

# UNIT 4: Financing of Terrorism and Asset Recovery

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# Chapter Outline

The concept of financing  
of terrorism

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The legal framework on  
financing of terrorism

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The principle of asset  
recovery in Mauritius  
through existing  
legislations

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Conclusion

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Thank you



*The concept of  
financing of terrorism*

# The concept of financing of terrorism

- The concept of financing terrorism in Mauritius refers to the provision of funds, resources, or support to individuals or groups involved in terrorist activities. This includes any form of financial assistance, whether it be direct funding, money transfers, purchasing of goods and services, or any other means that aids or facilitates terrorist activities.
- In Mauritius, financing terrorism is considered a serious offense under the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) and other relevant legislation. The government has implemented strict measures to combat terrorism financing, including regulations on financial institutions to monitor and report any suspicious transactions that may be linked to terrorism.

# The concept of financing of terrorism

- The Financial Intelligence Unit (FIU) of Mauritius plays a crucial role in detecting and preventing terrorism financing activities. It collects, analyzes, and disseminates financial information related to suspected terrorist financing to law enforcement agencies for investigation and prosecution.
- Furthermore, Mauritius has also ratified international conventions and agreements aimed at combating terrorism financing, such as the United Nations Convention for the Suppression of the Financing of Terrorism (UN CFT) and the Financial Action Task Force (FATF) recommendations.
- Overall, the concept of financing terrorism in Mauritius encompasses any financial support or resources provided to individuals or groups engaged in terrorist activities, and the government is actively engaged in efforts to prevent and combat such activities through legislative measures and international cooperation.

# The Convention for the Suppression of the Financing of Terrorism Act 2003

- The Convention for the Suppression of the Financing of Terrorism Act of 2003 replaced the Prevention of Terrorism Act of 2002 in regulating terrorism financing in Mauritius.
- It repealed specific sections of the previous act and aligns with the International Convention for the Suppression of the Financing of Terrorism.
- The act introduces a new offense related to sponsoring terrorism, wherein any person who provides or collects funds knowingly for use in committing terrorism-related offenses is liable.

# The Convention for the Suppression of the Financing of Terrorism Act 2003

- The definition of "funds" encompasses various assets, whether tangible or intangible, including legal documents and instruments like bank credits, securities, and letters of credit.
- Offenders convicted under this act face penal servitude for a minimum of three years.
- This legislation aims to strengthen Mauritius's legal framework against terrorism financing by establishing clear offenses and penalties, consistent with international standards.

# The Convention for the Suppression of the Financing of Terrorism Act 2003

- 4. Financing of terrorism
- (1) Any person who, by any means whatsoever, wilfully and unlawfully, directly or indirectly, provides or collects funds with the intention or knowledge that it will be used, or having reasonable grounds to believe that they will be used, in full or in part, to commit in Mauritius or abroad -
  - (a) an offence in breach of sections 4, 5, 6 and 6A of the Civil Aviation (Hijacking and Other Offences) Act and section 12 of the Prevention of Terrorism Act 2002; or
  - (b) an act of terrorism, shall commit an offence.
- (2) For an act to constitute an offence under subsection (1), it shall not be necessary that the funds were actually used to carry out the offence in breach of sections 4, 5, 6 and 6A of the Civil Aviation (Hijacking and Other Offences) Act and section 12 of the Prevention of Terrorism Act 2002 an act of terrorism, as the case may be.
- (3) Any person who commits an offence under subsection (1) shall, on conviction, be liable to penal servitude for a term of not less than 3 years.

# The Prevention of Terrorism Act 2002

- The Prevention of Terrorism Act of 2002, enacted on February 19, 2002, and effective from March 16, 2002, empowers the judicial system in Mauritius to combat terrorism comprehensively.
- It includes provisions for preventing, suppressing, and combating terrorism, introducing new terrorism-related offenses, strengthening intelligence gathering and enforcement measures, and fulfilling international commitments.
- Acts of terrorism, as defined under the Act, involve actions intended to seriously intimidate populations, compel governments or international organizations, destabilize fundamental structures, or influence governments.
- These acts encompass various forms of violence, including attacks on individuals, kidnapping, destruction of public facilities, seizure of transport, use of weapons, release of dangerous substances, and interference with essential resources like water and power.
- Section 15 of the Act addresses terrorist property, including money, which is crucial in tackling the financial aspect of terrorism.

# The Prevention of Terrorism Act 2002

- Section 15 - Dealing in terrorist property:
- (1) Any person who enters into, or becomes concerned in, an arrangement which facilitates the retention or control by, or on behalf of, another person of terrorist property<sup>16</sup>, in any manner, including -
  - (a) by concealment;
  - (b) by removal from the jurisdiction; or
  - (c) by transfer to any other person, shall commit an offence.
- (2) It shall be a defence for a person charged under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.
- Under the Prevention of Terrorism Act 2002, "terrorist property" means property which -
  - (a) has been, is being, or is likely to be used for any act of terrorism;
  - (b) has been, is being, or is likely to be used by a proscribed organisation;
  - (c) is the proceeds of an act of terrorism; or
  - (d) is gathered for the pursuit of, or in connection with, an act of terrorism.

# Prevention of Terrorism (Special Measures) Regulations 2003

- The Prevention of Terrorism (Special Measures) Regulations 2003, enacted on January 25, 2003, enables the freezing of terrorists' funds.
- The definition of "funds" aligns with that in the Convention for the Suppression of the Financing of Terrorism Act of 2003.
- Amendments in March 2003 accommodated exceptions outlined in UN Security Council Resolution 1452 regarding payments for terrorists' basic and extraordinary expenses.
- Regulations 7 and 8 prohibit dealing in property owned or controlled by listed terrorists, facilitating financial transactions related to such property, and providing related services.
- The regulations extend to entities owned or controlled by listed terrorists and those acting on their behalf.
- Financial institutions are mandated to freeze funds and property held for listed terrorists upon publication of a proclamation listing them in the Government Gazette.

# The complementing nature of the FIAMLA towards the Prevention of Terrorism Act 2002 and related legislations

- The Financial Intelligence and Anti-Money Laundering Act (FIAMLA) serves as a complementary legislation to the Prevention of Terrorism Act of 2002 and the Convention for the Suppression of the Financing of Terrorism Act of 2003, along with any associated regulations.
- Under the FIAMLA, engaging in activities that involve the proceeds of any crime constitutes a money laundering offense.
- This extends to laundering funds associated with offenses covered by the aforementioned acts. Suspicious transactions under the FIAMLA include those raising reasonable suspicions of money laundering or involving funds linked to terrorism, whether or not they represent proceeds of a crime.
- The FIU is designated as the central agency in Mauritius for receiving, analyzing, and disseminating financial information, including data related to terrorism financing, to relevant authorities.

# The Asset Recovery Act 2011

- The Asset Recovery Act was passed by the National Assembly on April 5, 2011, and came into effect on February 1, 2012.
- Subsequent amendments, such as the Asset Recovery (Amendment) Act 2012 and the Asset Recovery (Amendment) Act 2015, have modified the original Act.
- This legislation outlines procedures for the State to recover assets derived from criminal activity or identified as terrorist property.
- Asset recovery can occur either through conviction-based confiscation, following a person's criminal conviction, or non-conviction-based asset forfeiture, established on the balance of probabilities.
- The Act provides a comprehensive framework applicable to all criminal offenses in Mauritius with a maximum sentence of at least 12 months in jail, including drug-related crimes, and extends to crimes committed outside Mauritius if they would be illegal there.
- Assets acquired within ten years of the Act's commencement are subject to its provisions.

# Enforcement Authority under the Asset Recovery Act 2011

- The Asset Recovery Act's Part II establishes a separate Enforcement Authority (EA), which has been assigned to the Financial Intelligence Unit (FIU) since January 26, 2016.
- Previously, the EA was under the jurisdiction of the Director of Public Prosecutions or another designated law enforcement official.
- The EA is empowered by the Act to undertake various legal actions, including seeking recovery or confiscation orders from a Supreme Court judge, or requesting property-related restraining orders from the Judge in Chambers.
- Additionally, the EA can request ancillary orders like search and seizure warrants or account monitoring orders from the Judge in Chambers.
- It also has the authority to compel individuals to provide information or materials, excluding privileged or customer information, and can require financial institutions to disclose customer information related to specific individuals.

# Customer Information and Account Monitoring Order

- Under the *Asset Recovery Act*, financial institutions may be compelled to provide specific customer information to the Enforcement Authority.
- This information includes whether an individual holds or has held an account, any evidence related to money laundering laws obtained by the institution, and other particulars concerning the account or its holder.
- When the Enforcement Authority applies to the Judge in Chambers for an Account Monitoring Order, the financial institution named in the application must disclose the specified account information according to the order's terms and timeline.
- This includes information on all accounts held by the applicant or specific descriptions of these accounts.
- Importantly, the Act prohibits financial institutions from using any statements provided in response to an Account Monitoring Order as evidence against them in legal proceedings.

# The Asset Recovery Investigative Division

- The Asset Recovery Investigation Division (ARID) has replaced the previous Investigative Agency within the Financial Intelligence Unit (FIU).
- It consists of law enforcement officers, with one appointed as the Chief Investigating Officer by the Director of the FIU.
- These officers are granted necessary authority by the Enforcement Authority.
- Additionally, the Director of the FIU is mandated to consult and seek assistance from individuals in Mauritius involved in combating money laundering, including representatives from banks, financial institutions, and cash dealers, to fulfill the FIU's responsibilities under the Asset Recovery Act.

# International Co-operation and Tipping Off

- The Asset Recovery Act empowers agreements between the Attorney-General or the Enforcement Authority and foreign entities to exchange data, including personal information, for various purposes authorized by the Act.
- In cases of foreign requests for identifying tainted property, the Enforcement Authority can seek a judge's order to compel financial institutions to provide relevant transaction information.
- The judge may also authorize law enforcement to conduct searches and seize materials if necessary.
- Financial institutions disclosing customer or account information to affected individuals regarding such orders could be charged with tipping off.
- The Act prohibits providing false information to the Enforcement Authority and mandates compliance with ancillary orders, with penalties ranging from fines to imprisonment depending on the severity of the offense.

# Thank you

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