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C O N T E N T

A Review of The Legal Framework on Money Laundering And Terrorism Financing In Mauritius In The Context of The Trade Relationship Between Mauritius And India

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ABSTRACT : This paper provides for an overview of the legal framework on money laundering in Mauritius. With the volume of trade being conducted between Mauritius and India, it is apposite for attention to be given to the high potential of money laundering occurring within this trade relationship. Increased trade between India and Mauritius can be a great thing, but it can also be a significant and non-negligence source of money laundering, as the Financial Action Task Force (FATF) has identified a long range of risk indicators related to trade-based money laundering. Hence, knowledge of Mauritius's legal framework regarding money laundering is pertinent and timely for the academic community, decision-makers in government, and business professionals. There is no question that such an effort must also be reciprocal, with Mauritian counterparts gaining some adaptability with the Indian framework for combating money laundering in order to make it simpler to identify, stop, and prosecute cases of money laundering within the trade arrangements between Mauritius and India.

Keywords: Mauritius, India, Money laundering, FAFT, Legislations.

Introduction

Mauritius and India share a strong cultural, political and economic relationship given that 70% of the Mauritian population are of Indian origin. Since independence, the various governments have succeeded in maintaining and nourishing this privilege tie that the country has with India. Amongst other things, this has resulted in an imported volume of business and trade between these two countries. On February 22, 2021, Mauritius and India signed the Comprehensive Economic Cooperation and Partnership Agreement (CECPA), which became effective on April 1, 2021. Eight chapters and 16 annexes make up the CECPA, which covers topics like trade in goods, rules of origin, sanitary and phytosanitary measures, technical trade barriers, trade in services, and dispute resolution (Mauritius Trade, 2023). Mauritius exporters receive privileged market access for a selection of 615 products in international trade. With tariff rate quotas on about 100 products, including spices, tea, plastic items, hardwood furniture, and parts for motor vehicles, Mauritius offers privileged access to 310 products. Additionally, both Parties concurred that negotiations to extend preferential market access on a list of goods that interest each Party should continue after the Agreement enters into force.

India has pledged to opening up its market to approximately 94 service industries, including professional, business, financial, and telecommunication services. The Agreement also establishes a framework for Professional Bodies of the two nations to negotiate mutual recognition of educational and professional credentials in the fields of architecture, engineering, medicine, dentistry, accounting and auditing, nursing, veterinary medicine, and company secretariat within a year of the Agreement's entry into force. This would strengthen Mauritius' position as a center of learning for Indian students. The CECPA includes a chapter on economic cooperation as well. Over 25 industries are covered in this chapter, including those in the pharmaceutical, agro-industrial, small and medium-sized business (SMB), manufacturing, ocean economy, information and communications technology (ICT), and financial services sectors, among others.

The Financial Action Task Force (FATF) has identified an extensive list of risk factors related to trade-based money laundering which makes it evident that an increased volume of trade between India and Mauritius, while being a great thing, can also be an important and non-negligence source of money laundering (FATF, 2021). It is therefore relevant and timely for the academic community, policy makers and trade practitioners to be conversant with the legal framework on money laundering in Mauritius. There is no doubt that such an attempt must also be reciprocal with Mauritian counterparts developing a certain degree of versatility with the Indian money laundering framework for a greater ease of deciphering, preventing and prosecuting cases of money laundering within the trade relationship between Mauritius and India.

This informative paper therefore provides for a detailed legal framework on money laundering in Mauritius with relevant case law cited . It adopts a doctrinal approach in terms of methodology as it reviews laws and regulations pertaining to the combat against money laundering with a general sense of understating the main question of 'what is the law' in connection with this particular type of financial offence.

Money laundering has a negative influence on organisations all around the world (Lowe, 2017). According to the UNODC, between two and five percent of the world GDP, or $800 billion and $2 trillion, is estimated to be laundered abroad annually. The prevalence of this fraudulent activity makes terrorist plots easier to execute and might even skew the market. Financial institutions paid a total of $10.4 billion in fines and penalties worldwide in 2020 for breaking the Know Your Customer (KYC), anti-money laundering, data privacy, and Markets in Financial Instruments Directive (MiFID) legislation.

Criminals employ money laundering as a technique to conceal the ownership and genuine source of the profits they make from their unlawful activity. If done properly, it allows them to maintain control over those revenues and, ultimately, provides them with a trustworthy justification for where their money comes from. Since it is by definition a clandestine business, it is challenging to estimate the size of the problem or the amount of illicit funds produced locally or globally every year. Yet, failing to block the laundering of money earned through illicit activity allows criminals to profit from their actions, making crime a more enticing endeavour (Strafer, 1989: 149). Money is essential to a country's economy, and if money laundering is not addressed and prevented, it can have detrimental and far-reaching effects. Enterprises both domestically and abroad may be impacted, which would have a negative impact on society as well as the economy. What does it mean when it is said that the money in circulation is "dirty"?

Unstable Money Demand

For money launderers, the cash input and outflow are simple. Spending rates rise as a result of the nation's unconstrained and rapid money flow. Imports, exports, the balance of payments deficit, inflation, interest rates, and unemployment might all see considerable increases. The numerous requests for money related to black money will have a detrimental impact on monetary policy (acharya & Madhur, 1983). The global reach of these fraudulent activities affects market stability, and financial crises in one nation can spread to others. Whether or not the demand for money is predictable determines how central banks' monetary policies are impacted. One possible explanation for the central banks' unsuccessful policies is the effect of black money on money demand.

Loss Of Government Revenue

Money laundering makes it difficult for the government to collect taxes from related transactions. The fall in tax collection also results in a reduction in overall government income. Losses of public funds can be detrimental to institutions that rely on them, such public hospitals. Taxes account for the vast majority of all public funding. If income is low, there is a strong probability that public revenue will fall short of public expenditures, which could result in budget deficits (Quirk, 1996).

Instability Of Financial Institutions

If financial institutions unknowingly engage in money laundering, their assets and obligations could quickly change. The public authorities are alerted by reports of money laundering at particular banking institutions, which prompts a closer review of those organisations' auditing and harms their reputation (korejo et al, 2022: 671).

Distortion Of Markets

The availability of commodities at prices below the cost of production restricts the growth of the private sector. In order to launder their money, criminals may change prosperous businesses into unprofitable ones. In the end, this makes it difficult for enterprises to compete, which has an effect on the productivity of the economy. In addition, money laundering can result in irregular variations in the demand for money as well as significant volatility in global capital flows and exchange rates (Novaro et al, 2022).

Corruption

If criminal enterprises are made legitimate, money obtained via illicit activity can be used to fund them. Both society and the economy are impacted by money laundering. It gives criminals economic sway over the populace, the government, and the market, which promotes crime and corruption.

Brief literature review

Criminals must always be prevented from converting "dirty" money into "clean" money in order to legalise the proceeds of their crimes, which is crucial in the fight against crime. The ability to launder money through the financial system is an essential element of criminal activity success. Money launderers must use the tools provided by the global financial sector companies if they hope to make money off of their activities (Naheem, 2016: 135). Unchecked use of the financial systems for this purpose raises the risk of jeopardising particular financial institutions and, ultimately, the entire financial sector. The growing global financial system integration, the lifting of limits on the free movement of cash, and the growth of electronic banking have all contributed to the ease with which unlawful money can be laundered and the difficulty in tracking it (Brown & Gillespie, 2015: 371).

The ability to attract and hold onto legally acquired money is crucial to the long-term prosperity of any financial industry in the world. The term "ecosystem" refers to a group of people who work in the construction industry. Honest depositors are deterred, and financial systems' reputation and integrity are compromised. Anyone or any organisation involved in a money laundering incident stands the risk of being prosecuted and losing their reputation in the marketplace.

Stages Of Money Laundering

The three steps of the normal laundering process are as follows. Throughout each stage, the launderers may engage in a number of transactions that could arouse suspicions of money laundering: Placement - Placement is the actual physical disposal of the first unlawful proceeds from criminal activity; Layering - the technique of separating illegally obtained funds from their source by creating a complicated web of financial transactions that conceals the audit trail and provides anonymity; Integration- giving the impression that money gained illegally is legitimate. Integration plans would reintroduce the cleaned-up revenues into the economy in a way that would make them appear to be regular business money when they reentered the financial system if the layering process was successful (Schneider, 2008: 387).

Because financial sector organisations handle deposits, efforts to curb money laundering have historically concentrated there because that is where the launderer's activities are most likely to be discovered. Criminals have only recently realised, meanwhile, that putting cash into institutions in the banking sector can frequently lead to more enquiries. There have been various attempts to convert or combine illegally obtained money with legitimate cash profits before it enters the financial system in order to make it harder to identify at the placement stage. Examples include the use of "smart" cards and wire transfers, both of which are challenging to trace (Filipkowski, 2008).. Financial institutions should therefore consider the money laundering risks posed by the products and services they offer, particularly in cases where there is little to no face-to-face interaction with clients.

Given that they provide a variety of money transportation services, all financial institutions are prone to being employed in the placement stage of money laundering as well as the layering and integration stages. Electronic funds transfer services, which make it possible to easily move cash deposits between accounts with different identities and in different countries, increase the vulnerability.

A few financial institutions may also be the target of sophisticated criminal organisations and their "professional money launderers." To move their illegal funds from one jurisdiction to another, such organisations will create up significant but fictitious international trading activities, possibly utilising front businesses and candidates as a cover. They will use made-up letters of credit to further obscure the situation while faking foreign trade by artificially inflating invoices to produce what seem to be legitimate international wire transfers (Chhina, 2016: 160). In order to finance the business activity, several of the front firms may even seek their lenders for financing. Banking institutions that support foreign trade should be on the watch for different forms of laundering.

The State of the Republic of Mauritius has made clear through a number of actions that it is fully committed to preventing money laundering and the financing of terrorism. On December 23, 1997, Mauritius agreed to the Mutual Evaluation process and the 40 Financial Action Task Force (FATF) recommendations. The Financial Action Task Force is the organisation in charge of establishing international guidelines for fighting money laundering (FATF). The FATF was established at the G-7 Summit, which took place in Paris in July 1989. It published its Forty Recommendations in 1990, outlining the fundamental guidelines for initiatives aimed at preventing money laundering. The Mutual Assessment procedure and the 40 Financial Action Task Force (FATF) recommendations were accepted by Mauritius on December 23, 1997. The term "ecosystem" refers to a group of people who work in the construction industry (FATF). The FATF was founded at the G-7 Summit in Paris in July 1989. It published its Forty Recommendations in 1990, outlining the fundamental guidelines for initiatives aimed at preventing money laundering (Bank of Mauritius Guidelines, 2005).

Also, on October 20, 2000, Mauritius consented to follow the guidelines established by the United Nations Minimum Performance Programme, which was ratified at the Global Programme Against Money Laundering Plenary meeting in the Cayman Islands. The UN Convention against Transnational Organised Crime and the UN Convention against Illicit Trade in Narcotic Drugs and Psychotropic Substances, often known as the Vienna Convention, were also approved by the Government of Mauritius (also known as the Palermo Convention).

The Economic Crime and Anti-Money Laundering Act 2000 was passed by the government in June 2000 and became effective in Mauritius on July 7, 2000. The Economic Crime and Anti-Money Laundering Act of 2000 encompassed fraud and corruption. The Economic Crime and Anti-Money Laundering Act 2000 was eventually repealed and replaced by the Financial Intelligence and Anti-Money Laundering Act 2002, which gave a Financial Intelligence Unit (FIU) clear authority to gather, analyse, and disseminate information. Since June 10, 2002, Mauritius has been operating under this Act (Beebeejaun, 2022).

Among other things, it mandates that financial institutions report suspicious transactions to the FIU right away rather than the Bank of Mauritius as was the case in the past. However, the Economic Crime and Anti-Money Laundering Act 2000's corruption provision is not included in the Financial Intelligence and Anti-Money Laundering Act 2002. It was included in the Prevention of Corruption Act of 2002, which also provided that offences involving money laundering would be looked into by the Independent Commission Against Corruption formed under that Act.

Regulations (G.N. No. 79 of 2003), which went into effect in Mauritius on June 21, 2003, were announced on June 19 under the Financial Intelligence and Anti-Money Laundering Act of 2002. They include provisions for identification verification and record keeping. The Financial Intelligence and Anti-Money Laundering (Amendment) Regulations 2005 (G.N. No. 117 of 2005) and the Financial Intelligence and Anti-Money Laundering (Amendment) Regulations 2006 have updated these Regulations, among other things, to better account for eligible and group introducers (G.N. No. 127 of 2006). The Anti-Money Laundering (Miscellaneous Provisions) Act was also approved by Parliament on September 16, 2003. The Financial Sector Assessment Program (FSAP) mission of the World Bank and International Monetary Fund made recommendations that led to the development of the Act. As a result of the Act, significant modifications were made to Mauritius' institutional and regulatory framework for anti-money laundering. Mauritius was a founding member of the Eastern and Southern Africa Anti-Money Laundering Organization (ESAAMLG). The ESAAMLG is now recognised by the FATF as an associate member.

The main pieces of legislation pertaining to money laundering are the Anti-Money Laundering (Miscellaneous Provisions) Act 2003, the Financial Intelligence and Anti-Money Laundering Regulations 2003, the Financial Intelligence and Anti-Money Laundering (Amendment) Regulations 2005, the Financial Intelligence and Anti-Money Laundering (Amendment) Regulations 2006, and the Prevention of Money Laundering Act. The primary pieces of legislation that deal with terrorism financing are the Convention for the Suppression of the Financing of Terrorism Act, the Prevention of Terrorism Act 2002, the Prevention of Terrorism (Special Measures) Regulations 2003 (G.N. No. 14 of 2003), the Prevention of Terrorism (Special Measures) (Amendment) Regulations 2003 (GN No. 36 of 2003), and the Financial Intelligence and Anti-Money Laundering Act (FIU, 2023).

Unknowingly or intentionally, people may utilise the services of financial institutions to move money used for terrorist attacks and the means by which they are carried out. Terrorism may have a different ultimate purpose than other unlawful activities, which normally attempt to generate money. To carry out their goals, terrorists still want financial support. Like any other criminal organisation, a successful terrorist organisation needs to be able to build and maintain an effective financial infrastructure. To accomplish this, it must first develop financial sources, a means of money laundering, and finally a means of ensuring that the funds can be utilised to purchase the supplies and other logistical equipment required to carry out terrorist activities (Keatinge & Danner, 2021).

Therefore, financial institutions should take precautions to avoid acting as a conduit for such activities and use their current money laundering policies and procedures, existing due diligence requirements, and enhance them as necessary to detect transactions that may potentially involve terrorist funds. Financial institutions should review their activities in this area as part of their routine internal and external audit procedures. Financial institutions are advised to consider the risks outlined by the FATF in its Report "Emerging Terrorist Financing Risks," which was released in October 2015, while assessing their policies, procedures, and mandated due diligence. In light of the Report's assessment of the methods and strategies for funding terrorism, they should strengthen their systems and controls (Aamo, 2017).

Closely linked to money laundering is the issue of financing of terrorism. There are two main sources from which terrorist financing may originate, while there are other important sources as well. Wealthy individuals and nations or organisations with substantial infrastructures that can raise money and then give it to them are the primary sources of funding for terrorist organisations. The second main way that terrorist organisations are funded is through direct income from various "revenue-generating" operations. A terrorist organisation, like a criminal organisation, may get funds from criminal activities or other unlawful endeavours, such as large-scale smuggling, various types of fraud, theft and robbery, and drug trafficking (Freeman, 2011).

Yet, in contrast to criminal organisations, money for terrorist organisations occasionally comes from legitimate sources, like contributions, or from a combination of legitimate and illicit sources. Terrorist organisations are distinguished from more traditional criminal organisations by the fact that they derive their funding from legal and ostensibly legitimate sources. The FATF has emphasised that numerous law enforcement investigations and prosecutions have uncovered a connection between a commercial enterprise and terrorist organisations, including franchised restaurants and used car dealerships, where money from the commercial enterprise was being used to support the terrorist organisation (Raphaeli, 2003).

Community canvassing and fundraising efforts are two incredibly effective ways to raise funds for terrorism. Such fundraising initiatives are typically carried out under the auspices of organisations that are legally recognised as charitable or assistance organisations. In many cases, the organisations that accept donations are legitimate in the sense that they engage in some of the activities they advertise. The bulk of the group's members are not aware that a portion of the donations the charity receives are being used for terrorist activities in a pattern that may be identified. The collection of membership dues and/or subscription fees, the sale of publications, cultural and social events, door-to-door solicitation within the community, appeals to wealthy members of the community, and donations of a portion of one's own earnings are just a few of the specific fundraising techniques that may be used.

The methods used by terrorists and their allies to obtain money from illegal sources are substantially similar to those used by well-established criminal organisations. Terrorists frequently need to conceal or detangle connections between their funding and their legitimate funding sources, even though income from legal sources does not need to be "laundered." Thus, terrorists must devise ways to launder these funds in order to use them without catching the attention of law enforcement. After examining terrorist-related financial operations, FATF experts came to the conclusion that terrorists and the organisations that support them frequently employ the same strategies employed by criminal organisations to launder money.

One or more of the specific strategies used by different terrorist organisations have been identified as cash smuggling, deposits into or withdrawals from bank accounts, purchases of different financial instruments (traveler's checks, bank cheques, money orders), use of credit or debit cards, and wire transfers. The terrorist's main objective is not to make money via his methods of fundraising, but to gather resources to pay for his crimes. The route that fund transfers take would therefore be crucial for tracking down terrorist financing. A determination in this regard may be made on the basis of recurring, comparable transactions from a single account or from a number of accounts maintained in the same institution by various persons (Gomez, 2010: 4).

When terrorists obtain funding from reliable sources, it is more difficult to find and trace these funds (donations, sales of publications, etc.). For instance, it has been claimed that several terrorist organisations receive substantial funding from charities, non-profits, and other legitimate businesses. Due to the funding's apparent legal source, it may initially seem as though there are few, if any, indicators that would make a particular financial transaction or series of transactions stand out as related to terrorist operations. It is more difficult to identify terrorist financing because of other important factors including the volume and type of the transactions involved. A number of FATF experts claim that financing terrorist operations does not always require large sums of cash and that the transactions involved are frequently straightforward and include the transfer of small amounts via wire transfers. Improved due diligence techniques are therefore required to uncover terrorist financing. Financing terrorism is a crime in and of itself, but it also acts as a cover for money laundering (Teichmann, 2019).

The Financial Intelligence and Anti-Money Laundering Act 2002

First explicitly addressing the risks of money laundering in Mauritius was the Economic Crime and Anti-Money Laundering Act 2000. The Economic Crime and Anti-Money Laundering Act was abolished on April 1, 2002, by the Prevention of Corruption Act of 2002. The Financial Intelligence and Anti-Money Laundering Act of 2002 (hereafter referred to as FIAMLA) was enacted by Parliament on February 27, 2002, and it became effective on June 10, 2002. In response to the examination of our legal system conducted by the joint IMF/World Bank Financial Sector Assessment Program Mission, the Anti-Money Laundering (Miscellaneous Provisions) Act 2003 updated the Financial Intelligence and Anti-Money Laundering Act 2002.

From the Economic Crime and Anti-Money Laundering Act 2000 to the FIAMLA 2002

The Economic Crime and Anti-Money Laundering Act of 2000 mandated that financial institutions alert the Bank of Mauritius to any dubious transactions. In compliance with the FIAMLA, any allegation of money laundering must now be reported directly to the Financial Intelligence Unit. The Economic Crime Office, which was also established under the Economic Crime and Anti-Money Laundering Act of 2000, was mandated to investigate money laundering offences. The Independent Commission Against Corruption is in responsible of conducting investigations into offences involving money laundering, per the Prevention of Corruption Act of 2002.

The Economic Crime and Anti-Money Laundering Act of 2000 did not have any provisions for regulatory agencies to report questionable transactions that they learn about while performing their supervisory obligations to the Financial Intelligence Unit. This was inserted in the FIAMLA. Additionally, it provides a comprehensive structure for the communication of information to other governmental and law enforcement organisations. The FIAMLA's definition of a suspicious transaction particularly mentions transactions involving terrorism.

The Financial Intelligence Unit (FIU)

All suspicious transactions must be reported to the Financial Intelligence Unit by financial institutions. The Financial Intelligence Unit was authorized to be created by the FIAML on June 10, 2002. The Financial Intelligence Unit is led by a Director and is governed by a board that consists of a chairperson and two other members. In Mauritius, the FIU is the main organisation entrusted with gathering, requesting, analysing, and communicating with the investigative and supervisory bodies disclosures of financial information regarding: (a) alleged money laundering offences and suspected proceeds of crime; (b) information required by or under any law to combat and prevent money laundering; or (c) financing of any activities or transactions related to terrorism. The Financial Intelligence Unit is largely a data organisation that collects and organises information on money laundering and terrorism. It acts as the main repository for financial information about alleged or verified money laundering and terrorism financing.

On July 23, 2003, the Financial Intelligence Unit joined the EGMONT Group as a representative of African FIUs. When it comes to cases involving money laundering for the Financial Intelligence Unit, members of the Group cooperate with one another. The EGMONT Group, which presently unites Financial Intelligence Units from 151 countries, distributes financial intelligence data among other things to aid its members' national anti-money laundering programs.

The offence of Money Laundering

Section 3 of the FIAMLA provides for money laundering offences as follows:

(1) Any person who -

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

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

where he suspects or has reasonable grounds for suspecting that the property is derived or realised, in whole or in part, directly or indirectly from any crime, shall commit an offence.

(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.

(3) Reference to concealing or disguising property which is, or in whole or in part, directly or indirectly, represents, the proceeds of any crime, shall include concealing or disguising its true nature, source, location, disposition, movement or ownership of or rights with respect to it.

It should be emphasized that a bank includes anyone running a non-bank deposit taking company licensed under the Banking Act as well as moneylenders, credit unions, and other businesses with the same definition as under the 2004 Banking Act, according to section 3(2) of the FIAMLA. An institution or person that is licensed, registered, or required to be licensed, registered, or required to be registered under (a) section 14 or 77 of the Financial Services Act, (b) the Insurance Act, or (c) the Securities Act is referred to as a financial institution.

Referring to case law, both Accused were jointly charged with "Money Laundering" in violation of sections 3(1)(a) and (b) of the Financial Intelligence and Anti Money Laundering Act in the matter of ICAC v. Dumont and Another 2011 INT 77. To establish the crucial factor shared by both offenses, the prosecution presented the following evidence: 1. The various deposits made into the joint bank accounts held by both Accused, including the deposits of 80,000 rupees on November 10, 2006, 40,000 rupees on February 15, 2007, 20,000 rupees on February 27, 50,000 rupees on March 19, 2007, and 100,000 rupees on April 27, 2007. According to the court, it is only appropriate to say that the facts of this case unmistakably show that both Accused had good reason to believe that the various quantities in question were received partially, directly, from the aforementioned crime—drug dealing. The conclusion that such a reasonable suspicion does exist in the current case under all counts can therefore be drawn safely and logically. In this instance, there are no further data that might have undermined or destroyed the inference drawn. Money laundering was found to be committed by both defendants.

Limitation of payment in cash

Section 5 of the FIAMLA further provides that:

(1) Notwithstanding section 37 of the Bank of Mauritius Act 2004, but subject to subsection

(2) any person who makes or accepts any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.
(2) Subsection (1) shall not apply to an exempt transaction."

Upon conviction, the Intermediate Court has the authority to order the forfeiture of assets in addition to any other penalties it may impose, such as a fine of up to 2 million rupees and a term of imprisonment not to exceed 10 years. The Intermediate Court has the authority to try any offence committed in violation of the Act or regulations made thereunder. Any property that belongs to, is controlled by, or is in the custody of someone who has been convicted of a money laundering offence is regarded as having been acquired illegally, and the court may order its confiscation.
The Act defines "crime" as (a) an offense punishable by I penal servitude, (ii) incarceration for a term longer than 10 days, (iii) a fine greater than 5,000 rupees, (b) an action taken outside of Mauritius that would have been regarded as a crime if it had taken place there, and (c) an action taken outside of Mauritius that would have been regarded as a crime if it had.

In addition, regarding what amounts to suspicious transaction, the FIAMLA provides as follows:

(a) gives rise to a reasonable suspicion that it may include the laundering of money, the proceeds of any crime, or funds connected to, related to, or intended for use in acts of terrorism or by prohibited organisations, regardless of whether the monies involved are the proceeds of a crime;
(b) is made in circumstances of unusual or unjustified complexity;

(c) appears to have no economic justification or lawful objective;
(d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or
(e) gives rise to suspicion for any other reason.

The criteria that is applicable to both suspicions of and offences concerning money laundering is the objective standard. Hence, the offence may have been committed if the authorised officer of a financial institution ought to have a reasonable suspicion but didn't actually have one. Such officers should be familiar with the "Know Your Customer Principle," which is discussed in section 6 of these guideline notes.

To ensure an audit trail and as a preventative measure against the laundering of illegal funds, a cap on cash transfers has been imposed under the Act. Therefore, with the exception of a few exempt transactions, all cash transactions worth more than 500,000 rupees are forbidden. Exempt transactions are transactions for which the 500,000 rupee limit does not apply and are typically transactions between I the Bank of Mauritius and any other person, (ii) a bank and another bank, (iii) a bank and a financial institution, (iv) a bank or financial institution and a customer, where (a) the transaction does not surpasses an amount that is equivalent with the lawful activities of the client, and 1) the customer is, at the time the transaction occurs or b) 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 (v) between such other persons as may be prescribed.

In ICAC v. Shibani Finance 2012 INT 177, the accused company, as represented, is accused of three charges of "Limitation of payment in cash," in violation of sections 5(1) and 8 of the Financial Intelligence and Anti-Money Laundering Act as well as section 44(2) of the Independent and General Clauses Act. It is claimed in the information that on or about July 9, July 14, and July 19, 2004, the accused as described knowingly, willfully, and criminally accepted payments in cash in foreign currencies from Mr. Mohammud Yousouf Meeajun totaling GBP60,000 (Rs3,103,800), GBP35,000 (Rs1,811,250), and GBP 15,000 (Rs780,000), all of which were greater than Rs350.000.

It was held that there is evidence on record that… the accused company… could not have had any business relationship with Mr Y. Meeajun. The transactions were confined to three days in one month. The fact that the accused company ascertained that the money was withdrawn from the account of the Mr Meeajun's daughter, by the daughter and that she authorised her father to make the exchange, is not really verification of the source of the funds.

Obligations of Financial Institutions

To combat money laundering and the funding of terrorism, every financial institution must take steps to ensure that neither it nor any services it offers can be used to conduct or facilitate a money laundering crime. The FIAML also mandates that financial institutions confirm the true identity of all parties with whom they transact business. Financial institutions may only open accounts for cash deposits in conformity with the Banking Act of 2004 if they are certain that they have positively identified the person to whom the funds are to be attributed.

Financial institutions must also adopt internal reporting policies, which may include the designation of a money laundering reporting officer, and install internal controls and other precautions to stop money laundering and the support of terrorism.

Legal requirements pertaining to reporting

In Beezadhur v ICAC 2013 SCJ 292, the Supreme Court of Mauritius held that *"…banks or other financial institutions have a duty and are responsible for reporting any suspicious financial transactions exceeding the prescribed limit to the Financial Intelligence Unit."*

Every financial institution is obligated by section 14 of the FIAMLA to notify the FIU as soon as practically possible but no later than 15 working days of any transaction that it has reason to suspect might be a suspicious transaction. The FIU has created a form to that aim. Financial institutions are required to use the form provided by the FIU to report any suspicious transactions. Financial institutions are required to use the form provided by the FIU to report any suspicious transactions. The following details must be included in every report submitted to the Financial Intelligence Unit: the identity of the party or parties to the transaction; the amount of the transaction; a summary of its nature; all circumstances and contexts giving rise to the suspicion; the nature of the person of interest's business relationship with the financial institution; and, if the suspect is an insider, any information pertaining to whether the suspect is still connected.

Following receipt of a report, the FIU will communicate the study's results in writing to the relevant financial institution and the Bank of Mauritius. Reports of suspicious transactions are never acceptable as evidence in legal proceedings. After a financial institution alerts the FIU to a suspicious transaction, the FIU director is permitted to contact that financial institution and any other financial institutions that are or appear to be involved in the transaction for additional information. A financial institution is required to give the FIU the needed information as soon as it is practical, but no later than 15 working days after receiving a request for more information from the FIU's director. The FIU Director's power is nevertheless subject to the following two restrictions: -(i) The additional data may only be sought to establish if it should be given to supervisory or investigative authorities. (ii) All supplementary information must be connected to the financial institution's report of a suspicious transaction.

The Act expressly prevents anybody involved in the reporting of a suspicious transaction from informing the parties involved in the transaction or any unauthorised third party that the transaction has been reported. If someone is found guilty of tipping off, they could be sentenced to up to five years in prison and a fine of up to one million rupees. A tip-off offence won't occur if you make initial questions about a possible client to confirm their identification, find out more about their financial status, or ascertain the precise nature of the transaction they are engaging in. However, where a suspicious transaction has already been reported and further investigation is necessary, extra caution should be taken to avoid customers from finding that their identities have been brought to the FIU's attention.

A fine of up to one million rupees may be imposed on any financial institution, director, or employee who willfully and without justification fails to I comply with a request from the FIU under section 13(2) or 13(3) of the FIAMLA, (ii) submit a report under section 14 of the FIAMLA, or (iii) verify, identify, or maintain records, registers, or documents as required under section 17 of the FIAMLA.
The Bank of Mauritius may, in the absence of a convincing defence, take any of the following actions if it finds that a financial institution under its supervision violated an FIAML requirement or a regulation that applies to that financial institution and that the violation was the result of a careless act or omission or a serious flaw in the implementation of any such requirement:

(a) If a bank is involved, file a lawsuit against it in accordance with Sections 11 and 17 of the Banking Act 2004 because it is operating against the interests of the general public.;
(b) A cash dealer or holder of a deposit-taking business license may be sued under sections 16 and 17 of the Banking Act 2004 for working against the interests of the general public.

The Financial Intelligence and Anti-Money Laundering Regulations 2003

The Financial Intelligence and Anti-Money Laundering Regulations 2003 were passed on June 19, 2003, and they were effective on June 21, 2003. However, these regulations have been updated by the Financial Intelligence and Anti-Money Laundering (Amendment) Regulations of 2005 and the Financial Intelligence and Anti-Money Laundering (Amendment) Regulations of 2006.

The Regulations as amended set forth the prerequisites for identity verification, the minimal documents required, record-keeping requirements, adoption of internal reporting procedures, including the designation and appointment of a Money Laundering Reporting Officer, implementation of internal controls, and other measures for preventing money laundering and the funding of terrorism, as well as the degree of reliance by financial institutions.

Conclusion And Recommendations

The legal framework on money laundering can be said to be more or less aligned to international standards provided by mechanisms such as the UN and FAFT. However, this is an area which evolves arguably more rapidly than the law itself. It is therefore imperative that a collaborative approach be taken between India and Mauritius in order to be able to engage in an effective combat against money laundering. More effective collaboration is needed at the state-state level, institution-institution level as well as from the academic and research perspective. Only then the trade relationship between the two states will be free from the ill effects of money laundering.

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