



## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

### Enforcement Authority

pursuant to Section 4 of the Asset Recovery Act 2011

#### STEP-BY-STEP GUIDE FOR ASSET RECOVERY

##### MAURITIUS

- 1) Mauritius asset recovery system is two-fold:
  - a) a conviction based system in Part III of the Asset Recovery Act 2011 (ARA)
  - b) a non-conviction based system in Part IV of the Asset Recovery Act 2011 (ARA)
- 2) Asset Recovery is implemented and executed by the Enforcement Authority (EA) which acts under the aegis of the Director of Public Prosecutions of Mauritius. The EA also included an Investigative Agency that conducts investigation regarding Asset Recovery cases.
- 3) The Central Authority is the Attorney-General, who shall, for the purposes of a request with regards to a Restraint or Confiscation order, from a foreign State or an international criminal tribunal, be the appropriate competent authority.

#### Conviction based Recovery in Part III of the ARA

##### 1. Confiscation orders

The provisions which deal with Confiscation Orders are contained in Sections 17 to 26 of the Asset Recovery Act 2011. It is an order in personam.

Where a person is convicted of an offence, the Enforcement Authority may apply to the Court for a Confiscation Order in respect of the benefit derived or likely to be derived by the person from that offence or from any other unlawful activity which the Court finds to be sufficiently related to that offence.

When the Court is satisfied that the person has benefited from an offence or any other unlawful activity which the Court finds to be sufficiently related to that offence, it shall make a Confiscation Order, ordering the said person to pay to the State, within such time as it may determine, an amount equal to the value of his benefit.

## 2. Restraint orders

To ensure that property is not dissipated, the state may obtain a restraint order over any such property until the criminal case is disposed of. This includes only tainted property belonging to persons who are subject to a criminal enquiry or has been convicted of an offence. The tainted property should also normally be linked to the unlawful activity.

The provisions which deal with Restraining Orders are contained in Sections 9 to 16 of Asset Recovery Act.

## 3. Trustee to take care of the restrained property

To look after the restrained property, the court may appoint a trustee. The trustee thereafter shall take custody of the said property and shall have the power to manage the said property. The powers of the Trustee are contained in Section 11 of the ARA.

## Civil recovery in Part IV of ARA

## 4. Recovery order

The provisions which deal with Recovery Orders are contained in Sections 34 to 39 of the Asset Recovery Act 2011. It is an order in rem.

Where any property has come to the notice of the Enforcement Authority, or property is found by a law enforcement agent to be in the possession of any person, and the property is reasonably believed by the Enforcement Authority to be worth more than 500,000 rupees and to be proceeds, an instrumentality or terrorist property, the Enforcement Authority may, unless it would not be in the interests of justice, make an application to the Court for the grant of a Recovery Order in respect of the property.

Proceeds are defined as per the ARA to be any property or economic advantage, wherever situated, derived from or obtained, directly or indirectly, through or in connection with an unlawful activity.

An application for a Recovery Order is applicable even when there is no prosecution or the accused has been acquitted.

As opposed to Conviction-based recovery, to obtain a Recovery Order it must be proved that the property itself is proceeds or an instrumentality of unlawful activities or a terrorist property, and only the actual tainted property can be recovered by the Enforcement Authority. It is not necessary to show that the property is linked to an offence that the owner of the property is charged with.

## 5. Restriction Order

Where a property is reasonably believed by the Enforcement Authority to be recoverable by way of a Recovery Order and to be proceeds or an instrumentality or terrorist property, it may apply to a Judge for a Restriction Order in respect of that property. The

importance of a Restriction Order is to avoid the dissipation of property by its owner pending the application of a recovery order.

#### 6. Asset Manager

To look after the restricted property, the court may appoint an Asset Manager. The Asset Manager thereafter shall take custody of the said property and shall have the power to manage the said property. The powers of the Asset Manager are contained in Section 28 of the ARA.

### HOW A FOREIGN COUNTRY CAN SEEK ASSISTANCE IN TRACING AND LOCATING TAINTED PROPERTY IN MAURITIUS.

7. Upon a foreign State requesting the Enforcement Authority to assist in locating a property believed to be proceeds, an instrumentality or terrorist property, the Enforcement Authority may apply to a Judge of the Supreme Court 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 property, be delivered forthwith to the Enforcement Authority; or
  - (b) a financial institution forthwith produces to the Enforcement Authority 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 the Judge may direct.
8. Alternatively an official request can be sent to the Attorney General Office to assist in locating property believed to be the proceeds of a serious crime committed in that State.
9. Informal requests relating to asset recovery, can be sent directly to the Enforcement Authority. Under these circumstances only information which is publicly available can be provided.

### CAN A FOREIGN STATE SEEK A CIVIL OR CONVICTION BASED ASSET RECOVERY FROM MAURITIUS?

10. Where a foreign State requests the Enforcement Authority to obtain the issue of an order against property believed to be proceeds, an instrumentality or terrorist property which is located in Mauritius, the Enforcement Authority may apply to a Judge for a Restriction Order.
11. The Attorney General's Office may apply to the Court of Mauritius to restrain or confiscate a property unless where granting the request would require a Court in Mauritius to make an order in respect of any person or property concerning conduct which does not constitute an offence in Mauritius.

**CAN MAURITIUS ENTERTAIN FOREIGN REQUEST FOR ENFORCEMENT OF FOREIGN RESTRICTION OR RECOVERY ORDERS?**

12. Where a foreign State requests that necessary measures be taken for the enforcement of a foreign Restriction or Recovery Order, the Enforcement Authority may apply to a Judge or the Court, as the case may be, for registration of the Order.
13. Where an Order has been registered 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 terrorist property, it may order that the property be recovered and be vested in the State until such arrangement is made by the Enforcement Authority with the foreign State for its disposal or transfer.

**CAN MAURITIUS ENTERTAIN FOREIGN REQUEST FOR ENFORCEMENT OF FOREIGN RESTRAINING OR CONFISCATION ORDERS**

14. Where a foreign State, or an international criminal tribunal, requests that necessary measures be taken for the enforcement of
  - (a) a foreign restraining order; or
  - (b) a foreign confiscation order,

the Attorney General's Office may apply to the Supreme Court for registration of the order.

15. The Supreme Court shall register the foreign confiscation order where it is satisfied that—
  - (a) at the time of registration, the order is in force in the foreign State, or before the international criminal tribunal; and
  - (b) in the case of a person who did not appear in the proceedings in the foreign State, or before the international criminal tribunal—
    - (i) the person was given notice of the proceedings in sufficient time to enable him to defend himself; or
    - (ii) the person had absconded or died before such notice could be given.

16. Where an order has been registered and the Supreme Court is notified that it has been established to the satisfaction of a foreign Court or international criminal tribunal that the property or any part thereof constitutes the proceeds of crime of a serious offence or of an international criminal tribunal offence, the Supreme Court shall order that the property be confiscated and be vested in the State until such arrangement is made under by the Central Authority with the foreign State.

## DISPOSAL/RETURN OF ASSETS

17. On a request by a foreign State, the Attorney-General shall transfer to it any proceeds, instrumentality or terrorist property recovered in Mauritius in response to a request for the enforcement of a foreign Order.

## ASSET RECOVERY AGENCY/ AGENCIES – CONTACT INFORMATION

18. Formal request should be addressed to:

Enforcement Authority  
Office of the Director of Public Prosecutions  
13<sup>th</sup> Floor, Garden Tower,  
La Poudriere Street  
Port Louis  
Mauritius  
Telephone number: +230 4055673  
Telefax number: +230-2130384

The Attorney General's Office  
NPF Building, Pope Hennessy Street  
Port Louis  
Mauritius  
Telephone number: +230 2034740

19. Informal requests concerning asset forfeiture can be forwarded to:

The Enforcement Authority  
Office of the Director of Public Prosecutions  
13<sup>th</sup> Floor, Garden Tower,  
La Poudriere Street  
Port Louis  
Mauritius  
Telephone number: +230 4055673  
Telefax number: +230-2130384  
e-mail: aru@govmu.org

20. Mauritius is a member of the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA).