Subject to subsection (3), any person who makes a false representation with the intention to make a gain for himself or another person, or to cause loss to another person, or to expose another person to a risk of loss, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

-
- (2) For the purpose of subsection (1) –
- (a) a representation is false if it is untrue or misleading, and the person making it knows that it is, or might be, untrue or misleading;
 - (b) a representation may be regarded as made if it, or anything implying it, is submitted in any form to any system or device designed to receive, convey or respond to communications with or without human intervention.

(3) Subsection (1) shall not apply to an offence committed under any Revenue Law.

- (4) In this section –

“representation”, which may be express or implied, means any representation as to fact or law, including a representation as to the state of mind of the person making the representation, or any other person.

40. Fraud by failing to disclose information

(1) Subject to subsection (2), any person who fails to disclose to another person information which he is under a legal duty to disclose, and intends by failing to disclose the information –

- (a) to make a gain for himself or for another person; or
- (b) to cause loss to another person or to expose another person to a risk of loss,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Subsection (1) shall not apply to an offence committed under any Revenue Law.

41. Making or supplying articles for use in fraud offence

(1) Any person who makes, adapts, supplies or offers to supply any article knowing that it is designed or adapted for use in the course of, or in connection with, a fraud offence, intending it to be used to commit, or assist in, the fraud offence shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) In this section –

“article” includes any data or program held in electronic form.

42. Failing to pay for goods and services

Any person who, by a dishonest act, obtains goods or services for himself or for another person, with the intention, for not paying or for paying partly for the goods or services shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

43. Fraud by abuse of position

Any person who –

- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interest of another person;
- (b) dishonestly abuses that position; and
- (c) intends, by means of abuse of that position to –
 - (i) make a gain for himself or another person; or
 - (ii) cause loss to another person or expose that another person to a risk of loss,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

44. Electronic fraud

Any person who, directly or indirectly, accesses, uses or interferes with any electronic or computer system or data, with the dishonest intent to –

- (a) obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or
- (b) cause loss, harm or damage to another person or to that another person's property,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

Sub-Part IV – Financing Drug Dealing Offences**45. Financing of drug dealing**

(1) Any person who, directly or indirectly, finances or collects funds for the purpose of financing any of the following drug dealing activities –

- (a) the importation, exportation, causing the importation or exportation, procuring of the importation or exportation, of any dangerous drug;
- (b) the production, manufacture, extraction, preparation or transformation of any dangerous drug;
- (c) the distribution, sale, offer for sale, brokering, delivery or transportation in any manner whatsoever, despatching in transit of any dangerous drug;
- (d) the purchase of any dangerous drug for the purpose of any activity; or
- (e) the organising, managing, aiding, abetting or counselling of any of the activities specified in paragraphs (a) to (d),

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Any person who, directly or indirectly, derives a profit or commission from any of the following drug dealing activities –

- (a) the importation, exportation, causing the importation or exportation, procuring the importation or exportation, of any dangerous drug;
- (b) the production, manufacture, extraction, preparation or transformation of any dangerous drug;
- (c) the distribution, sale, offer for sale, brokering, delivery or transportation in any manner whatsoever, despatching in transit of any dangerous drug;
- (d) the purchase of any dangerous drug for the purpose of any activity; or
- (e) the organising, managing, aiding, abetting or counselling of any of the activities specified in paragraphs (a) to (d),

and who has reasonable grounds to suspect that the profit or commission is derived, directly or indirectly, from any of the activities, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

Sub-Part V – Other Offences

46. Making or supplying articles

Any person who makes, adapts, supplies or offers to supply any article knowing that it is designed for use in the course of, or in connection with, an offence under this Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5 million rupees and to imprisonment for a term not exceeding 5 years.

47. Possession of articles

Any person who has in his possession or under his control any article for use in the course of, or in connection with, an offence under this Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5 million rupees and to imprisonment for a term not exceeding 5 years.

48. Conspiracy

Notwithstanding section 109 of the Criminal Code (Supplementary) Act, any person who agrees with one or more other persons to commit an offence under this Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

49. Aiding, abetting or counselling

Notwithstanding section 38 of the Criminal Code, any person who aids, abets or counsels the commission of an offence under this Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees and to penal servitude for a term not exceeding 10 years.

50. Attempt

Any person who attempts to commit an offence under this Part shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5 million rupees and to penal servitude for a term not exceeding 5 years.

51. Penalty for breach of guidelines

(1) Where a person breaches, without reasonable excuse, the provisions of any guidelines issued by the Commission, he shall be liable to pay to the Commission a penalty representing 10,000 rupees per month or part of the month, until such time as the breach is remedied, provided that the total penalty payable shall not exceed one million rupees.

(2) Any person who is dissatisfied with a decision of the Commission under to subsection (1) may, within 28 days of the imposition of the penalty, apply to the Supreme Court for a judicial review of such decision.

Sub-Part VI – Obligations and Liability of Legal Persons**52. Obligations of legal persons**

(1) A legal person shall ensure that it has adequate procedures in place, which are reasonably necessary, to prevent it or any person acting on its behalf from committing an offence under this Part, failing which it shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees.

(2) The Commission, may, after consultation with the relevant supervisory authority, issue appropriate guidelines to a legal person on the adequate procedures which the legal person shall put in place pursuant to subsection (1).

53. Liability of legal persons

(1) A legal person shall be guilty of an offence under this Part if any of its directors, senior managers or any other persons involved in its management, or any of its officers, agents or representatives having authority to act on its behalf, commits an offence under this Act for the benefit of the legal person.

(2) It shall be a defence for a legal person if the legal person proves, on a balance of probabilities, that it has adequate procedures in place designed to prevent any of its directors, senior managers or any other persons involved in its management, or any of its officers, agents or representatives having authority to act on its behalf, from undertaking such conduct.

(3) Any legal person who commits an offence under this Part shall, on conviction, be liable to a fine not exceeding 20 million rupees.

(4) For the purpose of this Part, a legal person may be convicted for an offence notwithstanding the persons referred to in subsection (1) having been convicted for an offence under this Part.

PART IV – DETECTION OF, AND INVESTIGATION INTO, FINANCIAL CRIMES AND OTHER OFFENCES

Sub-Part I – Detection of Financial Crimes and Other Offences

54. Notification of financial crimes and other offences

- (1) Any person may –
- (a) without disclosing his identity; and
 - (b) orally or in writing,

notify the Commission or an officer that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed.

(2) The Commission shall take all steps that may be necessary to facilitate the notification under subsection (1).

55. Duty to report financial crimes and other offences

(1) Where an officer of a public body suspects that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed, within or in relation to a public body, he shall forthwith make a written report to the Commission.

(2) The Commission shall issue such guidelines as it considers appropriate to ensure compliance with subsection (1).

56. Referrals to Commission

(1) Notwithstanding any other enactment, where in the discharge of his functions –

- (a) a judicial officer;
- (b) the Director of Public Prosecutions;
- (c) the Commissioner of Police;
- (d) the Director-General of the Mauritius Revenue Authority;
- (e) the Governor of the Bank of Mauritius;
- (f) the Director of the Financial Intelligence Unit;
- (g) the Ombudsman;
- (h) the Director of Audit;
- (i) any public official of a public body; or
- (j) any other person,

has reasonable grounds to suspect that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed, he shall refer the matter to the Commission for investigation.

(2) Where a matter is referred to the Commission under subsection (1) for investigation and –

- (a) the money involved amounts to, or the property, benefit or financial loss is valued at, 500,000 rupees or less in relation to a fraud offence; or
- (b) the money involved amounts to 500,000 rupees or less in relation to the financing of a drug dealing offence,

the Commission shall refer the matter to the Police for investigation.

(3) Where in the course of a criminal enquiry, the Commissioner of Police suspects that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed, he shall, subject to subsection (4), refer the matter within 72 hours to the Commission for investigation.

(4) Notwithstanding subsection (3), where –

- (a) the money involved amounts to, or the property, benefit or financial loss is valued at, 500,000 rupees or less in relation to a fraud offence; or
- (b) the money involved amounts to 500,000 rupees or less in relation to the financing of a drug dealing offence,

the Commissioner of Police shall not refer the matter to the Commission for investigation, but the Police shall investigate into the matter.

(5) Where the Director-General of the Mauritius Revenue Authority suspects that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed, he shall, subject to subsection (6), refer the matter within 72 hours to the Commission for investigation.

(6) Notwithstanding subsection (5), where –

- (a) the money involved amounts to, or the property, benefit or financial loss is valued at, 500,000 rupees or less in relation to a fraud offence; or

- (b) the money involved amounts to 500,000 rupees or less in relation to the financing of a drug dealing offence,

the Director-General of the Mauritius Revenue Authority shall refer the matter to the Police for investigation.

Sub-Part II – Investigation into Financial Crimes and Other Offences

57. Preliminary investigation by Commission

(1) Where, under sections 54, 55 and 56, or on its own initiative, or upon a referral of an information by the Director of any Division, the Commission becomes aware that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed, it shall decide whether to refer the matter for a preliminary investigation.

(2) The Director of the Investigation Division or of the Asset Recovery and Management Division shall, within 30 working days of a referral under subsection (1) or within such other period as the Commission may direct, report to the Commission on the matter.

(3) The Commission shall, on receipt of a report under subsection (2), make a determination as whether to –

- (a) proceed with a further investigation; or
- (b) discontinue the investigation.

(4) The Commission may, in making a determination whether to proceed with a further investigation under subsection (3)(a), consider –

- (a) the seriousness of the conduct or involvement to which the allegation relates;
- (b) whether or not the allegation is frivolous or vexatious;
- (c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of a criminal enquiry or other action by an investigatory authority under any other law; and

- (d) whether or not, in all the circumstances, the carrying out of an investigation for the purposes of this Act in relation to the allegation will disclose the commission or likelihood of the commission of an offence under this Act or the Declaration of Assets Act.

58. Further investigation by Commission

(1) Where the Commission makes a determination to proceed with a further investigation pursuant to section 57(3)(a), the investigation shall be carried out by the Director of the Investigation Division or of the Asset Recovery and Management Division, as the case may be, under the responsibility of the Director-General.

(2) For the purpose of subsection (1), the Director-General may delegate such of his powers as he considers appropriate to the Director of the Investigation Division, the Director of the Asset Recovery and Management Division or to any other officer.

(3) The Director-General shall, during the course of an investigation, ensure that there is an appropriate mechanism in place to coordinate parallel and complex investigations.

(4) Where, during the course of an investigation, any other offence is detected and which relates to a financial crime, the Commission shall also investigate into that other offence.

(5) The Commission may, in carrying out an investigation, conduct such hearings as it considers appropriate and, for that purpose –

- (a) the hearing shall be conducted by the Director-General or an officer designated by the Director-General;
- (b) the Chief Legal Adviser, or an officer of the Legal Division deputed by the Chief Legal Adviser, shall be in attendance and shall provide legal advice to the Commission;

-
- (c) the hearing may, at the discretion of the Director-General, be conducted in public or in private;
 - (d) where the Director-General decides that the hearing shall not be conducted in public, no person shall make any report of the hearing unless he has obtained the prior written permission of the Director-General;
 - (e) any person who is required by the Commission to attend the hearing shall be entitled to be represented by a law practitioner of his choice; and
 - (f) where the hearing is conducted by the Director-General, the Director-General may take a deposition on oath or solemn affirmation and may administer the oath or solemn affirmation to any person attending the hearing.

(6) Any person who, in the course of a hearing under subsection (4), knowingly makes a statement which is false or misleading in a material particular, shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(7) After conclusion of an investigation, the Director-General shall submit a report to the Commission.

(8) On receipt of a report under subsection (7), the Commission may decide –

- (a) whether to institute criminal proceedings for an offence under this Act or the Declaration of Assets Act in accordance with section 142;
- (b) whether to discontinue the investigation; or
- (c) on any other course of action as it may deem fit and proper taking into consideration all circumstances of the case.

59. Power of examination

(1) Where the Commission requires a person for the purpose of an investigation, the Director-General may –

- (a) order any person to attend before him for the purpose of being examined orally in relation to any matter;
- (b) order any person to produce before him any book, document, record or article;
- (c) order that information which is stored in a computer, a disc, a cassette or on a microfilm, or preserved by any mechanical or electronic device, be communicated in a form in which it can be taken away and which is visible and legible; or
- (d) by written notice, order a person to furnish a statement in writing made under oath or affirmation setting out all information which may be required under the notice.

(2) A person on whom an order under subsection (1) is served shall –

- (a) comply with the order;
- (b) attend before the Director-General in accordance with the terms of the order;
- (c) continue to attend on such other days as the Director-General may direct until the examination is completed; and
- (d) subject to subsection (4), answer any question, produce any book, document, record or article, or give such information or statement as the Director-General may order.

(3) Where the Director-General has reasonable grounds to suspect that any book, document, record or article produced under subsection (2)(d) may provide evidence relevant to an investigation being carried out by the Commission, he may –

- (a) where the book, document, record or article is not reasonably required for the purpose of performing any

duty under any enactment, retain the book, document, record or article, as the case may be, until its production in Court or until such earlier time as may be required; or

- (b) make certified copies of, or take records from, the book, document or record.

(4) A person may refuse to answer any question put to him, refuse to produce any book, document, record or article, or refuse to give any information or statement where the answer to the question, the production of the book, document, record or article, or the giving of the information or statement may incriminate him.

(5) Subsection (4) shall not apply where the Director-General gives an undertaking in writing to a person that any answer given, any book, document, record or article produced, or any information or statement given will not be used in evidence in any criminal proceedings against him for an offence other than proceedings for perjury.

(6) Where an undertaking is given under subsection (5), no Court shall admit the answer, book, document, record, article, information or statement referred to in the undertaking in any criminal proceedings against the person to whom the undertaking was given, except in proceedings for perjury.

(7) Any person who, after having been served with an order under subsection (1) –

- (a) fails, without reasonable excuse, to comply with any of the terms of the order;
- (b) conceals, destroys, alters, tampers with, removes from the place where it is habitually kept, or otherwise disposes of, a book, document, record or article referred to in the order,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(8) Where a person who, without reasonable excuse, fails to comply with an order under subsection (1), the Director-General may authorise an officer to arrest the person and compel him to comply with that subsection.

60. Power of entry and search

(1) Where the Director-General has reasonable grounds to suspect that there is, on any premises, other than on specified premises referred to in section 64 or in any place of business, evidence which may assist it in an investigation, he may issue a warrant to an officer authorising him to enter and search, at all reasonable times, the said premises.

(2) A search under subsection (1) shall, so far as is practicable, be carried out in the presence of the owner or occupier of the premises, or his duly authorised agent.

(3) An authorised officer shall, prior to a search under subsection (1), deliver a photocopy of the warrant to the owner or occupier of the premises, or his duly authorised agent against receipt acknowledged by a signature on the original of the warrant.

(4) Where a search is effected under subsection (1), the authorised officer effecting the search may –

- (a) seize and take possession of any book, document, record, article, disk, computer system or other article, whether in electronic or digital record, or any electronic or communication device;
- (b) inspect, make copies of, or take extracts from, any book, document or record;
- (c) search any person who is on the premises, detain him for the purpose of the search, and seize any article found on such person; or
- (d) break open, examine, and search any article, safe, container or receptacle.

(5) Notwithstanding any other enactment, the Director-General shall have the power to examine any book, document, record, article, disk, computer system or other article, whether in electronic or digital record, or any electronic or communication device seized under this section and any information obtained shall be admissible as evidence in any Court.

61. Seizure of property

(1) Where, in the course of an investigation under this Act or for any other purpose under this Act or the Declaration of Assets Act, the Director-General is satisfied that a property is the subject matter of, or relates to, an offence under this Act or the Declaration of Assets Act, the Director-General may seize that property.

(2) The Director-General shall keep a record of property seized under subsection (1) and shall cause a copy of that record to be served on the person from whom the property was seized.

(3) A seizure effected under subsection (1) shall be effected by placing the property seized under the custody of such person and at such place as the Director-General may determine.

(4) Notwithstanding subsection (3), where the Director-General considers that it is not practicable to remove the property, he may leave it at the premises on which it is found under the custody of such person as he may direct for that purpose.

(5) Where property seized under subsection (1) is under the custody of a third party, the Director-General may direct that third party not to dispose of, or otherwise deal with, the property without his consent in writing.

(6) In this section –

“property” includes any property which is reasonably believed by the Commission to be proceeds, an instrumentality or a terrorist property.

62. Power of arrest

(1) Where the Director-General is satisfied, with regard to an investigation or prosecution for an offence under this Act or the Declaration of Assets Act, that person –

- (a) has interfered with a potential witness;
- (b) has destroyed or intends to destroy evidence in his possession; or
- (c) has otherwise interfered with the investigation,

the Commission may, in writing, direct an officer to arrest that person.

(2) Where a person is arrested under subsection (1), he –

- (a) shall forthwith be brought to the office of the Commission;
- (b) shall be explained his constitutional rights and given the right to contact his legal representative;
- (c) shall be allowed prompt access to his legal representative;
- (d) may be questioned through a video recording; and
- (e) shall be brought before a Magistrate who may impose such conditions as he considers necessary for his release.

63. Disclosure of financial transactions and any other information

(1) (a) Where the Commission has reasonable grounds to suspect that –

- (i) any property in the possession, or under the control, of a person is proceeds, an instrumentality or a terrorist property;
- (ii) customer information or account information of any person is likely to be of substantial value to any other application made under this Act, or

any investigation being carried out under this Act or the Declaration of Assets Act, by the Commission; and

- (iii) it is in the public interest that the customer information or account information be provided,

it may, by way of an ex parte application, apply to a Judge for an Order to direct a financial institution to provide such customer information or account information, including any details pertaining to financial transactions, as it may have relating to the person specified in the application.

(b) Where any customer information or account information is contained in an electronic device, a Judge may direct the financial institution to provide it in a form in which it is accessible or may be taken away.

(c) Where the Judge issues an Order under this subsection, the financial institution shall, within 21 days of the Order, provide the customer information or account information to the Commission.

(d) Where a financial institution fails to comply with an Order under this subsection, it shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees.

(2) (a) Where the Commission has reasonable grounds to suspect that a law practitioner is in possession of any document, book, record or any other information which may assist the Commission in an investigation under this Act or the Declaration of Assets Act, the Commission may, notwithstanding section 10C(4)(b) of the Law Practitioners Act and section 3(4)(c) of the Notaries Act, apply to a Judge for an Order of disclosure of such document, book, record or information.

(b) A Judge shall not issue an Order under paragraph (a) unless a Judge is satisfied that –

- (i) the document, book, record or information is material for the purpose of an investigation that the Commission is carrying out or a contemplated criminal proceedings;

- (ii) having regard to the need to protect legal professional privilege, it is in the public interest that the Order be issued; or
- (iii) the disclosure is otherwise necessary, in all circumstances.

(3) Notwithstanding any other enactment, the Commission may, for the purpose of an investigation or a prosecution for an offence under this Act or the Declaration of Assets Act, direct any person, bank, financial institution, cash dealer or member of a relevant profession or occupation, to preserve such data, information or record, until such time as may be reasonably required for the investigation or where prosecution is instituted, until the determination of the case.

(4) Any information provided under this section, including any information provided by electronic means, shall be admissible as evidence in any other application made under this Act, or in any prosecution, by the Commission.

(5) Any person who fails to comply with a direction of the Commission under subsection (3) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees.

64. Order to search specified premises

(1) Where the Commission has reasonable grounds to suspect that –

- (a) a bank, financial institution or cash dealer has failed to keep a business transaction record as required under section 17 of the Financial Intelligence and Anti-Money Laundering Act;
- (b) a bank, financial institution, cash dealer or member of a relevant profession or occupation, has failed to report a suspicious transaction as required under section 14 of the Financial Intelligence and Anti-Money Laundering Act; or

- (c) a bank, financial institution, cash dealer or member of a relevant profession or occupation is in possession of any book, document, record, article or any other information which may assist the Commission in an investigation,

the Commission may apply to a Judge for an Order authorising any officer designated by the Director-General, to enter premises belonging to, or in the possession or control of, the bank, financial institution, cash dealer or member of the relevant profession or occupation and to search the premises and remove therefrom any book, document, record or article.

(2) An application under subsection (1) shall be supported by an affidavit by the Director-General disclosing the reason why an Order is sought under this section.

65. Telecommunication Order

(1) Notwithstanding any other enactment, the Commission may, for the purpose of an investigation under this Act or the Declaration of Assets Act, apply to a Judge for a Telecommunication Order directing a public operator or any of its employees or agent to intercept or withhold a message, or disclose to the Commission a message or any information relating to a message.

(2) A Judge shall issue a Telecommunication Order under subsection (1) where a Judge is satisfied that the information relating to the requested information or the message is material to any investigation under this Act or the Declaration of Assets Act.

- (3) In this section –

“information” has the same meaning as in the Information and Communication Technologies Act;

“message” has the same meaning as in the Information and Communication Technologies Act;

“public operator” has the same meaning as in the Information and Communication Technologies Act.

66. Special investigative techniques

(1) For the purpose of preventing, detecting an offence under this Act or the Declaration of Assets Act, the Director of the Investigation Division shall, with the approval of the Director-General, use the following investigative techniques as may be required for the purpose of gathering intelligence or evidence –

- (a) controlled remittance; and
- (b) surveillance.

(2) Notwithstanding any other enactment, where the Director of Investigation has reasonable grounds to suspect that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed by any person, the Director of Investigation may, with the approval of the Director-General, apply to a Judge for an Order to use the following investigative techniques as may be required for the purpose of gathering intelligence or evidence –

- (a) intrusive surveillance;
- (b) the conduct and use of covert intelligence human source; and
- (c) equipment interception.

(3) The Director-General shall give his approval under subsection (1) or (2) after being satisfied that it is just, proportionate and in the public interest to do so.

(4) Where, on an application made under subsection (2), a Judge is satisfied that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed, a Judge may grant the Order.

(5) Any evidence gathered using the investigative techniques under subsections (1) and (2) shall be admissible in Court.

(6) The Director of Investigation Division may delegate his powers under subsections (1) and (2) to any officer.

(7) There shall be a Covert Intelligence Human Source Data Controller who shall keep all records and information pertaining to operations where the use of the Covert Intelligence Human Source technique has been used.

(8) In this section –

“conduct and use of covert intelligence human source” means inducing, asking or assisting a person to engage in the conduct of covert human intelligence source as undercover agent to obtain information by means of the conduct of such a source;

“conduct of covert human intelligence source” means a person who –

- (a) provides intelligence gathered by interpersonal contact to assist in investigations;
- (b) establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating surveillance or intrusive surveillance;
- (c) covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- (d) covertly discloses information obtained by the use of a relationship, or as a consequence of the existence of such a relationship;

“controlled remittance” means an operation which allows for the performance of an act by one person that would qualify as a financial crime, for the purpose of identifying any person involved in the commission of the financial crime;

“equipment interception” means either remotely or physically interfering with computers or computer-like devices such as, inter alia, tablets, smart phones, cables, wires and static storage devices, for the purpose of obtaining communications, equipment data or other information;

“intrusive surveillance” –

- (a) means an act of monitoring, observing or listening to a person, his movements, conversations or other activities; and
- (b) communications, from within a place other than a public place; and
- (c) includes –
 - (i) surveillance from any residential premises or in any private vehicle or private property; and
 - (ii) the use of any kind of surveillance device, drones or other electronic device to enter a place other than a public place;

“surveillance” means the continual act of monitoring, observing or listening to a person, his movements, conversations or other activities and communications, from a public place, with the likely result of obtaining private information about that person or another person.

67. Discharge or variation of Order under Part IV

(1) An application to discharge or vary an Order under this Part may be made to a Judge by –

- (a) the person who applied for the Order; or
- (b) any person affected by the Order.

(2) A Judge may, on an application made under subsection (1), vary or discharge the Order where a Judge is of opinion that it is in the interests of justice to do so.

PART V – ASSET RECOVERY

Sub-Part I – Application of Part V

68. Application of Part V

(1) This Part shall apply to properties which are proceeds and instrumentalities of unlawful activities, including any property seized by any investigatory authority during the course of a criminal enquiry, and terrorist properties.

(2) For the purpose of this Part, where it is found that a person was in possession of property which are proceeds or instrumentalities of an unlawful activity and that he did not have a legitimate source of income sufficient to justify his interest in the property or the benefit derived by him or the interest in the property or any benefit therefrom is not from his legitimate source of outcome, the onus shall, on a balance of probabilities, lie on that person to show that the property was not obtained, or the benefit was not derived, from an unlawful activity.

(3) Any application to the Court under this Part shall –

- (a) be by way of motion supported by an affidavit; and
- (b) constitute civil proceedings and be determined on a balance of probabilities.

(4) Any application to a Judge under this Part shall –

- (a) be by way of an application supported by a proceipe and affidavit; and
- (b) constitute civil proceedings and be determined on a balance of probabilities.

(5) Nothing in this Act shall affect the power of a Court to order the estreatment or forfeiture of any property pursuant to its power under any other enactment.

(6) In this Part –

“unlawful activity” –

- (a) means an act which constitutes an offence or some other contravention of a law; and
- (b) includes acquiring possession of property or deriving a benefit, as a result of or in connection with an act referred to in paragraph (a), at any time not earlier than 10 years before 10 November 2012.

Sub-Part II – Criminal-Based Asset Recovery

Section A – Criminal Attachment Order

69. Application for Criminal Attachment Order

(1) Where a person is charged with, or convicted of, an offence or a criminal enquiry is ongoing, the Commission may apply to a Judge, by way of ex parte application, for a Criminal Attachment Order in order to preserve or protect any property, in which the person being investigated, charged or convicted has an interest that is reasonably believed to be proceeds or an instrumentality of the offence, or a terrorist property.

(2) Where the Commission determines that it is necessary for it to take custody of, and manage the property, it shall, in the application under subsection (1), justify why it shall take custody of, and manage, the property.

70. Issue of Criminal Attachment Order

(1) Where the Commission applies to a Judge for a Criminal Attachment Order, and a Judge is satisfied, having regard to any relevant evidence, that there are reasonable grounds to believe that –

- (a) the alleged offender has been charged with, or convicted of, an offence, or is the subject of a criminal enquiry; and
- (b) the property which is the subject of the application is proceeds or an instrumentality of the offence, or a terrorist property,

a Judge may issue a Criminal Attachment Order.

(2) Where a Judge issues a Criminal Attachment Order under subsection (1), he shall direct that –

- (a) the property shall not be transferred, pledged, disposed of, or the property shall not otherwise be dealt with, by any person, except in such manner and in such circumstances as may be directed in the Order;

- (b) the property, or such part of the property as is specified in the Order, shall be seized, taken into possession, delivered up for safekeeping or otherwise secured by the Commission; or
- (c) the Commission shall take custody of, and manage, the property in such manner and in such circumstances as may be directed in the Order.

(3) Where a Judge issues a Criminal Attachment Order, the Commission shall, within 21 days of the issue of the Order, or such other period as a Judge may direct, give notice of the Order to –

- (a) every person known to the Commission to have an interest in the property;
- (b) such reporting person as it considers appropriate, in such form and manner as it may determine; and
- (c) such other person as a Judge may direct.

71. Management of property under Criminal Attachment Order

(1) Subject to subsection (2), the Commission may do anything which it considers reasonably necessary or appropriate to preserve or protect any property seized or to which a Criminal Attachment Order applies and its value, and may, in particular –

- (a) become a party to any civil proceedings that affects the property;
- (b) ensure that the property is insured;
- (c) realise or otherwise deal with the property if it is perishable, subject to depreciation or wasting or other forms of loss, its value is volatile or the cost of its storage or maintenance is likely to exceed its value;
- (d) incur any necessary capital expenditure in respect of the property;

- (e) where the property consists of a trade or business –
 - (i) employ persons in the business or terminate their employment;
 - (ii) do any other thing that is necessary or convenient for carrying on the trade or business on a sound commercial basis; and
 - (iii) with a Judge’s approval, sell, liquidate or wind up the trade or business if it is not a viable, going concern or it is otherwise commercially advantageous to do so; or
- (f) where the property includes shares in a company, exercise rights attaching to the shares as if he were the registered holder of the shares.

(2) The Commission may, for the purpose of subsection (1), incur such expenses as may be reasonably necessary and may retain the services of such person as it may deem fit to realise or otherwise deal with the property subject to the Criminal Attachment Order.

(3) Any expenses incurred by the Commission under subsection (2) shall be recovered from the Recovered Assets Fund.

72. Judge’s further Orders

(1) Where a Criminal Attachment Order is issued, a Judge may issue –

- (a) another Order revoking the Criminal Attachment Order or varying the property to which it relates;
- (b) another Order varying any condition to which the Criminal Attachment Order is subject;
- (c) another Order directing any person who holds or has dealt with the property to give to the Commission a sworn statement setting out such particulars of the property or dealings with the property, as a Judge thinks fit;

-
- (d) where the Criminal Attachment Order directed the Commission to take custody of the property, another Order –
 - (i) regulating the manner in which the Commission may exercise its powers;
 - (ii) determining any question relating to the property; or
 - (iii) directing the owner of the property or any other person to do any act necessary or convenient to enable the Commission to take custody of the property in accordance with the Order; or
 - (e) subject to subsection (2), another Order to provide for meeting out of the property –
 - (i) reasonable living expenses of a person having an interest in the property;
 - (ii) any such person's reasonable expenses in defending any criminal charge; and
 - (iii) the Commission's remuneration and expenses.

(2) A Judge shall not issue another Order under subsection (1)(e)(i) or (ii) unless he is satisfied that the person cannot meet the expenses out of any property that is not subject of the Criminal Attachment Order and he determines that it is in the interests of justice to do so.

(3) An application for an Order under subsection (1)(a) or (b) may be made by any person affected by the Criminal Attachment Order.

73. Exclusion of property from Criminal Attachment Order

Any person who has an interest in any property that is subject of a Criminal Attachment Order may apply to a Judge to exclude his interest from the Order, and a Judge shall grant the application where he is satisfied that –

- (a) the property is not proceeds or an instrumentality of the offence in relation to which the Order was issued, or a terrorist property;

- (b) the person was not in any way involved in the commission of the offence in relation to which the Order was issued;
- (c) where the person acquired the interest before the commission of the offence in relation to which the Order was issued, he did not know that any person would use, or intended to use, the property in or in connection with the commission of the offence; or
- (d) where the person acquired the interest at the time of or after the commission of the offence, the interest was acquired in circumstances which would not arouse a reasonable suspicion that the property was proceeds or an instrumentality of the offence in relation to which the Order was issued, or a terrorist property.

74. Registration of Criminal Attachment Order

(1) Where a Criminal Attachment Order applies to property of a particular kind and an enactment provides for the registration of title to, or charges over, property of that kind, the Registrar-General or any other relevant authority shall, on application by the Commission, record on the register kept pursuant to that enactment the particulars of the Order.

(2) Where particulars of the Order are recorded pursuant to subsection (1), a person who subsequently deals with the property shall, for the purpose of section 70(3), be deemed to have notice of the Criminal Attachment Order at the time of the dealing.

(3) Where particulars of the Order are recorded pursuant to subsection (1), a Judge may, on an application made by the Commission, direct that the property shall not, without the consent of a Judge –

- (a) be mortgaged or otherwise burdened;
- (b) be attached or sold in execution;
- (c) vest in the liquidator where the estate of the owner of the property is sequestrated; or

- (d) form part of the assets of a body corporate where that body is the owner of the immovable property and it is wound up.

(4) Where a Criminal Attachment Order is revoked or varied pursuant to section 72(1)(a) or (b), the Registrar-General or any other relevant authority shall cancel or, as the case may be, amend the particulars recorded in the appropriate register in accordance with such Order as a Judge may issue.

75. Contravention of Criminal Attachment Order

(1) Any person who knowingly contravenes a Criminal Attachment Order by transferring, pledging, disposing or otherwise dealing with, a property that is subject of the Order shall commit an offence.

- (2) Where, in relation to a Criminal Attachment Order –
 - (a) property is transferred, pledged, disposed of, or otherwise dealt with, in contravention of the Order; and
 - (b) the transfer, pledging or disposition of the property, or the property being otherwise dealt with, was not for sufficient consideration or not in favour of a person who acted in good faith,

the Commission may apply to a Judge for another Order that the transfer, pledging or disposition of the property, or the property being otherwise dealt with, be set aside.

(3) Where the Commission makes an application under subsection (2), a Judge may issue an Order –

- (a) setting the transfer, pledging or disposition of the property, or the property being otherwise dealt with, from the day on which it took place; or

- (b) setting the transfer, pledging or disposition of the property, or the property being otherwise dealt with, from the day of the Order issued under this subsection, and declaring the respective rights of any person who acquired an interest in the property on or after the day on which the dealing took place and before the Order was issued under this subsection.

76. Duration of Criminal Attachment Order

(1) Subject to subsection (3), where a Criminal Attachment Order is issued on the basis that an alleged offender is the subject of a criminal enquiry, a Judge shall, on application made to him pursuant to subsection (2), discharge the Order if the alleged offender is not charged with a criminal offence as a result of the enquiry, or an offence arising from the same conduct or course of conduct, within 12 months of the date on which the Order is issued.

(2) (a) Where subsection (1) applies, the Commission shall make the necessary application to a Judge as soon as reasonably practicable.

(b) Where no application pursuant to paragraph (a) is made by the Commission within 7 days of the expiry of the period referred to in subsection (1), any person affected by the Criminal Attachment Order may apply under this subsection for the discharge of the Order.

(3) Where a Criminal Attachment Order is likely to lapse pursuant to subsection (1), a Judge may, on an application made by the Commission, extend the operation of the Order for a specified additional period not exceeding 3 years where he is satisfied that it is in the interests of justice to do so.

(4) Where a Criminal Attachment Order is issued on the basis that an alleged offender is the subject of a criminal enquiry and the alleged offender is, within 12 months of the date on which the Order was issued, charged with a criminal offence as a result of that enquiry, the Order shall have effect until the conclusion of the criminal proceedings, including any appeal, in respect of that offence.

Section B – Criminal Confiscation Order**77. Application for Criminal Confiscation Order**

(1) (a) Where a person is convicted of an offence, the Commission may apply to the Court for a Confiscation Order in respect of any property, in which the convicted person or any other person has an interest, that is reasonably believed to be proceeds, including income or other benefits derived from such proceeds, or an instrumentality used or intended to be used for the offence, or a terrorist property, including income or other benefits derived from such instrumentality or terrorist property.

(b) The Commission shall attach to the application a statement setting out an assessment of the value of the benefit obtained or likely to be obtained by the defendant.

(c) The Court may require a defendant served with a copy of a statement under paragraph (b) to respond to each averment in it and, insofar as he does not accept any averment, to indicate on oath any facts upon which he proposes to rely.

(2) The Commission shall, except with leave of the Court, make an application under subsection (1) within 6 months of the date on which a person is convicted of the offence.

(3) The Court shall only grant leave under subsection (2) where it is satisfied that –

- (a) the benefit to which the application relates was, or is likely to be, derived, realised or identified after the period referred to in subsection (2); or
- (b) the application is based on evidence that could not reasonably have been obtained by the Commission before the period referred to in subsection (2); and
- (c) it is in the interests of justice to do so.

(4) The Commission may amend an application for a Criminal Confiscation Order at any time before the final determination of the application by the Court, provided that reasonable notice of the amendment is given to every person on whom the application is served.

(5) Where an application is made for a Criminal Confiscation Order, the Court may, in determining the application, have regard to any evidence received in the course of the proceedings against the person convicted before the trial Court and to any other relevant evidence gathered in the course of a criminal enquiry.

(6) (a) Where an application under this section has been finally determined, the Commission may not make a further application for a Criminal Confiscation Order in respect of the same offence without the leave of the Court.

(b) The Court shall not grant leave under paragraph (a) unless –

- (i) the further application is made not more than 6 months after the final determination; and
- (ii) the benefit to which the new application relates was identified after the determination of the previous application; or
- (iii) the Court is satisfied that –
 - (A) necessary evidence became available after the previous application was determined;
 - (B) the benefit to which the further application relates was identified after the final determination; or
 - (C) it is otherwise in the interests of justice to do so.

78. Service of Criminal Confiscation Order application

(1) Where the Commission makes an application for a Criminal Confiscation Order –

- (a) it shall serve a copy of the application and of the statement referred to in section 77(1)(b) on the defendant and on such other person as the Court may direct; and
- (b) every person who has been served may appear and adduce evidence at the hearing of the application.

(2) The absence of the defendant, or of any other person on whom service has been effected, shall not prevent the Court from making a Criminal Confiscation Order in his or their absence.

(3) The Court may waive the requirements of service under subsection (1) on the defendant where he is already before the Court.

79. Issue of Criminal Confiscation Order

(1) Where the Commission makes an application under section 77 and the Court is satisfied that the defendant has benefited from an offence or any other unlawful activity which the Court finds to be sufficiently related to that offence, it shall, subject to section 81, issue a Criminal Confiscation Order, ordering him to pay to the State, within such time as it may determine, an amount equal to the value of his benefit.

(2) The Court shall, in accordance with sections 80 and 81, assess the value of the benefit which the defendant has derived.

(3) Where the Court issues a Criminal Confiscation Order –

- (a) the Order shall not, except with leave of the Court and in accordance with any direction of the Court, be enforced before the relevant appeal date; and
- (b) if, after the relevant appeal date, the Order has not been set aside or discharged, the Order may be enforced and any amount recovered applied in accordance with Section B of this Sub-part and any direction given by the Court.

(4) In this section –

“relevant appeal date” means –

- (a) the date on which the period prescribed for the lodging of an appeal against the defendant’s conviction before a trial Court, or for the lodging of an appeal against the issuing of a Confiscation Order, expires without an appeal having been lodged, whichever is later; or

- (b) where an appeal against the defendant's conviction before the trial Court or against the issuing of a Confiscation Order is lodged, the date on which the appeal lapses in accordance with the law or is finally determined, whichever is later.

80. Determination of value of benefit

(1) For the purpose of Section B of this Sub-part, the value of the benefit derived or likely to be derived by a defendant may include –

- (a) any money received by the defendant, or by another person at the request or by the direction of the defendant;
- (b) the value of any dangerous drug found in the possession of the defendant or of another person on behalf of the defendant;
- (c) the value of any property that was derived or realised, directly or indirectly, by the defendant or by another person at the request or by the direction of the defendant;
- (d) the value of any service or financial advantage provided for the defendant or another person, at the request or by the direction of the defendant; or
- (e) unless the Court is satisfied that the increase was due to causes unrelated to the commission of the offence, any increase in the total value of property in which the defendant has an interest in the period beginning immediately before the commission of the offence and ending at some time after the commission of the offence.

(2) In calculating the value of the benefit –

- (a) any expenditure of the defendant in connection with the commission of the offence shall be disregarded; and
- (b) the Court shall make any adjustment necessary to prevent a benefit from being counted more than once.

(3) For the purpose of subsection (1)(e), where an offence is committed between 2 dates, the period begins immediately before the earlier of the 2 dates and ends at some time after the later of the 2 dates.

(4) Where the benefit derived or likely to be derived by a defendant was in the form of property, including dangerous drug or some other form of unlawfully obtained property, the Court may, in determining the value of that property, have regard to evidence given by the Commission or such other person whom the Court considers has expert knowledge of the value of that kind of property.

(5) The Court may, for the purpose of determining whether there was a benefit and the value of the benefit, treat any acceptance by the defendant of the averments set out in the statement referred to in section 77(1)(b) as conclusive of the matters to which it relates.

(6) The Court may treat a defendant's failure to respond to the statement or to indicate the facts upon which he will rely as an acceptance of every averment in the statement other than –

- (a) an averment regarding whether he complied with the requirement; and
- (b) an averment that he has benefited from the offence or that he obtained any property or advantage as a result of or in connection with the commission of the offence.

81. Amount recoverable

(1) The amount to be recovered under a Criminal Confiscation Order shall be the amount specified in the Order or, if a certificate is issued pursuant to subsection (4), such lesser amount as may be specified in the certificate.

(2) An application for a certificate referred to in subsection (4) may be made by the defendant to the Court.

(3) An application pursuant to subsection (2) –

- (a) shall not be made more than 30 days after the date on which the application for a Criminal Confiscation Order was issued;

- (b) shall be supported by an affidavit of the defendant and of any other person on whose evidence the defendant proposes to rely; and
- (c) shall be served on the Commission, together with any supporting affidavit.

(4) The Court shall issue a certificate pursuant to this section where, having regard to written or oral testimony, it is satisfied that –

- (a) it has been provided with an accurate assessment of the total value of the financial resources held by the defendant, irrespective of whether they are subject to any other Order under this Act; and
- (b) the total value of the financial resources held by the defendant is less than the amount ordered to be paid under the Criminal Confiscation Order.

(5) Where a certificate is issued pursuant to subsection (4), it shall specify a monetary amount equal to the total value of the financial resources held by the defendant.

(6) The Court may, on an application made by the Commission within 2 years after the issue of the certificate, vary or revoke it or issue a Criminal Confiscation Order in a new amount, where –

- (a) it is made aware of facts that would have led it to a different conclusion regarding the issuing of the certificate or the amount specified in a certificate; or
- (b) the defendant acquires possession of additional assets which, had they been available at the date of the certificate, would have resulted in the certificate not being issued or being issued for a higher amount.

82. Discharge of Criminal Confiscation Order

- (1) A Criminal Confiscation Order shall be discharged –
 - (a) on the satisfaction of the Order by payment of the amount due under the Order;

- (b) if the conviction for the offence in reliance on which the Order was issued is, or is taken to be, quashed and no conviction for the offence is substituted; or
- (c) if the Order is quashed.

(2) For the purpose of subsection (1)(b), a person's conviction for an offence shall be taken to be quashed in any case where –

- (a) the conviction is quashed or set aside;
- (b) the person is charged with and found guilty of the offence but is discharged, without any conviction being recorded; or
- (c) the person is granted a pardon in respect of his conviction for the offence.

83. Appeal against Criminal Confiscation Order

(1) The Commission may, where an application for a Criminal Confiscation Order has been rejected, or any other person who has been served with an application for a Criminal Confiscation Order is aggrieved by the issue of a Criminal Confiscation Order, appeal, against such decision, to the Court of Civil Appeal in accordance with the Court of Civil Appeal Act.

(2) Where a Criminal Confiscation Order is issued, it shall remain in force until the final determination of an appeal under subsection (1).

84. Realisation of property under Criminal Confiscation Order

(1) Where a Criminal Confiscation Order is issued and the Order is not subject to appeal, nor discharged, the Court may, on an application made by the Commission, exercise the powers conferred upon it by this section.

(2) The Court may direct the Commission to take possession and control of and realise –

- (a) the property in which the defendant has an interest which he acquired before or after the making of the Criminal Confiscation Order; or

- (b) the property protected by a Criminal Attachment Order; or
- (c) the specified items of property in which the defendant has an interest.

(3) The Court may issue such further Order to assist the Commission in the exercise of its powers as the Court thinks fit.

85. Application of monetary sums

(1) Monetary sums in the hands of the Commission from receipt of the property of the defendant or from the realisation of any property under section 84 shall, after any such payment as the Court may direct are made out of those sums, be paid to the Official Receiver and applied on the defendant's behalf towards the satisfaction of the Criminal Confiscation Order in the manner provided by subsection (3).

(2) If, after full payment of the amount payable under the Confiscation Order, any sum referred to in subsection (1) remain in the hands of the Commission, the Commission shall distribute those sums among such of those persons who held property which has been realised under Section B of this Sub-part and in such proportions as the Court directs, after giving a reasonable opportunity for those persons to make representations to the Court.

(3) Sums received by the Official Receiver in payment of amounts due under a Criminal Confiscation Order shall be applied as follows –

- (a) if received from the Commission under subsection (1), they shall first be applied in payment of the Commission's expenses; and
- (b) the balance shall be transferred to the Recovered Assets Fund.

86. Contravention of Criminal Confiscation Order

A defendant who wilfully makes default in the payment of any amount recoverable on a Criminal Confiscation Order shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10 million rupees and to imprisonment for a term not exceeding 5 years.

Sub-Part III – Civil-Based Asset Recovery**Section A – Civil Attachment Order****87. Application for Civil Attachment Order**

(1) Where a property is reasonably believed by the Commission to be recoverable under Section B of this Sub-part and to be proceeds, an instrumentality or a terrorist property, it may apply to a Judge, by way of ex parte application, for a Civil Attachment Order in respect of that property.

(2) It shall be sufficient, for the purpose of subsection (1), for the Commission to show that the property is proceeds, an instrumentality or a terrorist property, without being required to show that the property was derived directly or indirectly from a particular offence or that any person has been charged in relation to such an offence.

(3) The Commission may make an application under subsection (1) notwithstanding the fact that the act which is the subject of the application was committed by a person who is deceased at the time of the application.

(4) Where the Commission is of the opinion that, for any reason, it is necessary for it to manage the property, it shall state the reason in its application.

88. Issue of Civil Attachment Order

(1) A Judge shall, where he is satisfied that there are reasonable grounds to believe that the property referred to in the application is proceeds, an instrumentality or a terrorist property, issue a Civil Attachment Order which may –

- (a) authorise, require or secure the delivery up, seizure, detention or custody of the property; or
- (b) authorise or require the Commission to take –
 - (i) custody and control of the property and to manage or otherwise deal with it in such manner as a Judge may direct; or

- (ii) such steps as a Judge considers appropriate to secure the detention, custody or preservation of the property or for any other purpose.

(2) A Judge may issue a Civil Attachment Order where a person is not in Mauritius or is acquitted of an offence, or the charge against him is withdrawn before a verdict is returned or the proceedings are stayed.

(3) Notwithstanding subsection (1) and section 87, the Commission may apply to a Judge for an Order that the person in whose possession the property is found shall exercise the powers specified in subsection (1)(b).

(4) A Civil Attachment Order may, subject to subsection (5), make such provision as a Judge thinks fit for –

- (a) reasonable living expenses of a person holding an interest in property subject of the Order; and
- (b) reasonable legal expenses of such a person in connection with any proceedings instituted against him under this Act or any related criminal proceedings.

(5) A Judge shall not make provision for any expenses under subsection (4) unless he is satisfied that the person cannot meet the expenses concerned out of his property which is not the subject of the Civil Attachment Order and he determines that it is in the interests of justice to do so.

(6) (a) For the purpose of preventing a property subject of a Civil Attachment Order from being disposed of or removed contrary to the Order, the Commission may seize the property where it has reasonable grounds to suspect that the property will be disposed of or removed.

(b) Any property seized pursuant to paragraph (a) shall be dealt with in accordance with the directions of a Judge.

(7) (a) Where a Judge issues a Civil Attachment Order, the Commission shall, within 21 days from the making of the Order or such longer period as a Judge may direct, give notice of the Order –

- (i) to every person known to the Commission to have an interest in the property;
- (ii) such person, including a reporting person, as it considers appropriate, in such form and manner as it may determine; and
- (iii) such other person as a Judge may direct.

(b) Where a person who is the owner of the property is unknown or cannot be found, a Judge shall, as soon as practicable after the Order is issued, cause to be published a notice of the Order in 2 daily newspapers of wide circulation.

89. Management of property under Civil Attachment Order

(1) The Commission may do anything which it considers reasonably necessary or appropriate to protect or preserve the property to which the Civil Attachment Order applies and its value, and may, in particular –

- (a) realise or otherwise deal with the property if it is perishable subject to wasting or other form of loss, its value is volatile or the cost of its storage or maintenance is likely to exceed its value;
- (b) where the property comprises assets of a trade or business –
 - (i) carry on, or arrange for another person to carry on, the trade or business;
 - (ii) employ persons in the trade or business or terminate their employment; and
 - (iii) with a Judge's approval, sell, liquidate or wind up the trade or business if it is not a viable or going concern or it is otherwise commercially advantageous to do so;

- (c) incur any necessary capital expenditure in respect of the property;
- (d) where the property includes shares in a company, exercise rights attaching to the shares as if he was the registered holder of the shares;
- (e) ensure that the property is insured; or
- (f) become a party to any civil proceedings that affect the property.

(2) The Commission may, for the purpose of subsection (1), incur such expenses as may be reasonably necessary and may retain the services of such person to realise or otherwise deal with the property subject to the Criminal Attachment Order.

(3) Any expenses incurred by the Commission under subsection (2) shall be recovered from the Recovered Assets Fund.

90. Exclusion of property from Civil Attachment Order

Where a person who has an interest in property that is the subject of a Civil Attachment Order applies to a Judge to exclude his interest from the Order, a Judge shall grant the application where he is satisfied that –

- (a) the property is not proceeds, an instrumentality or a terrorist property;
- (b) the applicant was not, in any way, involved in the commission of the offence in relation to which the Order was issued;
- (c) where the person acquired the interest before the commission of the offence, the person did not know that another person would use, or intend to use, the property in, or in connection with, the commission of the offence; or
- (d) where the person acquired the interest at the time or after the commission of the offence, the interest was acquired in circumstances which would not arouse a reasonable suspicion that the property was proceeds, an instrumentality or a terrorist property.

91. Order in respect of immovable property

(1) Following the issue of a Civil Attachment Order in respect of an immovable property of a particular kind and where any enactment provides for the registration of title to, or charges over, a property of that kind, a Judge may, on an application made by the Commission, order the Registrar-General to endorse any one or more of the restrictions referred to in subsection (2) on the title deed of the immovable property with a view to ensuring the effective execution of a subsequent Order issued by a Judge or by the Court.

(2) An Order under subsection (1) may include a restriction that the property shall not, without the consent of a Judge –

- (a) be mortgaged or otherwise burdened;
- (b) be attached or sold in execution;
- (c) vest in the liquidator when the estate of the owner of that immovable property is sequestered; or
- (d) where the owner of the property is a body corporate, form part of the assets of that body corporate where it is wound up.

(3) In order to give effect to an Order issued under subsection (1), the Registrar-General shall make the necessary entries in his register and the necessary endorsement on the title deed, and thereupon any restriction referred to in subsection (2) shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(b), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property before the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property.

92. Variation and rescission of Civil Attachment Order

(1) Any person affected by a Civil Attachment Order may apply to a Judge for the variation or rescission of the Order.

(2) A Judge –

- (a) may vary or rescind the Order where necessary in the interests of justice; or
- (b) shall rescind the Order where the proceedings concerned are concluded.

(3) Where a Civil Attachment Order in respect of an immovable property is varied or rescinded, a Judge shall direct the Registrar-General to amend or cancel any restriction endorsed by virtue of that Order on the title deed of the immovable property, and the Registrar-General shall give effect to any such direction and declare the respective rights of every person who acquired an interest in the property on or after the day on which the Order was issued and before the day on which it was varied or rescinded.

93. Duration of Civil Attachment Order

(1) Subject to subsection (2), a Civil Attachment Order shall expire 12 months after the date on which it was issued unless –

- (a) there is an application for a Civil Confiscation Order pending before the Court in respect of the property which is the subject of the Civil Attachment Order;
- (b) there is an unsatisfied Civil Confiscation Order in force in relation to the property which is the subject of the Civil Attachment Order; or
- (c) the Civil Attachment Order is rescinded before the expiry of that period.

(2) The Commission may, on good cause shown, apply to a Judge to extend the duration of a Civil Attachment Order for such specific additional period, not exceeding 3 years, as a Judge thinks fit to do in the interests of justice.

94. Contravention of Civil Attachment Order

(1) A person who knowingly contravenes a Civil Attachment Order by disposing of or otherwise dealing with property that is subject to the Order shall commit an offence.

(2) The Commission may apply to a Judge for an Order that any dealing with property be set aside where –

- (a) the property is dealt with in contravention of the Civil Attachment Order; or
- (b) the dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice of the Civil Attachment Order.

(3) A Judge may, on an application under subsection (2), order that –

- (a) the disposition or dealing shall be set aside from the day on which it took place; or
- (b) the disposition or dealing shall be set aside from the day on which he issues the Order and declare the respective rights of every person who acquired an interest in the property on or after the day on which the disposition or dealing took place and before the day on which he issues the Order.

Section B – Civil Confiscation Order**95. Application for Civil Confiscation Order**

(1) Where a property has come to the notice of the Commission and the property is reasonably believed by the Commission to be proceeds, an instrumentality or a terrorist property, the Commission may make an application to the Court for the issue of a Civil Confiscation Order in respect of the property.

(2) The Commission shall, within 14 days of an application under subsection (1), give notice to every person known to the Commission to have an interest in the property subject to the application.

(3) Any person referred to in subsection (2) or any other person claiming an interest in the property may appear at the hearing of an application under subsection (1) –

- (a) to oppose the making of the Civil Confiscation Order; or
- (b) to apply for an Order –
 - (i) excluding his interest in that property from the operation of the Civil Confiscation Order; or
 - (ii) varying the operation of the Civil Confiscation Order in respect of that property; and
- (c) to adduce evidence at the hearing of the application.

96. Issue of Civil Confiscation Order

(1) The Court shall, subject to subsection (2) and section 98, issue a Civil Confiscation Order where it finds that the property concerned is proceeds, an instrumentality or a terrorist property.

(2) The Court shall not issue a Civil Confiscation Order of property or transfer the proceeds from the sale of the property to the State unless it is satisfied that it is in the interests of justice to do so and until such notice as the Court may direct has been given to any person in whose possession the property is found or who may have interest in the property or claim ownership of the property, to show cause why the property should not be recovered.

(3) The Court may issue a Civil Confiscation Order under this section where a person is not in Mauritius or is acquitted of an offence, the charge against him is withdrawn before a verdict is returned or the proceedings are stayed.

(4) Where the Court issues a Civil Confiscation Order, the Commission shall cause to be published a notice of the Order in 2 daily newspapers of wide circulation as soon as practicable after the Order is issued.

(5) A Civil Confiscation Order shall not take effect –

- (a) before the period allowed for an application under section 97, or an appeal under section 99, has expired; or
- (b) before such an application or appeal has been disposed of.

97. Failure to notify

(1) Any person affected by a Civil Confiscation Order who was entitled to receive notice of the application for the Order under section 95(2), but did not receive the notice, may, within 45 days after the last publication of the notice under section 96(4), apply for an Order excluding his interest in the property concerned from the operation of the Civil Confiscation Order, or varying the operation of the Civil Confiscation Order in respect of that property.

(2) An application under subsection (1) shall be accompanied by an affidavit setting out –

- (a) the nature and extent of the applicant’s right, title or interest in the property concerned;
- (b) the time and circumstances of the applicant’s acquisition of the right, title, or interest in the property;
- (c) any additional facts supporting the application; and
- (d) the relief sought.

(3) The application and the affidavit shall be served on the Commission which may appear at the hearing of the application.

(4) The hearing of the application shall, to the extent practicable and consistent with the interests of justice, be held within 30 days from the date the application is filed.

(5) The Court may consolidate the hearing of the application with the hearing of any other application filed under this section.

(6) The Court may issue an Order under subsection (1) where it finds that the applicant for such an Order –

- (a) had lawfully acquired the interest concerned; and
- (b) neither knew nor had reasonable grounds to believe that the property in which the interest is held is proceeds, an instrumentality or a terrorist property.

98. Exclusion of property from Civil Confiscation Order

Where a person who has an interest in a property which is the subject of a Civil Confiscation Order makes an application to exclude his interest from the Order, a Judge may grant the application where he is satisfied that –

- (a) the property is not proceeds, an instrumentality or a terrorist property;
- (b) the person was not in any way involved in the commission of the offence in relation to which the Civil Confiscation Order was issued;
- (c) in the case where the person acquired the interest before the commission of the offence, the person did not know that another person would use, or intended to use, the property for, or in connection with, the commission of the offence; or
- (d) in the case where the person acquired the interest at the time or after the commission of the offence, the interest was acquired in circumstances which would not have given rise to any reasonable suspicion that the property was proceeds, an instrumentality or a terrorist property.

99. Appeal against Civil Confiscation Order

(1) The Commission may, where an application for a Civil Confiscation Order has been rejected, or any other person who has been served with an application for a Civil Confiscation Order is aggrieved

by the issue of a Civil Confiscation Order may, appeal against such decision to the Court of Civil Appeal in accordance with the Court of Civil Appeal Act.

(2) Where a Civil Confiscation Order has been issued, it shall remain in force until the final determination of an appeal under subsection (1).

100. Enforcement of Civil Confiscation Order

(1) A property which is the subject of an Order shall vest in the State on the day a Civil Confiscation Order takes effect.

(2) On a Civil Confiscation Order taking effect, the Commission may take possession of that property on behalf of the State from any person in possession, or entitled to possession, of the property.

(3) The Commission shall, subject to any Order for the exclusion of an interest in recovered property under section 98, dispose of the property recovered under section 96 by sale or such other means as the Court may direct.

(4) Any right or interest in recovered property not exercisable by or transferable to the State shall expire and shall not revert to the person who has possession, or was entitled to possession, of the property immediately before the Civil Confiscation Order took effect.

(5) No person who has possession, or was entitled to possession, of a recovered property immediately before the Civil Confiscation Order took effect, and no person acting in concert with or on behalf of that person shall purchase the recovered property at any sale effected by the Commission.

(6) The Commission shall deposit into the Recovered Assets Fund the proceeds of any sale or disposition of the recovered property and any moneys recovered.

(7) The expenses incurred in connection with the recovery and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and Court costs, shall be defrayed out of the Recovered Assets Fund.

Section C – Tracing of Assets

101. Recoverable property

(1) Subject to section 103, where any property which constitutes proceeds, an instrumentality or a terrorist property has been disposed of given that it was used or obtained in connection with the commission of an offence, it may be recoverable pursuant to Section A or B of this Sub-part if it is held by a person into whose hands it may be followed in accordance with subsection (2).

(2) The property may be followed into the hands of a person obtaining it on a disposal by –

- (a) the person who used or intended to use the property as an instrumentality or through the offence obtained the property or terrorist property; or
- (b) a person into whose hands it may, by virtue of this subsection, be followed.

102. Property indirectly obtained or used

(1) Subject to section 103, where a property which is a terrorist property or an instrumentality of, or has been obtained through, an offence (in this section, referred to as “the original property”) is or has been recoverable, any property which represents that property shall also be so recoverable.

(2) Where a person enters into a transaction by which –

- (a) he disposes of a property which is recoverable, whether the original property or property which represents the original property; and
- (b) he obtains other property in place of it,

the other property shall represent the original property.

(3) Where a person disposes of a property which represents the original property, the property may be followed into the hands of the person who obtains it.

(4) (a) The part of any mixed property which is attributable to a property which is recoverable represents the property used as an instrumentality of, or obtained through, an offence.

(b) A property may be mixed with another property where it is used –

- (i) to increase funds held in a bank account;
- (ii) in part payment for the acquisition of an asset;
- (iii) for the restoration or improvement of land;
- (iv) by a person holding a leasehold interest in the property to acquire the freehold; or
- (v) for any similar purpose.

(5) Where a person who has a property which is used as an instrumentality of, or is derived from, an offence obtains further property consisting of profits accruing in respect of the use or derivation, the further property shall be treated as representing the property used as an instrumentality of, or obtained through, an offence.

(6) (a) Where a person grants an interest in a property that is recoverable pursuant to Section A or B of this Sub-part, the question whether the interest is also recoverable shall be determined in the same manner as it is on any other disposal of recoverable property.

(b) Where the property referred to in paragraph (a) is proceeds, an instrumentality or a terrorist property of, or obtained through, an offence or an unlawful activity, the interest shall also be treated as part of the proceeds, instrumentality or terrorist property.

(c) Where the property in question represents in the person's hands proceeds, a benefit or an instrumentality of, or obtained through, an offence, the interest shall also be treated as representing in his hands part of the instrumentality or the property so obtained, as the case may be.

103. Property not recoverable

(1) Where –

- (a) a person disposes of a property which is recoverable; and
- (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

the property may not be followed into that person's hands and ceases to be recoverable.

(2) Where a property which is recoverable is vested, recovered or otherwise disposed of pursuant to the powers conferred by virtue of this Sub-part, it shall cease to be recoverable.

(3) Where –

- (a) pursuant to a judgment in civil proceedings, the losing party makes a payment to the claimant or the claimant otherwise obtains property from the losing party;
- (b) the claimant's claim is based on the losing party's unlawful activity; and
- (c) apart from this subsection, the sum received, or the property obtained, by the claimant would be capable of being recovered by reason of the same unlawful activity,

the sum received or property obtained shall cease to be recoverable.

(4) Where –

- (a) a payment is made to a person pursuant to any Compensation Order or a restitution or other Order issued by a Court under any other enactment; and
- (b) apart from this subsection, the sum received would be recoverable,

the property shall cease to be recoverable.

(5) A property shall not be recoverable where a Civil Confiscation Order or any other similar Order applies to it.

(6) Where –

- (a) a person enters into a transaction to which section 102(2) applies; and
- (b) the disposal is one to which subsection (1) or (2) applies,

this section shall not affect the recoverability of any property obtained on the transaction in place of the property disposed of pursuant to section 102(2).

Sub-Part IV – Compensation Order

104. Application for Compensation Order

The Court may, on application made to it, issue a Compensation Order where, in its opinion, it would be in the interests of justice, to do so and –

- (a) a Civil Attachment Order had been issued; or
- (b) an application for a Civil Confiscation Order was not issued and the Civil Attachment Order was revoked; and
- (c) the applicant suffered a loss as a result of the operation of the Civil Attachment Order.

105. Issue of Compensation Order

(1) The Court may, if it is of the opinion that to do so would be in the interests of justice, issue a Compensation Order on application by a person where –

- (a) a Civil Confiscation Order relating to an instrumentality was issued that affects property in which the person had an interest before the making of the Order; or

- (b) in the opinion of the Court, the value of the person's recovered interest in the property is disproportionate to its value to the offence in question; and
- (c) the person suffered a loss as a result of the operation of the Civil Confiscation Order.

(2) The Court may issue a Compensation Order on application made to it where –

- (a) a Criminal Attachment Order was issued;
- (b) an application for a Criminal Confiscation Order was not issued or was withdrawn and the Criminal Attachment Order was revoked, or an application for such a Criminal Confiscation Order was never issued because the defendant was acquitted; or
- (c) there was a serious default consisting of gross negligence or intentional misconduct on the part of a person involved in a criminal enquiry or prosecution and the enquiry would not have continued or the proceedings would not have started or continued, if the default had not occurred; and
- (d) the person suffered a loss as a result of the operation of the Criminal Attachment Order or the default.

(3) The amount of compensation to be paid under this section shall be such amount as the Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(4) An application under this section shall be made not later than 6 months after the date of the Criminal Attachment Order or Civil Attachment Order or of the default and notice of the application shall be given to the Commission.

Sub-Part V – International Cooperation**106. Foreign request in connection with civil asset recovery**

(1) Where a foreign State requests the Commission to obtain the issue of an order against a property that is believed to be proceeds, an instrumentality or a terrorist property which is located in Mauritius, the Commission may apply to a Judge for a Civil Attachment Order under section 87.

(2) Where a Judge receives an application under subsection (1), he may issue a Civil Attachment Order under section 88 as if the application were an application in respect of property in Mauritius.

107. Foreign request for enforcement of foreign Civil Attachment or Civil Confiscation Order

(1) Notwithstanding any other enactment, where a foreign State requests that necessary measures be taken for the enforcement of a foreign Civil Attachment or Civil Confiscation Order, the Commission may apply to a Judge or the Court, as the case may be, for registration of the Order.

(2) A Judge shall register the foreign Civil Attachment Order where he is satisfied that, at the time of registration, the Order is in force in the foreign State.

(3) The Court shall register the foreign Criminal Confiscation Order where it is satisfied that –

- (a) at the time of registration, the Order is in force in the foreign State; and
- (b) any person who had an interest in the property the subject of the Order had the opportunity to be represented before the Court that issued the Order in the foreign State.

(4) Where a foreign Order is registered in accordance with this section, a copy of any amendment made to the Order in the foreign State shall be registered in the same way as the Order.

(5) The Commission shall publish the registration of any foreign Order in the Gazette and 2 daily newspapers.

(6) Subject to subsection (8), where the foreign Order or an amendment thereof comprises a facsimile copy of a duly authenticated foreign Order, or amendment made to such an Order, the facsimile shall be regarded, for the purposes of this Act, as the duly authenticated foreign Order.

(7) Any registration effected on production of a facsimile copy shall cease to have effect until the end of the period of 14 days commencing on the date of registration, unless a duly authenticated original of the Order is registered by that time.

(8) Where a foreign Order has been registered pursuant to this section, sections 84 and 85 shall apply to the registration.

(9) For the purpose of subsections (6) and (7) –

“facsimile copy” includes a copy through any other electronic means.

108. Effect of registration of foreign Order

(1) Subject to subsections (2) and (3), where an Order has been registered under section 107 and the Court is notified that it has been established to the satisfaction of a foreign Court that the property constitutes proceeds, an instrumentality or a terrorist property, it may order that the property be recovered and be vested in the State until such arrangement is made by the Commission with the foreign State for its disposal or transfer.

(2) The Court may issue an Order under subsection (1) on such conditions as it thinks fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

(3) Any person who claims to have an interest in a property subject to an Order registered under section 107 may, within 21 days from the last publication of the registration under section 107(5), apply to the Court for an Order under subsection (4).

(4) Where the Court is satisfied that the applicant under subsection (3) acquired the property without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of acquisition, proceeds, an instrumentality or a terrorist property, the Court shall issue an Order declaring the nature of the interest of the applicant.

(5) The Court shall, on application by the Commission, cancel the registration of any foreign Order if it appears to it that the Order has ceased to have effect.

109. Foreign request for the location of tainted property

(1) Where a foreign State requests the Commission to assist in locating property believed to be proceeds, an instrumentality or a terrorist property, the Commission may apply to a Judge for an Order that –

- (a) any information relevant to –
 - (i) identifying, locating or quantifying any property; or
 - (ii) identifying or locating any document necessary for the transfer of any property,be delivered forthwith to the Commission; or
- (b) a financial institution forthwith produces to the Commission all information obtained by it about any business transaction relating to the property for such period, before or after the date of the Order, as a Judge may direct.

(2) Notwithstanding section 26 of the Bank of Mauritius Act, section 64 of the Banking Act and section 83 of the Financial Services Act, a Judge may issue an Order under subsection (1) on being satisfied that –

- (a) the document is material and necessary to the proceedings in the foreign State; and
- (b) the law of the foreign State authorises the issuing of such an Order in circumstances similar to the one relating to the request.

(3) A Judge may, on good cause shown by the Commission that a person is failing to comply with, is delaying or is otherwise obstructing an Order issued in accordance with subsection (1), order the Commission to enter and search the premises specified in the Order and remove any document, material or other thing therein for the purpose of executing such Order.

110. Disposal of proceeds of crime

(1) On a request by a foreign State made to him, the Attorney-General may, after consultation with the Commission, transfer to it any proceeds, instrumentality or terrorist property recovered in Mauritius in response to a request for the enforcement of a foreign Order.

(2) Unless the foreign State and Mauritius agree otherwise, the Attorney-General may deduct reasonable expenses incurred in the recovery, criminal enquiry and judicial proceedings which have led to a transfer referred to in subsection (1).

111. Proceedings in foreign State

The Attorney-General may initiate legal proceedings in a Court of a foreign State, subject to the provisions and requirements of the national law of the foreign State, in order to establish the title to, or ownership of, property acquired through the commission of an offence which is also an offence in accordance with Part III of the UN Convention Against Corruption 2003, and to seek recovery of that property.

PART VI – UNEXPLAINED WEALTH

Sub-Part I – Application of Part VI

112. Application of Part VI

- (1) This Part shall apply to the property of citizens of Mauritius.
- (2) This Part shall not apply to –
 - (a) any property acquired or having come in the possession or under the custody or control of a person more than 7 years before 1 January 2016;

- (b) unexplained wealth of less than 10 million rupees, other than unexplained wealth of at least 2.5 million rupees in cash which has been seized by an investigatory authority.

(3) No Unexplained Wealth Order shall be issued under section 119 in relation to any property acquired or having come in the possession or under the custody or control of a person more than 7 years before the date on which a request under section 114(1)(a) is made.

(4) Any application made under this Part shall constitute civil proceedings and the onus shall lie on the respondent to establish, on a balance of probabilities, that any property is not unexplained wealth.

Sub-Part II – Proceedings in Relation to Unexplained Wealth

113. Reporting of unexplained wealth

(1) Notwithstanding any enactment, where, in the discharge of his functions –

- (a) a judicial officer;
- (b) the Director of Public Prosecutions;
- (c) the Commissioner of Police;
- (d) the Director-General of the Mauritius Revenue Authority;
- (e) the Governor of the Bank of Mauritius;
- (f) the Director of the Financial Intelligence Unit;
- (g) the Ombudsman;
- (h) the Director of Audit; or
- (i) any other person,

has reasonable grounds to suspect that a person has acquired unexplained wealth, he shall make a written report of the matter to the Commission.

(2) Any person who makes a report under subsection (1) shall assist the Commission in any investigation which may be carried out in relation to the matter disclosed.

114. Investigation into unexplained wealth

- (1) The Director-General may –
 - (a) on receipt of a report under section 113 by the Commission, or on his own initiative, request, in writing, any person to make a statement under oath, within 21 working days or any such longer period as he may determine, to justify the source of any property which the person owns, possesses, has custody or control of, or any funds which are believed to have been used in the acquisition of any property;
 - (b) investigate whether any person referred to in paragraph (a) –
 - (i) has a standard of living which is commensurate with his emoluments or other income;
 - (ii) owns, possesses, has custody or control of, or which are believed to have been used in the acquisition of, property to an extent which is disproportionate to his emoluments or other income; or
 - (iii) is able to justify as to how he came into ownership, possession, custody or control of any property.

(2) The Director-General shall, after any investigation into unexplained wealth under subsection (1), report the matter to the Commission.

(3) Where the Director-General reports a matter to the Commission, it shall not initiate any action in respect of that matter, unless directed by the Commission.

(4) Where a report is made pursuant to subsection (2), the Commission shall determine –

- (a) whether an application for an Unexplained Wealth Order shall be made;
- (b) what further action, if any, shall be taken in respect of the report; and
- (c) whether any person deserves a reward and the quantum thereof.

(5) Notwithstanding any other enactment, the Director-General –

- (a) may request from a competent authority any information it considers relevant for the purposes of discharging its functions under this Part;
- (b) may request any person for the communication or production of any relevant book, document, record or article.

(6) Any person who receives a request under subsection (5)(b) or (c) shall, within 14 days, comply with the request.

(7) (a) Where an investigatory authority has already instituted any proceedings in connection with the confiscation of property, the Commission may, after consultation with that investigatory authority, request it to stay action.

(b) Where that investigatory authority stays action pursuant to paragraph (a), the Commission shall institute action for the confiscation of the property pursuant to this Part.

(8) (a) Subject to paragraph (b), where suspected unexplained wealth is the subject of concurrent reports with an investigatory authority, the Commission may, after consultation with that investigatory authority, initiate action on the report to the exclusion of other bodies.

(b) Where the Commission determines that the report submitted discloses reliable evidence of underlying criminal activity, it shall refer the matter to that investigatory authority.

(c) Where the Commission determines that it shall initiate action on the report, no further action for the confiscation of property shall be taken thereon by an investigatory authority.

115. Application for disclosure order

(1) The Commission may, where a person fails to make a statement under oath under section 114(1)(a) in relation to a suspected case of unexplained wealth, make an application to a Judge for a disclosure order –

- (a) to obtain information on property held by a person or by any other person on his behalf; or
- (b) requiring any person to disclose the sources of funds used to acquire, possess or control any property.

(2) The Commission may, notwithstanding section 64 of the Banking Act, apply to a Judge for a disclosure order requiring a financial institution to disclose any information the Commission considers relevant for the purpose of an investigation under this Act.

116. Inscription of privilege or lien

(1) The Director-General may, before submitting a report to the Commission under section 114(2), inscribe a privilege or lien in favour of the Government on the property which is the subject matter of a request made by the Director-General under section 114(1)(a).

(2) Where a request is made, no transfer, pledging, disposal of, or other dealing with, the property shall be made.

(3) The Commission shall deposit with the Conservator of Mortgages 2 identical memoranda in such form as may be prescribed and forthwith notify the person whose property has been subject of a privilege or lien under subsection (1).

(4) The Conservator of Mortgages shall, on deposit of the memoranda, inscribe the privilege or lien generally on the property referred to in subsection (1) and return one of the memoranda to the Commission with a statement written or stamped on it to the effect that the privilege has been inscribed.

(5) Where a privilege or lien is inscribed under this section, it shall take effect from the date of the inscription.

(6) (a) The inscription of privilege under this section shall, unless renewed, lapse 42 days from the date of the deposit of the memoranda at the Office of the Conservator of Mortgages and shall accordingly be erased.

(b) Where an inscription is erased pursuant to paragraph (a), the Commission shall, within 5 working days of the date of the notification of the erasure by the Conservator of Mortgages, give written notice thereof to the person on whose property the inscription was made.

(7) Any inscription or erasure which is required to be taken or made under this section shall be free from stamp duty under the Stamp Duty Act, or registration dues leviable under the Registration Duty Act and or any other costs under any other enactment.

Sub-Part III – Unexplained Wealth Order

117. Application for Unexplained Wealth Order

(1) Where the Commission has reasonable grounds to suspect that a person has unexplained wealth, it shall make an application to a Judge for an Unexplained Wealth Order for the confiscation of that unexplained wealth.

(2) The Commission may amend an application for an Unexplained Wealth Order at any time before the final determination of the application by a Judge where reasonable notice of the amendment is given to every person on whom the application has been served.

(3) Where an application is made under subsection (1), the Commission may apply for an Order prohibiting the transfer, pledging, disposal, or otherwise dealing with, the property.

118. Service of Unexplained Wealth Order application

(1) Where the Commission makes an application for an Unexplained Wealth Order, it shall serve a copy of the application on the respondent and such other person as a Judge may direct.

(2) Nothing shall prevent a Judge from issuing an Unexplained Wealth Order in the absence of the respondent, or any other person on whom service has been effected.

119. Issue of Unexplained Wealth Order

(1) Where the Commission makes an application for an Unexplained Wealth Order and a Judge is satisfied that the respondent has unexplained wealth, a Judge shall issue an Unexplained Wealth Order or an order for the payment of its monetary equivalent.

(2) Where a Judge issues an Unexplained Wealth Order for the confiscation of any virtual asset, the respondent shall further be ordered to disclose all such information to the Commission as is necessary in order to enable the recovery of the virtual asset.

(3) Where a Judge considers that an application for an Unexplained Wealth Order under subsection (1) cannot be issued on the basis of affidavit evidence, he shall refer the matter to the Court.

120. Appeal against Unexplained Wealth Order

(1) The Commission may, where an application for an Unexplained Wealth Order has been rejected, or a respondent or any other person who has been served with an application for an Unexplained Wealth Order is aggrieved by the issue of an Unexplained Wealth Order may, appeal against such decision to the Court of Civil Appeal in accordance with the Court of Civil Appeal Act.

(2) Where an Unexplained Wealth Order has been issued, it shall remain in force until the final determination of an appeal under subsection (1).

121. Enforcement of Unexplained Wealth Order

(1) On the day on which an Unexplained Wealth Order takes effect, the property which is the subject of the Order shall vest in the State.

(2) Where an Unexplained Wealth Order takes effect, the Commission may forthwith take possession of that property on behalf of the State from any person in possession, or entitled to possession, of the property.

(3) The Commission shall dispose of any property confiscated under an Unexplained Wealth Order by sale or such other means as the Court may direct.

(4) Any right or interest in confiscated property not exercisable by or transferable to the State shall expire and shall not revert to the person who has possession, or was entitled to possession, of the property immediately before the Unexplained Wealth Order took effect.

(5) No person who has possession, or was entitled to possession, of a confiscated property immediately before an Unexplained Wealth Order took effect, and no person acting in concert with or on behalf of that person shall purchase any recovered property at any sale conducted by the Commission.

(6) The Commission shall deposit into the Recovered Assets Fund the proceeds of any sale or disposition of confiscated property and any moneys recovered.

(7) The expenses incurred in connection with the recovery and sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and Court costs, shall be defrayed out of the Recovered Assets Fund.

(8) The Commission shall appoint an expert to assist in the recovery and realisation of any confiscated virtual asset.

122. Reward

Where the Director-General is of the opinion that a public body, statutory body or any other person has disclosed matters which have led to the confiscation of properties which are proceeds, instrumentalities, terrorist properties or unexplained wealth, he shall make a report to the Commission and recommend a reward.

PART VII – PROTECTION OF, AND ASSISTANCE TO, INFORMERS AND WITNESSES

123. Protection of informers

(1) Where the Commission receives information in confidence to the effect that an offence under this Act or the Declaration of Assets Act

has been, is being or is likely to be committed, that information and the identity of the informer shall be secret between the Commission and the informer, and all matters relating to such information shall be privileged and shall not be disclosed in any proceedings before any Court, Tribunal or any other authority.

(2) Where any record, which is given in evidence or liable to inspection in any civil, criminal or other proceedings, contains an entry relating to the informer or the information given by the informer, the Director-General shall cause all parts relating to the informer or the information given to be concealed from view so as to protect the identity of the informer.

(3) The Commission shall develop a policy and procedure to protect and reward an informer in accordance with best practices and guidelines issued by the Office of the United Nations Office on Drugs and Crime.

124. Protection of witnesses

- (1) Subject to subsection (6), where a person –
- (a) discloses or makes a report to the Commission that a person, public official, public body, private entity or any other person is or has been involved in any offence under this Act or the Declaration of Assets Act; and
 - (b) at the time he makes the disclosure or report, has reasonable grounds to believe that the information he discloses or reports may be true and is of such a nature as to warrant an investigation under this Act or the Declaration of Assets Act,

he shall incur no civil or criminal liability as a result of such disclosure or report.

- (2) Subject to subsection (6), where a public official –
- (a) discloses or reports to his responsible officer or to the Commission that any offence under this Act or the Declaration of Assets Act may have occurred within the public body in which he is employed; and

- (b) has reasonable grounds to believe that the information is true,

he shall incur no civil or criminal liability as a result of such disclosure or report and no disciplinary action shall be instituted against him by reason only of such disclosure or report.

(3) A person who makes a disclosure or report under subsection (1) or (2) shall assist the Commission in any investigation which the Commission may make in relation to the matters disclosed or reported by him.

(4) A person to whom a disclosure or report is made under subsection (1) or (2) shall not, without the consent of that other person who makes the disclosure or report, divulge the identity of that other person except where it is necessary to ensure that the matters to which the information relates are properly investigated.

(5) Any person who commits an act of victimisation against a person who has made a disclosure or report under subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding one year.

(6) Any person who makes a false disclosure or report under subsection (1) or (2) knowing it to be false shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding one year.

- (7) In this section –

“victimisation” means an act –

- (a) which causes injury, damage or loss;
- (b) of intimidation or harassment;
- (c) of discrimination, disadvantage or adverse treatment in relation to a person’s employment; or
- (d) which amounts to threats of reprisals.

125. Witness Protection Scheme

(1) The Commission may set up a Protection Unit to provide protection and assistance to endangered persons under a Witness Protection Scheme.

(2) An endangered person may submit a request to the Commission to be included in the Witness Protection Scheme, in the event that the free testimony of that person in any criminal proceedings could not be obtained in any other way.

(3) Notwithstanding subsection (2), the Commission may, on its own initiative, invite a person whom it considers as an endangered person to be included in the Witness Protection Scheme.

(4) The inclusion of an endangered person into the Witness Protection Scheme shall be voluntary and the included person shall give his consent to the Witness Protection Scheme.

(5) An included person included in the Witness Protection Scheme shall exit the scheme where the Commission is satisfied that the person is no longer an endangered person or upon an application made by the person.

PART VIII – THE OPERATIONS REVIEW COMMITTEE**126. Operations Review Committee**

(1) There shall be an Operations Review Committee which shall consist of –

- (a) a chairperson, who shall be a retired Judge of the Supreme Court or a law practitioner of at least 10 years' standing;
- (b) a deputy chairperson;
- (c) 3 other members; and
- (d) the Director-General, the Director of the Investigation Division, the Director of the Asset Recovery and Management Division and the Chief Legal Adviser, who shall be ex officio members with no right to vote.

(2) The members of the Operations Review Committee, other than the ex officio members, shall be appointed –

- (a) by the President, acting in accordance with the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition; and
- (b) on such terms and conditions as the Prime Minister may determine.

(3) Every member of the Operations Review Committee, other than an ex officio member, shall hold office for a period of 3 years and shall be eligible for reappointment.

(4) The President shall, on the advice of the Prime Minister, at any time terminate the appointment of any member of the Operations Review Committee –

- (a) who is found guilty of any misconduct, default or breach of trust in the discharge of his functions;
- (b) who has committed an offence of such nature as renders it desirable that his appointment should be terminated; and
- (c) who is physically or mentally incapable of discharging his functions as a member.

127. Proceedings of Operations Review Committee

(1) The Operations Review Committee shall meet at least once every 3 months and on such other date as the chairperson of the Operations Review Committee thinks fit.

(2) At any meeting of the Operations Review Committee, 3 members, including the chairperson but excluding the ex officio members, shall constitute a quorum.

(3) There shall be a Secretary to the Operations Review Committee who shall –

- (a) prepare and attend every meeting of the committee;

- (b) keep minutes of the proceedings of any meeting of the committee;
- (c) follow up on the implementation of the committee's decisions;
- (d) service the committee; and
- (e) perform such other duties as may be conferred upon him by the committee.

128. Functions and powers of Operations Review Committee

(1) The Operations Review Committee shall, in order to ensure effectiveness of investigations under this Act, advise the Commission on the number and the manner by which the following are dealt with –

- (a) complaints of any offence under this Act made to the Commission;
- (b) investigations being carried out by the Commission and which have lasted more than 12 months;
- (c) the exercise by the Commission of its investigatory powers;
- (d) all cases where suspects have been provisionally charged for more than 12 months;
- (e) investigations which the Commission has completed and discontinued;
- (f) prosecutions of offences adjudicated upon and any appeals;
- (g) information revealed by investigations into offences within its jurisdiction which have been passed to Government departments or public bodies or other organisations and individuals for necessary actions.

(2) Subject to subsection (4), the Operations Review Committee may, in the discharge of its functions under subsection (1), call for and receive –

- (a) any necessary information, documents or report from the Director-General; or
- (b) any clarification from any officer.

(3) The Operations Review Committee may, for the purpose of subsection (2)(b), request any officer to attend its meeting.

(4) In the discharge of its functions under this Part, nothing shall be construed as authorising the Operations Review Committee to interfere in the day to day management, operations or decisions of the Commission.

PART IX – THE PARLIAMENTARY COMMITTEE

129. Parliamentary Committee

(1) There shall be, for the purposes of this Act, a Parliamentary Committee which shall be responsible to monitor and review the general manner in which the Commission discharges its functions and exercises its powers under this Act, other than for matters which fall under the purview of the Operations Review Committee.

(2) The Parliamentary Committee shall consist of 9 members, 5 of whom shall be designated by the Prime Minister and 4 of whom shall be designated by the Leader of the Opposition.

(3) The Prime Minister shall designate one of the members to be chairperson of the Parliamentary Committee.

(4) A member of the Parliamentary Committee may, at any time, be removed as member of the Committee –

- (a) by the Prime Minister, in the case of a member designated by him;
- (b) by the Leader of the Opposition, in the case of a member designated by him.

(5) The Clerk of the National Assembly shall be the Secretary to the Parliamentary Committee.

(6) (a) The Director-General and, subject to paragraph (b), the Financial Secretary or his representative who shall not be below the rank of Deputy Financial Secretary, shall attend every meeting of the Parliamentary Committee.

(b) The chairperson of the Parliamentary Committee may excuse the Financial Secretary or his representative from attending a meeting of the Parliamentary Committee.

(7) The Director of Audit shall, if so requested by the Parliamentary Committee, attend a meeting of the Parliamentary Committee.

130. Proceedings of Parliamentary Committee

(1) The Parliamentary Committee shall meet at least once every 3 months and on such other date as the chairperson of the Parliamentary Committee thinks fit.

(2) Subject to subsections (3) and (4), the proceedings of the Parliamentary Committee shall be governed by the Standing Orders and Rules of the National Assembly relating to Select Committees of the National Assembly and by such other Orders as the Speaker of the National Assembly may make.

(3) At any meeting of the Parliamentary Committee, 5 members shall constitute a quorum.

(4) Everything authorised or required to be done by the Parliamentary Committee shall be decided by a simple majority of the members present and voting and in the event of an equality of votes, the person chairing the meeting shall have a casting vote.

131. Functions and powers of Parliamentary Committee

(1) Subject to subsections (3) and (7), the Parliamentary Committee shall –

- (a) review the budgetary estimates of the Commission;

-
- (b) issue such general instructions as it considers appropriate with regard to –
 - (i) the financial management of the Commission;
 - (ii) the staffing requirements of the Commission; and
 - (iii) the allocation of resources to the various operations of the Commission;
 - (c) subject to subsection (4), issue general guidelines and give general directives to the Commission with regard to the general manner in which the Commission may discharge its functions and exercise its powers;
 - (d) receive reports from the Commission at such intervals as the Parliamentary Committee may require;
 - (e) make a report to the National Assembly where the Committee considers that it is expedient that the attention of the National Assembly be directed to –
 - (i) the general manner in which the Commission is discharging its functions and exercising its powers;
 - (ii) the financial situation of the Commission;
 - (iii) the need for further legislative reforms; or
 - (iv) any other matter relating to this Act;
 - (f) consider the annual report and other reports of the Commission and report to the National Assembly on any matter appearing in, or arising out of, such report; and
 - (g) report to the Minister on any matter relating to this Act.
- (2) The Parliamentary Committee may, in the discharge of its functions and exercise of its powers under this Act, but subject to subsection (3) –
- (a) examine a Commissioner or an officer;

- (b) summon a public official to answer questions and produce documents; and
 - (c) require the Director-General or any officer to furnish any accounting or other records relating directly or indirectly to all financial transactions of the Commission and to answer any question in relation to such financial transactions.
- (3) Notwithstanding this Act –
- (a) the Parliamentary Committee shall not –
 - (i) discharge its functions or exercise its powers in relation to a case under investigation by the Commission;
 - (ii) require the Commission to reconsider a decision to investigate or not to investigate or to discontinue the investigation of a particular complaint;
 - (iii) reconsider the findings of the Commission in relation to a particular investigation or complaint;
 - (iv) question a Commissioner, an officer or a public official concerning, or otherwise enquire into, a case which is under investigation by the Commission;
 - (b) the Director-General, a Commissioner, an officer or a public official may refuse to answer a question which –
 - (i) is in relation to a specific matter which is the subject of an investigation by the Commission;
 - (ii) in his opinion, would tend to disclose facts relating to a matter which is the subject of an investigation by the Commission.

(4) Where the Parliamentary Committee issues guidelines under subsection (1)(c) –

- (a) the chairperson of the Parliamentary Committee shall lay the guidelines on the table of the National Assembly within 14 days from the date on which such guidelines are issued;
- (b) a Member of the National Assembly may, within 30 days of the date on which the guidelines are tabled, move the National Assembly that the guidelines be disallowed and, on such motion being tabled, it shall be debated and put to a vote at the next sitting of the National Assembly.

(5) Where –

- (a) the guidelines under subsection (1)(c) are not laid on the table of the National Assembly under subsection (4)(a); or
- (b) a motion of disallowance under subsection (4)(b) has been voted by the National Assembly,

the guidelines shall cease to have effect.

(6) Where, as the result of the dissolution of the Parliament or for any other reason, the Parliamentary Committee is not constituted, or is unable to discharge its functions or exercise its powers under this Act, its functions under subsection (1)(b) and (c) and section 155 may be discharged by, and its powers under subsection (2)(c) and section 151(2), may be exercised by the Financial Secretary.

(7) In the discharge of its functions under this Part, nothing shall be construed as authorising the Parliamentary Committee to interfere in the day to day management and operations of the Commission, or to sit on appeal on a decision of the Commission.

**PART X – COORDINATION AND COOPERATION FOR
COMBATING FINANCIAL CRIMES**

Sub-Part I – Setting Up of National Coordination Committee

132. National Coordination Committee

(1) There is set up, for the purposes of this Act, a National Coordination Committee for combating financial crimes.

- (2) The National Coordination Committee shall consist of –
- (a) the Director-General, as chairperson;
 - (b) the Solicitor-General or his representative who shall not be below the rank of Assistant Parliamentary Counsel;
 - (c) the Director of Public Prosecutions or his representative who shall not be below the rank of Assistant Director of Public Prosecutions;
 - (d) the Commissioner of Police or his representative who shall not be below the rank of Deputy Commissioner of Police;
 - (e) the Director-General of the Mauritius Revenue Authority or his representative who shall be a senior officer;
 - (f) the Governor of the Bank of Mauritius or his representative who shall not be below the rank of Deputy Governor;
 - (g) the Chief Executive of the Financial Services Commission or his representative who shall be a senior officer;
 - (h) the Chief Executive of the Gambling Regulatory Authority or his representative who shall be a senior officer; and
 - (i) the Director of the Financial Intelligence Unit or his representative who shall be a senior officer.

(3) The National Coordination Committee may co-opt such other persons as appear to it to have special knowledge or experience in combating financial crimes.

133. Functions of National Coordination Committee

The National Coordination Committee shall, for the purpose of combating financial crimes –

- (a) ensure effective coordination and collaboration regarding criminal investigations with investigatory authorities and supervisory authorities in relation to parallel and complex cases, and assist in overcoming any challenges;
- (b) follow up and coordinate matters relating to mutual legal assistance and extradition relating to financial crimes;
- (c) harness intelligence and capabilities from across different sectors, including the private sector, to tackle financial crimes;
- (d) develop strategic oversight to enable agencies involved in the fight against financial crimes to prioritise activity better, drive performance and align funding and capability;
- (e) jointly identify and prioritise the most appropriate type of enquiries, whether criminal or regulatory, to ensure maximum impact;
- (f) organise and coordinate training needs for its members, the investigatory authorities or any other relevant authorities;
- (g) carry out research in new trends in financial crimes in order to develop new typologies and methodologies to address those trends;
- (h) carry out risk assessments related to financial crimes in order to develop risk-based approach to combating such crimes; and
- (i) make recommendations to the Minister for legislative, regulatory and policy reforms for the purpose of combating financial crimes.

134. Meetings of National Coordination Committee

(1) At any meeting of the National Coordination Committee, 5 members shall constitute a quorum.

(2) The National Coordination Committee shall regulate its meetings and proceedings in such manner as it deems fit.

Sub-Part II – Setting Up of Public-Private Partnership Task Force**135. Public-Private Partnership Task Force**

(1) There is set up, for the purposes of this Act, a Public-Private Partnership Task Force.

(2) The Public-Private Partnership Task Force shall consist of the Director-General as chairperson, the Director of the Investigation Division, the Director of the Asset Recovery and Management Division and –

- (a) a representative of the Mauritius Police Force;
- (b) a representative of the Financial Intelligence Unit;
- (c) a representative of the Bank of Mauritius;
- (d) a representative of the Financial Services Commission;
- (e) a representative of Business Mauritius;
- (f) a representative of the Mauritius Revenue Authority;
- (g) a representative of the Mauritius Bankers' Association;
- (h) a representative of a relevant insurance company; and
- (i) 3 other members from the private sector, to be appointed by the Prime Minister.

(3) The Public-Private Partnership Task Force may, for the proper discharge of its functions, co-opt such other members, and set up such subcommittee, as it deems necessary.

136. Functions of Public-Private Partnership Task Force

The Public-Private Partnership Task Force shall –

- (a) be responsible to develop and promote cooperation between the public and private sector in combating financial crimes;
- (b) strengthen the fight against financial crimes with the collaboration and partnership of the public and private sectors; and
- (c) enhance collaboration and sharing of information by its members to assist the Commission in financial crimes investigation and prosecution.

137. Meetings of Public-Private Partnership Task Force

The Public-Private Partnership Task Force shall meet as and when required and any meeting of the Task Force shall be convened by the chairperson.

138. Sharing of information and intelligence

(1) Notwithstanding this Act, the Commission may share relevant information to members of the Public-Private Partnership Task Force for the purpose of receiving information or intelligence to enable an investigation under this Act to progress.

(2) Notwithstanding any other enactment, a member of the Public-Private Partnership Task Force may share relevant information and or intelligence to the Commission to assist it for an investigation under this Act.

Sub-Part III – Cooperation between Relevant Bodies**139. Memorandum of Understanding for mutual cooperation**

The Commission may, for the purpose of investigations under this Act, enter into a Memorandum of Understanding with a competent authority governing the effective discharge of their respective responsibilities and establishing mechanisms for practical cooperation in the discharge of those responsibilities.

140. Memorandum of Understanding for sharing of information

(1) The Commission may enter into a Memorandum of Understanding with any public body or a competent authority in or outside Mauritius for the purpose of exchanging or sharing information within or outside Mauritius for combating financial crimes or for any other purpose under this Act.

(2) The Commission may, in writing, notify a public body or a competent authority of the start of an investigation for the purpose of engaging into mutual cooperation and sharing of information.

(3) Notwithstanding any other enactment, every public body or a competent authority shall, following a notification under subsection (2), provide the Commission with such information as it may require for the discharge of its functions and exercise of its powers under this Act.

(4) In this section –

“public body” means the Financial Services Commission, the Registrar of Companies, the Registrar-General, the National Land Transport Authority, the Tourism Authority, the Civil Status Division, the Social Security Office, the Registrar of Co-operatives, any Ministry or Government department and such other public body as may be prescribed.

**PART XI – CRIMINAL PROCEEDINGS AND
COMPOUNDING OF OFFENCES****Sub-Part I – Criminal Proceedings****141. Offences and jurisdiction**

(1) Any person who wilfully obstructs, hinders, intimidates, resists, threatens or assaults, the Director-General, a Commissioner, an officer or a member of any committee set up under this Act in the discharge of his functions or exercise of his powers under this Act shall commit an offence and shall, on conviction, be liable to a fine of not less than 100,000 rupees and not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

-
- (2) Any person who –
- (a) interferes with a potential witness in relation to an investigation or prosecution for an offence under this Act or under the Declaration of Assets Act;
 - (b) has destroyed or intends to destroy evidence in his possession which he knows would have assisted the Commission in any investigation or prosecution for an offence under this Act or under the Declaration of Assets Act;
 - (c) refuses to give documentary evidence in his possession to the Commission which would assist the Commission in any investigation or prosecution for an offence under this Act or under the Declaration of Assets Act;
 - (d) uses means and ways to delay or obstruct the course of an investigation under this Act or the Declaration of Assets Act; or
 - (e) fails to comply with an Order issued by a Judge or Court under this Act,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 100,000 rupees and not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) A financial institution which has, pursuant to this Act, been required to provide customer information or account information in relation to a person and provides information, or enables information to be provided, to that person by any means whatsoever regarding a requirement under section 63 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 20 million rupees.

(4) (a) Where a person knows or has reason to believe that the Commission is acting, or proposing to act, in connection with an investigation which is being or is about to be carried out, he shall, subject to paragraphs (b) and (d), commit an offence where –

- (i) he makes a disclosure which is likely to prejudice the investigation; or

- (ii) he falsifies, conceals, destroys or otherwise disposes of, a book, a document, a record or an article which is relevant to the investigation.

(b) A person shall not commit an offence under paragraph (a)(i) where –

- (i) he does not know or did not have reason to believe that the disclosure is likely to prejudice the investigation;
- (ii) the disclosure is made in the discharge of a function under this Act or any other enactment relating to unlawful activity or benefit from an unlawful activity or in compliance with a requirement of this Act; or
- (iii) he is a legal adviser and the disclosure falls within paragraph (c).

(c) A disclosure, other than a disclosure made for a criminal purpose, falls within this subsection where it is a disclosure –

- (i) to a client of a legal adviser in connection with the giving, by the adviser, of legal advice to the client; or
- (ii) by a legal adviser to any person in connection with legal proceedings or contemplated legal proceedings.

(d) A person shall not commit an offence under paragraph (a)(ii) where –

- (i) he does not know or suspect that the book, document, record or article is relevant to the investigation; or
- (ii) he does not intend to conceal any fact disclosed by the book, document, record or article from the Commission during its investigation.

-
- (5) Any person who fails to –
- (a) adopt and enforce a code of conduct or guidelines issued by the Commission; or
 - (b) implement the recommendation following examination and review the practices and procedures of any public body,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 50,000 rupees and not exceeding 500,000 rupees.

(6) Any person who otherwise contravenes this Act shall, on conviction, be liable to a fine not exceeding 5 million rupees and to penal servitude for a term not exceeding 10 years.

- (7) Notwithstanding –
- (a) section 114 of the Courts Act; and
 - (b) section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try any offence under this Act and may impose any penalty provided for by this Act.

142. Prosecution

(1) (a) Following the conclusion of an investigation and the receipt of a report under section 58, the Commission may institute such criminal proceedings as it may consider appropriate for any offence under this Act or the Declaration of Assets Act.

(b) The institution of criminal proceedings by the Commission under paragraph (a) shall be without prejudice to the powers of the Director of Public Prosecutions vested in him to the exclusion of any other person or authority under section 72(3)(b) and (c) of the Constitution to take over, continue or discontinue such criminal proceedings.

(c) The Director of Public Prosecutions may discontinue before any Court the criminal proceedings instituted by the Commission under paragraph (a) giving such reasons as he may deem fit for such discontinuance before the Court.

(d) Where any aggrieved party is dissatisfied with the decision of the Director of Public Prosecutions under paragraph (c), the aggrieved party may apply to the Supreme Court for a judicial review of the decision.

(e) The aggrieved party shall, within 21 days of the date of the decision of the Director of Public Prosecutions under paragraph (c) –

- (i) lodge the application for judicial review and the grounds thereof at the Registry of the Supreme Court;
- (ii) at the same time, serve a notice of the application to the Director of Public Prosecutions.

(f) The Chief Justice may make such rules as may be appropriate for the purpose of an application for judicial review under paragraph (d).

(2) Notwithstanding any other enactment, an officer designated in writing by the Commission may swear or affirm and file an information for the institution of criminal proceedings before the Supreme Court or any other competent Court for any offence under this Act or the Declaration of Assets Act.

(3) This section shall be without prejudice to the Chief Legal Adviser, or any officer of the Legal Division designated by him, conducting the prosecution for any offence under this Act or the Declaration of Assets Act.

143. Acts committed outside Mauritius

(1) Where the act alleged to constitute an offence under this Act occurred outside Mauritius, a Court in Mauritius shall, regardless of whether or not the act constitutes an offence at the place of its commission, have jurisdiction in respect of that offence if the person to be charged –

- (a) is a citizen of Mauritius;
- (b) is ordinarily resident in Mauritius;

- (c) was arrested in Mauritius or in its territorial waters or on a ship or an aircraft registered or required to be registered in Mauritius at the time the offence was committed;
- (d) is a private entity.

(2) Any act alleged to constitute an offence under this Act and which is committed outside Mauritius by a person, other than a person referred to in subsection (1), shall, regardless of whether or not the act constitutes an offence at the place of its commission, be deemed to have been committed in Mauritius where that –

- (a) act affects or is intended to affect a public body, a business or any other person in Mauritius;
- (b) person is found to be in Mauritius;
- (c) person is, for any reason, not extradited by Mauritius, or if there is no application to extradite that person.

(3) Any offence committed in a country outside Mauritius as specified in subsection (1) or (2) is, for the purpose of determining the jurisdiction of a Court to try the offence, deemed to have been committed –

- (a) at the place where the accused is ordinarily resident; or
- (b) at the accused person's principal place of business.

(4) Where a person is charged with conspiracy or giving instructions to commit an offence, the offence shall be deemed to have been committed not only at the place where the act was committed, but also at every place where the conspirator or the person giving instructions acted or, in case of an omission, should have acted.

144. Admissible evidence

(1) Where, in any proceedings for an offence under this Act or the Declaration of Assets Act, it is established that the accused –

- (a) has been maintaining a standard of living which was not commensurate with his emoluments or other income;

- (b) has been in control of property to an extent which is disproportionate to his emoluments or other income;
- (c) held property for which he, his relative or associate, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control,

that evidence shall be admissible to corroborate other evidence relating to the commission of the offence.

(2) Notwithstanding any other enactment –

- (a) any evidence gathered in the course of an investigation by a Division of the Commission and used by another Division of the Commission; or
- (b) any information, document or any other evidence shared to the Commission through the National Coordination Committee or the Public-Private Partnership Task Force, or pursuant to any Memorandum of Understanding,

shall be admissible evidence in any Court proceedings.

(3) Notwithstanding any confidentiality provision under this Act and under any other enactment, an investigatory authority or any other relevant authority that has provided information, through its relevant officer, to the Commission during the course of an investigation, shall provide the information as evidence in Court, through the relevant officer or any other relevant officer, when summoned to do so.

145. Burden of proof with regard to corruption offence

In the course of a trial of an accused for a corruption offence, it shall be presumed that at the time a gratification was received, the recipient knew that such gratification was made for a corrupt purpose.

Sub-Part II – Other Sanctions

146. Ordering deprivation of monetary benefits and property

Where a person is convicted of an offence under this Act and the Court is satisfied that, as a result of committing the offence, the person

has benefited from monetary benefits or from a property, the Court may, in addition to the fine and imprisonment imposed for that offence, order the person to pay a penalty in an amount not exceeding 100 times the amount of the monetary benefits or value of the property and that penalty shall be recovered in the same manner as a fine.

147. Ordering compensation for loss or damage

Where a person is convicted of an offence under this Act, the Court may, in addition to the fine and imprisonment imposed for that offence, order the person to pay –

- (a) compensation to the owner of any property damaged or destroyed as a direct result of the offence;
- (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence;
- (c) any costs incurred in detaining or seizing any property or thing in respect of that offence;
- (d) any other loss or damage caused by the offence,

and the compensation for such loss, damage or costs shall be recovered in the same manner as a fine.

148. Confiscation of property

Where a person is convicted of an offence under this Act, the Court may, in addition to the fine and imprisonment imposed for that offence, order the confiscation of the property which is the subject matter of the offence.

149. Civil and administrative sanctions

(1) Notwithstanding any other enactment, where a person is convicted of an offence under this Act, the Court may, in addition to the fine and imprisonment imposed for that offence, order –

- (a) in the case of a natural person, the following civil or administrative sanctions, as the case may be –
 - (i) the payment of a sum to the State representing a percentage of the annual turnover or total annual

- salary of the natural person, the calculation of which shall be based on the annual turnover or annual salary of that person for the 3 previous years as from the date of the offence;
- (ii) the removal or suspension of the natural person from a public office or an office in a State-owned enterprise, for such period as the Court may determine;
 - (iii) the disqualification of the natural person from holding a public office or an office in a State-owned enterprise, for such period as the Court may determine;
 - (iv) the withdrawal of certain advantages to which the natural person is entitled because of his position in a public office or an office in a State-owned enterprise;
 - (v) the suspension of certain rights to which the natural person is entitled because of his position in a public office or an office in a State-owned enterprise;
 - (vi) the banning from holding a public office or an office in a State-owned enterprise;
 - (vii) the disqualification of an existing director or ban of the natural person from becoming a company director or from holding a management position in a legal person;
 - (viii) the banning from receiving State loans, advances or other financial accommodation; or
 - (ix) the deprivation of the natural person of all or part of his retirement or gratuity benefits;

-
- (b) in the case of a legal person, the following civil or administrative sanctions, as the case may be –
- (i) the payment of a sum to the State, representing a percentage of the annual turnover of the legal person, the calculation of which shall be based on the annual turnover of that person for the 3 previous years as from the date of the offence;
 - (ii) the disqualification of the legal person from performing such activities as the Court may determine;
 - (iii) the dissolution or deregistration of the legal person;
 - (iv) the winding up of the legal person;
 - (v) the revocation of any licence, permit or such other authorisation of the legal person as the Court may determine;
 - (vi) the suspension of the legal person from bidding or entering into any contract for work or services with any public body, for such period as the Court may determine;
 - (vii) the cancellation of any existing contract with a public body between the legal person and the public body and order the reimbursement of any amount of money paid to the legal person pursuant to the said contract; or
 - (viii) the imposition of an independent monitoring programme on the legal person.
- (2) In this section –
- “certain activities” includes the prohibition to make specific transactions, to issue shares or other bonds, to receive subventions, facilities and other advantages from the State or to practise other activities;

“certain advantages”, in respect of a natural person –

- (a) means all advantages that the natural person benefits by virtue of his position in a public office or an office in a State-owned enterprise; and
- (b) includes the following benefits –
 - (i) duty-free for the acquisition of a motor vehicle or allowance in lieu of acquisition of a motor vehicle;
 - (ii) medical covers;
 - (iii) driver or allowance in lieu of driver;
 - (iv) car allowance;
 - (v) motor vehicle of the public body or State-owned enterprise;
 - (vi) increments, gratuities and bonus;
 - (vii) other financial benefits or allowances, except the salary of the natural person.

Sub-Part III – Compounding of Offences

150. Compounding of offences

(1) The Commission may compound any offence committed by any person under this Act or under the Declaration of Assets Act where that person agrees, in writing, to pay such amount, not exceeding the maximum penalty specified for the offence, as may be acceptable by the Commission.

(2) Every agreement to compound shall be final and conclusive and, on payment of the agreed amount, no further proceedings in regard to the offence compounded shall be initiated in respect of the offence so compounded against the person.

(3) Where the Commission does not compound an offence or a person does not agree to compound an offence, the Commission may prosecute that person for the offence committed.

(4) Any amount paid for compounding an offence shall accrue to the Consolidated Fund.

**PART XII – FINANCIAL PROVISIONS, ACCOUNTS
AND EXEMPTIONS**

**Sub-Part I – General Fund, Recovered Assets Fund
and Accounts of Commission**

151. General Fund

- (1) There shall be a General Fund for the Commission –
- (a) into which shall be paid all sums received from the Consolidated Fund; and
 - (b) out of which all payments required to be made by the Commission and all charges on the Commission shall be effected.

(2) The Parliamentary Committee may direct that any sum in the General Fund which is not immediately required for the purpose of the Commission shall be paid into the Consolidated Fund.

152. Recovered Assets Fund

There shall be a Recovered Assets Fund for the Commission –

- (a) into which shall be paid all moneys derived from the enforcement of any Order issued pursuant to Parts V and VI;
- (b) out of which –
 - (i) payments may be made for any reward;
 - (ii) payments may be made to compensate victims who suffered losses as a result of an unlawful activity;
 - (iii) payments may be made to satisfy a Compensation Order;
 - (iv) payments may be made to transfer a recovered property to a foreign State or share it pursuant to any treaty or arrangement;

- (v) payments may be made for expenses relating to the recovery, management or disposition of property under this Act, including mortgages and liens against relevant property, and the fees for other professionals providing assistance to the Commission;
- (vi) payments may be made to pay third parties for interests in property as appropriate;
- (vii) payments may be made for the costs associated with the administration of the Fund, including the costs of external audit;
- (viii) payments may be made to fund, for the purposes of this Act, such training or other capacity building activity, or pay such expenses, as may be required by the Commission.

153. Accounts of Commission

The Commission may open and maintain such account as it thinks fit, with any bank, in the name of the Commission.

Sub-Part II – Estimates and Annual Report

154. Estimates

The Commission shall submit to the Minister, in accordance with the Statutory Bodies (Accounts and Audit) Act, an estimate of the income and expenditure of the Commission for the next financial year for his approval.

155. Annual report

(1) The Commission shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and, at the earliest available opportunity, submit it to the Parliamentary Committee, together with an audited statement of accounts on the operations of the Commission, in respect of every financial year.

(2) The Parliamentary Committee shall, at the earliest available opportunity but not later than one month after receipt of the annual report under subsection (1), lay a copy of the annual report and audited accounts of the Commission before the National Assembly.

156. Audit report

The auditor of the Commission shall be the Director of Audit.

Sub-Part III – Exemptions**157. Exemptions**

(1) The Commission shall be exempt from payment of any duty, levy, rate, charge or tax, and no registration fee shall be payable in respect of any document signed or executed by the Commission under which the Commission is a beneficiary.

(2) Notwithstanding any other enactment, the Commission shall, in realising a property pursuant to this Act, be exempt from any duty, levy, charge, tax or any other related fee.

158. Donations and legacies

Article 910 of the Code Civil Mauricien shall not apply to the Commission.

PART XIII – MISCELLANEOUS**159. Recovery of damages**

Where the Commission is satisfied that a person has been involved in a financial crime and has benefited from it, the Commission shall refer the matter to the Attorney-General who may enter civil proceedings for damages for any prejudice caused to the State.

160. Disclosure of assets and liabilities

(1) The Director-General, every Commissioner, every officer and every member of the Operations Review Committee shall not later than 30 days after –

- (a) his employment or appointment; and
- (b) leaving office,

make a declaration, in the form set out in the First Schedule, of his assets and liabilities, including the assets and liabilities of his spouse and his minor children.

(2) Notwithstanding section 4(5) of the Declaration of Assets Act, the Director-General, every Commissioner, every officer and every member of the Operations Review Committee shall make a declaration of his assets and liabilities with the Director-General of the Mauritius Revenue Authority.

(3) Where a person makes a declaration under this section, he shall specify any property sold, transferred or donated to his children of age and grandchildren, in any form or manner whatsoever, including income or benefits from any account, partnership or trust.

(4) The Director-General, every Commissioner and every member of the Operations Review Committee shall, within a period of 30 days, make a declaration to the Director-General of the Mauritius Revenue Authority where he, his spouse or minor child –

- (a) acquires, or disposes of, an item of jewellery, precious stone or metal, or watch or gold coin exceeding 500,000 rupees in value;
- (b) acquires, or disposes of, a work of art, the value of which exceeds 500,000 rupees;
- (c) acquires, or disposes of, any freehold or leasehold immovable property registered in Mauritius or abroad;
- (d) dedicates *waqf* property under the *Waqf* Act;
- (e) acquires, or disposes of, a motor vehicle, a boat, a ship or an aircraft.

(5) Every officer shall make a fresh declaration with the Director-General of the Mauritius Revenue Authority –

- (a) at every interval of 5 years following the date of his first declaration; and
- (b) within a period of 30 days after leaving office.

(6) This section shall not apply to any officer of ICAC, ARID and IRSA who is transferred to the Commission after the commencement of section 165.

(7) In this section –
“assets” has the same meaning as in the Declaration of Assets Act.

161. Confidentiality

(1) The Director-General, every Commissioner, every officer, every member of the Parliamentary Committee, every member of the Operations Review Committee, every member of the National Coordination Committee and every member of the Public-Private Partnership Task Force shall take the oath of confidentiality in the form set out in the Second Schedule.

(2) No person referred to in subsection (1) shall, except in accordance with this Act, or as otherwise authorised by law or directed by a Court of law –

- (a) divulge any information obtained in the discharge of his functions or exercise of his powers under this Act;
- (b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Commission.

(3) Every person referred to in subsection (1) shall maintain the confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act that becomes known to him, or comes in his possession or under his control.

(4) Notwithstanding subsections (2) and (3), the Director-General may disclose, for the purpose of publication in the press, or to a competent authority, such information as he considers necessary in the public interest.

(5) For the purpose of an investigation in respect of an offence committed in Mauritius or abroad under this Act, or for any asset recovery investigation, the Director-General may impart to any authority in Mauritius or abroad, such information, other than the source of the information, as may appear to him to be necessary to assist the investigation.

(6) Any person who, without lawful excuse, contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(7) In this section –

“member” includes a co-opted member.

162. Protection from liability

(1) The Director-General, every Commissioner and every officer shall, in the discharge of his functions or exercise of his powers under this Act, be deemed to be a public officer for the purposes of sections 1, 2, 3 and 4(1) and (2) of the Public Officers’ Protection Act.

(2) No action shall lie against the Commission, the Director-General, a Commissioner or an officer in respect of any act done or omission made by it or him in good faith in the discharge of its or his functions, or exercise of its or his powers, under this Act or any other enactment.

163. Directives

The Commission may issue such directives as it considers appropriate with regard to its functioning and administration, including –

- (a) the functioning of the respective Divisions of the Commission;
- (b) the criteria that the Commission shall take into account when assessing whether a case should be investigated or placed under further investigation;
- (c) the functioning of the Witness Protection Scheme;
- (d) the functioning of the National Coordination Committee; and
- (e) the functioning of the Public-Private Partnership Task Force.

164. Regulations

(1) Subject to subsection (3), the Commission may make such regulations as it thinks fit for the purposes of this Act and may provide for –

- (a) rules of procedure governing the discharge of its functions and exercise of its powers;

- (b) rules governing the communication of information to the press;
- (c) rules governing the interrogation of persons in the course of hearings held by the Commission; and
- (d) guidelines and criteria for compounding of offences.

(2) Any regulations made under subsection (1) shall not require the prior approval of the Minister.

(3) Notwithstanding subsection (1), the Minister may make such regulations as may be necessary –

- (a) for the levying of fees and the taking of charges under this Act;
- (b) for the amendment of the Schedules; and
- (c) to provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding one year.

165. Repeal

The following enactments are repealed –

- (a) the Asset Recovery Act;
- (b) the Good Governance and Integrity Reporting Act; and
- (c) the Prevention of Corruption Act.

166. Consequential amendments

(1) The Bail Act is amended –

- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“Director-General” means the Director-General of the Financial Crimes Commission established under the Financial Crimes Commission Act 2023;

- (b) in section 13(1), by inserting, after the words “Assistant Superintendent”, the words “or the Director-General”;
 - (c) in section 14(1), by inserting, after the words “Commissioner of Police”, the words “or the Director-General”.
- (2) The Banking Act is amended –
- (a) in section 2, in the definition of “banking laws”, in paragraph (a), by inserting, after the words “the Convention for the Suppression of Financing of Terrorism Act,”, the words “the Financial Crimes Commission Act 2023,”;
 - (b) in section 64 –
 - (i) in subsection (9) –
 - (a) by deleting the words “Director-General under the Prevention of Corruption Act, the” and replacing them by the words “The”;
 - (b) by deleting the words “, the Enforcement Authority under the Asset Recovery Act,”;
 - (ii) in subsection (10)(b), by deleting the words “the Financial Intelligence and Anti-Money Laundering Act” and replacing them by the words “the Financial Crimes Commission Act 2023”.
- (3) The Courts Act is amended –
- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“Commission” means the Financial Crimes Commission established under the Financial Crimes Commission Act 2023;

-
- (b) in section 41A –
- (i) in subsection (2), by deleting the words “Where a person” and replacing them by the words “Subject to the provisions of the Financial Crimes Commission Act 2023, where a person”;
 - (ii) by inserting, after subsection (3), the following new subsection –

(3A) Pursuant to section 142 of the Financial Crimes Commission Act 2023, the Commission may, in instituting criminal proceedings for a financial crime before the Financial Crimes Division of the Supreme Court or the Financial Crimes Division of the Intermediate Court, have regard to the provisions of subsection (3)(a) to (d).
 - (iii) in subsection (5), by inserting, before the definition of “financial crime offence”, the following new definition –

“financial crime” means an offence committed under Part III of the Financial Crimes Commission Act 2023;
- (c) in section 80D –
- (i) in subsection (2), by deleting the words “Where a person” and replacing them by the words “Subject to the provisions of the Financial Crimes Commission Act 2023, where a person”;
 - (ii) by inserting, after subsection (3), the following new subsection –

(3A) Pursuant to section 142 of the Financial Crimes Commission Act 2023, the Commission may, in instituting criminal proceedings for a financial crime before the Financial Crimes Division of the Supreme

Court or the Financial Crimes Division of the Intermediate Court, have regard to the provisions of subsection (3)(a) to (d).

- (iii) in subsection (5), by inserting, before the definition of “financial crime offence”, the following new definition –

“financial crime” means an offence committed under Part III of the Financial Crimes Commission Act 2023;

- (d) in section 112 –

- (i) by numbering the existing provision as subsection (1);

- (ii) in the newly numbered subsection (1), by deleting the words “The Intermediate Court” and replacing them by the words “Subject to subsection (2), the Intermediate Court”;

- (iii) by adding the following new subsection –

(2) The Intermediate Court shall have jurisdiction to try any offence under the Financial Crimes Commission Act 2023 and the Declaration of Assets Act which the Director-General of the Commission may refer to it.

- (e) in the Sixth Schedule –

- (i) by deleting the following enactments –

Asset Recovery Act

Financial Intelligence and Anti-Money Laundering Act

Prevention of Corruption Act – Part II

-
- (ii) by inserting, in the appropriate alphabetical order, the following new enactment –
- Financial Crimes Commission Act 2023 – Part III
- (4) The Criminal Appeal Act is amended –
- (a) in section 2 –
- (i) in the definition of “appellant”, in paragraph (b), by inserting, after the words “Director of Public Prosecutions”, the words “or the Director-General,”;
- (ii) by inserting, in the appropriate alphabetical order, the following new definitions –
- “Commission” means the Financial Crimes Commission established under the Financial Crimes Commission Act 2023;
- “Director-General” means the Director-General of the Commission;
- (b) in section 5 –
- (i) in subsection (2), by deleting the words “The Director of Public Prosecutions” and replacing them by the words “Subject to subsection (2A), the Director of Public Prosecutions”;
- (ii) by inserting, after subsection (2), the following new subsection –
- (2A) Where the Director-General has instituted criminal proceedings for an offence under the Financial Crimes Commission Act 2023 or the Declaration of Assets Act, he may appeal to the Court against a final decision of the Supreme Court on any ground specified in subsection (2)(a) to (c).

- (c) in section 9, in subsection (1), by inserting, after the words “Director of Public Prosecutions”, the words “or the Director-General”;
- (d) in section 14 –
 - (i) by deleting the heading and replacing it by the following heading –

14. Duties of Director of Public Prosecutions and Director-General

- (ii) in subsection (1), by deleting the words “The Director of Public Prosecutions” and replacing them by the words “Subject to subsection (1A), the Director of Public Prosecutions”;
- (iii) by inserting, after subsection (1), the following new subsection –
 - (1A) Where the Director-General appeals to the Court under section 5(2A), he shall appear or cause a barrister of the Legal Division of the Commission to appear for the Commission.
- (iv) in subsection (2), by inserting, after the words “Director of Public Prosecutions”, the words “or Director-General”.

(5) The Customs Act is amended, in section 131A, in subsection (4) –

- (a) in paragraph (a), by deleting the words “the Independent Commission against Corruption established under the Prevention of Corruption Act” and replacing them by the words “the Financial Crimes Commission established under the Financial Crimes Commission Act 2023”;

-
- (b) in paragraph (c)(ii), by repealing sub subparagraph (A) and replacing it by the following sub subparagraph –
- (A) money laundering, to the Financial Crimes Commission under the Financial Crimes Commission Act 2023;
- (6) The Dangerous Drugs Act is amended, in section 47(5)(a), by deleting the words “order made under the Asset Recovery Act or under section 16 of the Good Governance and Integrity Reporting Act” and replacing them by the words “Order made under the Financial Crimes Commission Act 2023”.
- (7) The Declaration of Assets Act is amended –
- (a) in section 2 –
- (i) in the definition of “assets” –
- (A) in paragraph (e), by inserting, after the words “or watch”, the words “or gold coin”;
- (B) by inserting, after paragraph (e), the following new paragraphs –
- (ea) any virtual asset;
- (eb) a work of art exceeding 500,000 rupees in value;
- (C) by inserting, after paragraph (f), the following new paragraph –
- (fa) *waqf* property dedicated under the *Waqf Act*;
- (ii) by deleting the definition of “declaration” and replacing it by the following definition –
- “declaration” –
- (a) means a declaration of assets and liabilities made under section 4; and

- (b) includes a declaration made under section 6;
- (iii) by deleting the definition of “ICAC”;
- (iv) by inserting, in the appropriate alphabetical order, the following new definitions –
 - “Commission” means the Financial Crimes Commission established under the Financial Crimes Commission Act 2023;
 - “enforcement authority” means the Mauritius Police Force, the Mauritius Revenue Authority, the Financial Intelligence Unit or such other body as may be prescribed;
 - “member of the National Assembly” includes the Speaker of the National Assembly;
 - “member of the Rodrigues Regional Assembly” includes the Chairperson of the Rodrigues Regional Assembly;
 - “precious metal” –
 - (a) means gold, silver, platinum or palladium; and
 - (b) includes any object which is composed of gold, silver, platinum or palladium;
 - “precious stone” means diamond, sapphire, ruby, emerald, alexandrite or tanzanite;
- (v) by adding the following new definition, the full stop at the end of the definition of “trust property” being deleted and replaced by a semicolon –
 - “virtual asset” has the same meaning as in the Virtual Asset and Initial Token Offerings Services Act 2021.

-
- (b) in section 4 –
- (i) in subsection (1) –
- (A) by repealing paragraph (c) and replacing it by the following paragraph –
- (c) after his seat becomes vacant pursuant to section 32 or 35 of the Constitution, section 19 or 24 of the Rodrigues Regional Assembly Act or Parts III and IV of the Local Government Act, as the case may be,
- (B) by deleting the word “ICAC” and replacing it by the words “the Commission”;
- (ii) by repealing subsection (2);
- (iii) in subsection (3), by deleting the word “ICAC” and replacing it by the words “the Commission”;
- (iv) in subsection (4), by deleting the words “this section” and replacing them by the words “this Act”;
- (v) in subsection (5), by deleting the word “ICAC” and replacing it by the words “the Commission”;
- (vi) by adding the following new subsection –
- (6) For the purpose of –
- (a) subsection (3)(a), a person referred to in section 3(1)(e) and (f) who, on being appointed, has made a declaration shall not be required to make another

declaration where he is appointed to another post which is equivalent to, or higher than, the post for which he made the first declaration, provided that the second appointment –

- (i) is within a period of 5 years from his first appointment; and
 - (ii) is within the public service or local government service, as the case may be;
- (b) subsection (3)(b), the office of a person referred to in section 3(1)(e) and (f) becomes vacant where the person retires or resigns from the public service or local government service, as the case may be.
- (c) in section 5(2), by deleting the words “section 4” and replacing them by the words “this Act”;
- (d) in section 6 –
- (i) by numbering the existing provision as subsection (1) –
 - (ii) in the newly numbered subsection (1) –
 - (A) by repealing paragraph (a) and replacing it by the following paragraph –
 - (a) in section 3(1)(a), (b), (c), (d), (g), (h) and (i) shall, within a period of 30 days, make a declaration to the

Commission where he, his spouse or minor children –

- (i) acquires, or disposes of, an item of jewellery, precious stone or metal, or watch or gold coin exceeding 500,000 rupees in value;
- (ii) acquires, or disposes of, a work of art, the value of which exceeds 500,000 rupees;
- (iii) acquires, or disposes of, any freehold or leasehold immovable property registered in Mauritius or abroad;
- (iv) dedicates *waqf* property under the *Waqf* Act;
- (v) acquires, or disposes of, a motor vehicle, a boat, a ship or an aircraft;

(B) in paragraph (b), by deleting the word “ICAC” and replacing it by the words “the Commission”;

(iii) by adding the following new subsections –

(2) Any declaration made under this section shall be made in such form as may be prescribed.

(3) For the purpose of subsection (1)(b)(ii), a person leaves office where he retires or resigns from the public service or local government service, as the case may be.

(e) in section 7 –

(i) in subsection (1), by deleting the word “ICAC” and replacing it by the words “the Commission”;

- (ii) in subsections (2) and (3), by deleting the word “ICAC” and replacing it by the words “The Commission”;
- (iii) in subsection (3A), by deleting the word “ICAC” and replacing it by the words “the Commission”;
- (iv) in subsection (4), by inserting, after the words “on good cause shown”, the words “by the enforcement authority for the purpose of its investigation”;
- (v) by repealing subsection (5);
- (f) in Part III –
 - (i) by deleting the heading and replacing it by the following heading –

PART III – POWERS OF COMMISSION

- (ii) in section 8, by deleting the word “ICAC” and replacing it by the words “the Commission”;
- (iii) in section 9 –
 - (A) by numbering the existing provision as subsection (1);
 - (B) in the newly numbered subsection (1), by deleting the word “ICAC” and replacing it by the words “the Commission”;
 - (C) by adding the following new subsection –
 - (2) (a) For the purpose of subsection (1), the Commission may require a relevant authority to furnish it with any information and to produce any book, document or record.
 - (b) A relevant authority shall comply with any request made under paragraph (a).

-
- (iv) in section 10, in subsections (1) and (2), by deleting the word “ICAC” and replacing it by the words “the Commission”;
 - (g) in section 12, by repealing subsection (1);
 - (h) in section 16, by adding the following new subsection –
 - (4) Any declaration made under this Act to the Independent Commission Against Corruption by a person prior to the commencement of this subsection shall be deemed to have been made to the Commission.
- (8) The District and Intermediate Courts (Criminal Jurisdiction) Act is amended –
- (a) in section 2, in subsection (1), by inserting, in the appropriate alphabetical order, the following new definition –

“Director-General” means the Director-General of the Financial Crimes Commission under the Financial Crimes Commission Act 2023;
 - (b) in section 92 –
 - (i) by numbering the existing provision as subsection (1);
 - (ii) in the newly numbered subsection (1), by deleting the words “Where any person” and replacing them by the words “Subject to subsection (2), where any person”;
 - (iii) by adding the following new subsections –
 - (2) Where a person is charged with an offence under the Financial Crimes Commission Act 2023 or the Declaration of Assets Act before the District Court or the Intermediate Court, an appeal shall lie to the Supreme Court against

any final decision of the Court by the Director-General against any dismissal of a charge or, in case of a conviction, against the imposition of any sentence.

(3) For the purpose of subsection (2) –
 “Commission” means the Financial Crimes Commission established under the Financial Crimes Commission Act 2023.

(c) in section 94, in subsection (1)(b), by inserting, after the words “Director of Public Prosecutions”, the words “or the Director-General”.

(9) The Financial Intelligence and Anti-Money Laundering Act is amended –

(a) in section 2 –

(i) by deleting the definitions “Agency”, “ARID”, “Commission”, “Enforcement Authority”, “exempt transaction” and “investigatory authorities”;

(ii) by deleting the definitions “money laundering offence”, “officer” and “property” and replacing them by the following definitions –

“money laundering offence” means an offence specified in Sub-part II of Part III of the Financial Crimes Commission Act 2023;

“officer” includes the Director, an employee, an agent and a legal representative;

“property” has the same meaning as in the Financial Crimes Commission Act 2023;

-
- (iii) in the definition of “relevant enactments”, by deleting the words “, the Prevention of Corruption Act” and replacing them by the words “, the Financial Crimes Commission Act 2023”;
 - (iv) by inserting, in the appropriate alphabetical order, the following new definitions –
 - “competent authorities” –
 - (a) has the same meaning as in the Financial Crimes Commission Act 2023; and
 - (b) includes Registrars;
 - “Financial Crimes Commission” means the Financial Crimes Commission established under the Financial Crimes Commission Act 2023;
 - “investigatory authority” has the same meaning as in the Financial Crimes Commission Act 2023;
 - (b) by repealing Part II;
 - (c) in section 19A(2) –
 - (i) by repealing paragraph (ga) and replacing it by the following paragraph –
 - (ga) the Director-General of the Financial Crimes Commission or his representative;
 - (ii) by repealing paragraph (m);
 - (d) in section 19AA, in subsection (2)(a), by repealing subparagraph (iii) and replacing it by the following subparagraph –
 - (iii) the Director-General of the Financial Crimes Commission, as co-chairperson;

- (e) in section 21 –
 - (i) in subsection (1), by inserting, after the words “by itself or”, the words “shall,”;
 - (ii) in subsection (2), by deleting the words “investigatory authority” and replacing them by the words “investigatory authority not later than 48 hours of being aware of such information”;
 - (iii) in subsection (3), by deleting the words “Prevention of Corruption Act” and replacing them by the words “Financial Crimes Commission Act 2023”;
 - (iv) by adding the following new subsection –
 - (5) (a) Any request made under subsection (1) or (1A) shall, subject to paragraph (b), be attended to by FIU within 21 days of such request.
 - (b) The period referred to in paragraph (a) may, at the request of FIU, be extended for a further period of 21 days.
- (f) in section 31, in subsection (1), by deleting the word “Commission” and replacing it by the words “Financial Crimes Commission”;
- (g) in the First Schedule, in Part I –
 - (i) in items 3, 4, 5 and 6, in the third column, by deleting the word “FIU” and replacing it by the words “Attorney-General’s Office”;
 - (ii) in item 8, in the third column, by deleting the word “FIU” and replacing it by the words “Assay Office”;
 - (iii) in item 9, in the third column, by deleting the word “FIU” and replacing it by the words “Real Estate Agent Authority”.

(10) The Financial Services Act is amended –

- (a) in section 2, in the definition of “financial crime”, in paragraph (b), by deleting the words “Financial Intelligence and Anti-Money Laundering Act” and replacing them by the words “Financial Crimes Commission Act 2023”;
- (b) in section 42(2)(b)(i), by inserting, after the word “including”, the words “the Financial Crimes Commission Act 2023,”.

(11) The Gambling Regulatory Authority Act is amended, in section 155(2), by deleting the words “the Prevention of Corruption Act” and replacing them by the words “the Financial Crimes Commission Act 2023”.

(12) The Income Tax Act is amended –

- (a) by repealing section 4A and replacing it by the following section –

4A. Unexplained wealth

(1) Notwithstanding section 154, where the Director-General has reasonable grounds to suspect that a person has acquired unexplained wealth of at least 2.5 million rupees in cash, he shall, in accordance with the Financial Crimes Commission Act 2023, make a written report to the Financial Crimes Commission specifying the full name and address of the person and the sum of the unexplained wealth.

(2) Notwithstanding section 4, where a report is made under subsection (1), the sum specified in the report shall, subject to this section, not be liable to income tax.

(3) Where the Financial Crimes Commission does not institute action for the confiscation of the

sum specified in subsection (1), wholly or partly, the Financial Crimes Commission shall inform the Director-General, who shall as soon as is reasonably practicable, in respect of any sum specified in the report and which is not subject to confiscation, issue, notwithstanding section 123A, an assessment in respect of that sum.

(4) In this section –

“Financial Crimes Commission” means the Financial Crimes Commission established under the Financial Crimes Commission Act 2023.

- (b) in section 26, in paragraph (i), by deleting the words “as a bribe” and replacing them by the words “, as a gratification for a corruption offence”;
- (c) in section 154 –
 - (i) in subsection (2), by repealing paragraph (f) and replacing it by the following paragraph –
 - (f) the Financial Crimes Commission Act 2023;
 - (ii) in subsection (3), by deleting the words “or in any proceedings instituted under the Prevention of Corruption Act” and replacing them by the words “or in any proceedings instituted under the Financial Crimes Commission Act 2023”.

(13) The Information and Communication Technologies Act is amended, in section 32, in subsection (6), by deleting the words “or the Independent Commission Against Corruption established under the Prevention of Corruption Act”, wherever they appear.

- (14) The Mauritius Revenue Authority Act is amended –
- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –
“Commission” means the Financial Crimes Commission established under the Financial Crimes Commission Act 2023;
 - (b) in section 4, in subsection (1), by inserting, after paragraph (g), the following new paragraph, the word “and” at the end of paragraph (g) being deleted –
 - (ga) monitor the assets and liabilities of any declarant under section 160 of the Financial Crimes Commission Act 2023; and
 - (c) in section 13, in subsection (2)(ac), by deleting the words “Independent Commission against Corruption” and replacing them by the word “Commission”;
 - (d) in section 14, in subsection (5), by inserting, after the words “under this section”, the words “or under section 160 of the Financial Crimes Commission Act 2023”;
 - (e) by inserting, after section 14, the following new section –
14A. Penalty for late submission of declaration of assets and liabilities under Financial Crimes Commission Act 2023

(1) Where a person fails, without reasonable excuse, to submit a declaration of his assets and liabilities under section 160 of the Financial Crimes Commission Act 2023 within the specified period, he shall be liable to pay to the Authority a penalty representing 5,000 rupees per month or part of the month, until such time as the declaration is submitted, provided that the total penalty payable shall not exceed 50,000 rupees.

(2) Any person who is dissatisfied with a decision of the Authority relating to the imposition of a penalty pursuant to subsection (1), may, within 28 days of the imposition of the penalty, apply to the Supreme Court for a judicial review of such decision.

- (f) in section 15A, by repealing subsection (4);
- (g) in section 25, by adding the following new subsections –

(6) Any person who fails to make a declaration, or who wilfully makes a false declaration, under section 160 of the Financial Crimes Commission Act 2023 shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(7) Any spouse who, without any reasonable excuse, fails to collaborate in disclosing his or her assets and liabilities for the purpose of fulfilling a requirement under section 160 of the Financial Crimes Commission Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 6 months.

(15) The Real Estate Agent Authority Act 2020 is amended, in section 22, by repealing subsection (2) and replacing it by the following subsection –

(2) The Authority shall, for the purpose of anti-money laundering and combating the financing of terrorism and proliferation, be responsible, under the Financial Intelligence and Anti-Money Laundering Act and any other relevant Act, for the supervision of real estate agents.

(16) The Registration of Associations Act is amended –

- (a) in section 2, by deleting the definition of “investigatory body” and replacing it by the following definition –
“investigatory authority” has the same meaning as in the Financial Crimes Commission Act 2023;

- (b) in section 14B, in subsection (3), by deleting the words “investigatory body” and replacing them by the words “investigatory authority”.

(17) The Trusts Act is amended, in section 2, in paragraph (b), in the definition of “financial crime”, by deleting the words “Financial Intelligence and Anti-Money Laundering Act” and replacing them by the words “Financial Crimes Commission Act 2023”.

(18) The United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act is amended –

- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –
“Financial Crimes Commission” means the Financial Crimes Commission established under the Financial Crimes Commission Act 2023;

- (b) in section 3, by repealing subsection (2) and replacing it by the following subsection –

(2) Any function or power conferred on the Secretary for Home Affairs under this Act shall, in his absence, be discharged or exercised by any other officer not below the rank of Permanent Secretary, to be designated by the Secretary to Cabinet and Head of the Civil Service.

- (c) in section 4(1), by inserting, after paragraph (d), the following new paragraph, paragraphs (e), (f), (g), (h), (i) and (j) being relettered as paragraphs (f), (g), (h), (i), (j) and (k) –

- (e) the Director-General of the Financial Crimes Commission;

- (d) in section 6, in subsection (2), by deleting the words “7 members” and replacing them by the words “6 members”;

- (e) in Part V –
- (i) in Sub-part F, in the heading, by deleting the words “**Administrator to Manage**” and replacing them by the words “**Administration of**”;
 - (ii) in section 32 –
 - (A) by deleting the heading and replacing it by the following heading –

32. Management of funds or other assets
 - (B) in subsection (1), by deleting the words “may appoint a fit and proper person as administrator to manage those funds or other assets” and replacing them by the words “shall advise the Financial Crimes Commission to manage, through its Asset Recovery and Management Division, those funds or other assets”;
 - (C) by repealing subsection (3);
 - (D) by repealing subsections (4) and (5) and replacing them by the following subsections –
 - (4) For the purpose of subsection (1), the Financial Crimes Commission may, notwithstanding section 23, realise any or all of the assets of a listed or designated party.
 - (5) The duties of the Asset Recovery and Management Division of the Financial Crimes Commission shall cease upon the delisting of the designated

party or listed party and it shall use its best endeavours to facilitate the return of the funds or other assets under its management.

- (f) in section 43, by inserting, after the words “any sub-committee”, the words “, or the Financial Crimes Commission or any officer of the Commission”.

(19) The Value Added Tax Act is amended, in section 8(2), by deleting the words “Prevention of Corruption Act” and replacing them by the words “Financial Crimes Commission Act 2023”.

167. Employment of officers of ICAC, ARID and IRSA

(1) Notwithstanding any other enactment, every person employed by ICAC, ARID and IRSA shall, on the commencement of section 165, be dealt with in accordance with this section.

(2) Subject to this section, every person who –

- (a) is employed on the permanent and pensionable establishment of ICAC, ARID and IRSA shall, on the commencement of section 165, be transferred on the permanent and pensionable establishment of the Commission; and
- (b) is employed on contract by ICAC, ARID and IRSA shall, on the commencement of section 165, be transferred to the Commission.

(3) (a) Where a person refuses to be transferred to the Commission under subsection (2)(a), he shall be deemed to have retired on ground of abolition of office and he shall be paid his pension benefits in accordance with such pension schemes as may be applicable to him.

(b) Where a person refuses to be transferred to the Commission under subsection (2)(b), his contract of employment shall be terminated and he shall be paid such benefits as provided in any relevant enactment or his contract, whichever is more favourable.

(4) (a) Where a person is transferred to the Commission under subsection (2)(a), his period of service with ICAC, ARID or IRSA, as the case may be, shall be deemed to be an unbroken period of service with the Commission and he shall be deemed to have been transferred on the same terms and conditions than those of his previous employment.

(b) Where a person is transferred to the Commission under subsection (2)(b), his contract with ICAC, ARID or IRSA, as the case may be, shall be deemed to have been entered with the Commission and he shall be deemed to have been transferred on the same terms and conditions of his contract.

(c) No person referred to in this section shall, on account of his transfer to the Commission, be entitled to claim that his employment has been terminated or adversely affected in breach of any enactment.

(5) (a) Where a person is transferred to the Commission under subsection (2)(a), his employment with the Commission shall –

- (i) not later than 180 days from the date of the commencement of section 165 or not later than such later date as may be prescribed; or
- (ii) on the date he resigns, retires or otherwise ceases to be in the employment of the Commission within the period under subparagraph (i),

whichever is earlier, terminate.

(b) Where a person is transferred to the Commission under subsection (2)(b), his employment with the Commission shall –

- (i) not later than 180 days from the date of the commencement of section 165 or not later than such later date as may be prescribed; or
- (ii) on the expiry of his contract within the period under subparagraph (i),

whichever is earlier, terminate.

(6) (a) Every person whose employment is terminated pursuant to subsection (5)(a)(i) shall, subject to subsection (7), be deemed to have retired on the ground of abolition of office and shall be paid his pension benefits in accordance with such pension schemes as may be applicable to him.

(b) Every person whose employment is terminated pursuant to subsection (5)(b)(i) shall be paid such benefits as provided for in any relevant enactment or his contract, whichever is more favourable.

(7) Where a person is, not later than one month after the date of termination of his employment under subsection (5)(a)(i), employed on the permanent and pensionable establishment of the Commission, whether in the same position or different position –

- (a) his previous employment with the Commission shall not be deemed to have been terminated;
- (b) he shall not be paid any pension benefits; and
- (c) his period of service shall be deemed to be an unbroken period of service with the Commission.

(8) The Minister may make such regulations as he thinks fit for the purpose of this section.

168. Other savings and transitional provisions

(1) Any proceedings, whether judicial or extra-judicial, started by or against ICAC, ARID or IRSA and pending on the commencement of this Act shall be deemed to have been started by or against the Commission.

(2) Any investigation or enquiry started by ICAC, ARID or IRSA and pending on the commencement of this Act shall be taken over and continued by the Commission.

(3) (a) Any prosecution in respect of any act or allegation instituted under any of the repealed enactments shall, on the commencement of this Act, continue under that repealed enactment as if this Act had not come into operation.

(b) A prosecution in respect of any act or allegation so investigated under any of the repealed enactments may, on the commencement of this Act, be instituted under that repealed enactment as if this Act had not come into operation.

(c) The Court shall, in respect of any prosecution instituted under paragraph (a) or (b), have all the powers that it could exercise pursuant to any of the repealed enactments as if this Act had not come into operation.

(4) (a) Any Order issued by a Judge or Court under the repealed enactments and valid on the commencement of this Act shall be deemed to have been issued by a Judge or Court under this Act.

(b) Any application for an Order made under the repealed enactments and pending on the commencement of this Act shall be deemed to have been made under this Act and shall be dealt with in accordance with this Act.

(5) (a) A Restraining Order, Confiscation Order, Restriction Order or Recovery Order issued under the repealed Asset Recovery Act and valid on the commencement of this Act shall be deemed to be a Criminal Attachment Order, Criminal Confiscation Order, Civil Attachment Order or Civil Confiscation Order, respectively, issued under this Act.

(b) An application for a Restraining Order, Confiscation Order, Restriction Order or Recovery Order made under the repealed Asset Recovery Act and pending on the commencement of this Act shall be deemed to be an application made under this Act for a Criminal Attachment Order, Criminal Confiscation Order, Civil Attachment Order or Civil Confiscation Order, respectively, and shall be dealt with in accordance with this Act.

(6) All rights, obligations and liabilities subsisting in favour of or against ICAC, ARID or IRSA shall, on the commencement of this Act, continue to exist under the same terms and conditions in favour of or against the Commission.

(7) The assets and funds of the ICAC, ARID or IRSA shall, on the commencement of this Act, vest in the Commission.

(8) Any property seized or confiscated by ICAC, ARID or IRSA shall, on the commencement of this Act, be deemed to have been seized or confiscated by the Commission and shall be dealt with in accordance with this Act.

(9) Any act done by ICAC, ARID or IRSA shall, on the commencement of this Act, be deemed to have been done, and shall continue to be done, by the Commission.

(10) Where this Act does not make provision for any saving or transition, the Minister may make such regulations as may be necessary for such saving or transition.

169. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the nineteenth day of December two thousand and twenty three.

Urmeelah Devi Ramchurn (Ms)
Acting Clerk of the National Assembly

FIRST SCHEDULE

[Section 160(1)]

DECLARATION OF ASSETS AND LIABILITIES FORM

I, (name), bearing National Identity Card number, holding the office of (designation) and residing at (address), affirm/declare* that –

(a) I am single/married/widowed/divorced* to Mr/Mrs (name), holder of National Identity Card number on (date) under the system of

(b) particulars of assets held by me, my spouse and minor children are as follows –

(i) money, in any currency, in bank accounts in local banks and foreign banks (savings/current and fixed deposit accounts and others) follows –

.....

(ii) money deposited in a non-bank deposit taking institution/s licensed by the Bank of Mauritius –

SN	Name of institution	Reference no.	Balance at institution	Name of account holder**

FIRST SCHEDULE - Continued

- (iii) cash in hand, exceeding one million rupees, in any currency accepted as legal tender in any country –

SN	Amount	Name of owner

- (iv) securities, including stocks, bonds, treasury bills or other units held in Mauritius or abroad –

SN	Name and description	Organisation in which being held	Cost of acquisition or market value	In whose name held

- (v) shares or any interest, including any joint ownership, in a company, *société* or partnership –

SN	Name and description	Organisation in which being held	Face value or cost of acquisition per share	In whose name held

FIRST SCHEDULE - Continued

(vi) trust property –

SN	Name of trust	Settlor**	Beneficiary**	Amount invested

(vii) any item of jewellery, precious stone or metal, or watch or gold coin, exceeding 500,000 rupees in value –

SN	Item description	Value	Name of owner

(viii) any virtual asset –

SN	Item description	Value	Name of owner

(ix) any work of art exceeding 500,000 rupees in value –

SN	Item description	Value	Name of owner

FIRST SCHEDULE - Continued

- (x) any freehold or leasehold immovable property registered in Mauritius or abroad –

SN	Transcription volume number or Parcel identification number	Location	Registered owner

- (xi) any freehold or leasehold immovable property which, at the time of declaration, has been purchased but is still subject to registration in Mauritius or abroad –

SN	Location	Purchased by

- (xii) motor vehicle(s) –

SN	Make & model	Registration number	Registered owner

FIRST SCHEDULE - Continued

(xiii) boat(s)/ship(s) –

SN	Type**	Pleasure craft number/ artisanal fishery no.	Country of registration and registration number (for ship(s))	Registered owner

(xiv) aircraft –

SN	Make and model	ACF number	Registered owner

(xv) *waqf* property dedicated under the *Waqf* Act –

SN	Item description	Value	Name of owner

FIRST SCHEDULE - Continued

- (c) the following person holds assets for me and on my behalf in my capacity as ultimate beneficiary –

Name

Age

NIC no.

Residential address

Details of assets

.....

- (d) particulars of my liabilities** and liabilities of my spouse, including any joint liabilities, are –

- (i)

- (ii)

- (iii)

- (e) any property sold, transferred or donated to children of age and grandchildren, in any form or manner whatsoever, including income or benefits from any account, partnership or trust** are as follows **–

- (i) myself, includes –

.....

.....

.....

.....

FIRST SCHEDULE - Continued

(ii) my spouse, includes –

.....
.....
.....
.....

I, (full name of signatory in BLOCK LETTERS), do hereby declare that the information I have given on this form is true and correct.

.....

Date

.....

Signature

* Delete as appropriate

SECOND SCHEDULE

[Section 161]

OATH OF CONFIDENTIALITY

I,, hereby make oath/solemn affirmation* as a and declare that in the discharge of my functions and exercise of my powers under the Financial Crimes Commission Act 2023, I shall deal with and regard all documents and information relating to the operations of the Financial Crimes Commission and to which I have access as SECRET AND CONFIDENTIAL and refrain from disclosing any such document and information to any unauthorised person.

Sworn/solemnly affirmed* by the abovenamed before me at this day of 20.....

Before me

.....
District Magistrate of
..... Court

* Delete as appropriate
