

INDEPENDENT COMMISSION AGAINST CORRUPTION

Follow-up on Challenges - UNCAC Review Chapters II and V

BACKGROUND

The Republic of Mauritius was subject under Article 63 of the Convention, to a review under Cycle II on the implementation of Chapters II (Preventive Measures) and V (Assets Recovery) in 2016-2017. Mauritius was peer-reviewed by Mauritania and Panama assisted by the UNODC experts. With the contribution of stakeholders, the Self-Assessment Checklist for the review process was completed and submitted to the United Nations Office on Drugs and Crime (UNODC). Subsequently, the Reviewing Experts analysed the responses to the Self-Assessment Checklist and conducted a country visit in April 2017 along with the officers of the UNODC. The report has been finalized and indicates that at the time of review, in 2017, Mauritius was compliant to almost all the mandatory provisions of the different articles except the ones concerning declaration of assets and the regulation of issues such as accounting obligations, public subsidies, private donations, public disclosure and expenditure limits with respect to political parties.

The Follow-Up Exercise with Stakeholders

In line with the consultative and collaborative approach adopted for Cycle II, the Executive Summary containing the recommendations was sent to all stakeholders who participated in the process. Their attention was brought to the challenges highlighted in the Review Report for them to report on follow-up actions, especially those that are relevant to their mandates.

The table below on actions taken and progressed achieved with respect to the challenges contained in the report. It is based on the responses provided by stakeholders.

ACTIONS TAKEN ON RECOMMENDATIONS

SN	Challenges in implementation as per the Review Report	Actions Taken/Progressed Achieved
1	Enhance transparency in the funding of political parties, including through the adoption of a new law which would regulate issues such as accounting obligations, public subsidies, private donations, public disclosure and expenditure limits (art. 7, para. 3)	The Political Financing Bill was debated in the National Assembly in July 2019 but could not secure the required majority and was therefore not passed. Nevertheless, the Government stands committed to regulate political funding as per Government programme 2020 - 2024.
2	Consider strengthening the asset declaration system for public officials, including through the adoption of the envisaged new law and introducing an effective verification system (art. 7, para. 4, and art. 8, para. 5)	<p>A new Declaration of Assets Act (DoA) has been introduced in 2018. The new Act imposes the obligation on a wider category of public officials to declare all assets and liabilities, whether held on their own name or on their behalf to the Independent Commission Against Corruption (ICAC).</p> <p>Under the new Act, the ICAC has been vested with additional powers to, amongst others:</p> <ul style="list-style-type: none"> • receive and manage declarations; • disclose information to the public pursuant to Section 7 of the Act; and • monitor the assets and liabilities of any declarant for the purpose of detecting and investigating corruption and

		<p>money laundering offences or illicit enrichment, as per section 9 of the Act..</p> <p>In view of the above, a dedicated Unit has been set up to implement the provisions of the DoA Act.</p>
3	Amend its asset declaration system to also include information regarding foreign-based assets, signatures and other values (art. 8, para. 5, and art. 52, para. 6)	<p>This challenge has been attended to through a wider definition of assets that have to be declared as follows: -</p> <p>“assets” means –</p> <p>(a) money, in any currency, in local banks and foreign banks;</p> <p>(aa) money deposited in a non-bank deposit taking institution licensed by the Bank of Mauritius;</p> <p>(b) cash in hand exceeding one million rupees in any currency accepted as legal tender in any country;</p> <p>(c) securities, including stocks, bonds, treasury bills or other units held in Mauritius or abroad;</p> <p>(d) shares or any interest in a company, société or partnership;</p> <p>(da) trust property;</p> <p>(e) any item of jewellery, precious stone or metal, or watch, exceeding 500,000 rupees in value;</p> <p>(f) any freehold or leasehold immovable property –</p> <p>(i) registered in Mauritius or abroad;</p> <p>(ii) which, at the time of declaration, has been purchased but is still subject to registration in Mauritius or abroad;</p> <p>(g) motor vehicles, boats, ships or aircrafts;</p> <p>(h) assets held by a person for and on behalf of the declarant in the declarant’s capacity as ultimate beneficiary;</p>
4	Continue the efforts to encourage public officials to report acts of corruption (art. 8, para. 4)	It is an ongoing activity of the Corruption Prevention and Education Division of the ICAC. The effort is further relayed by members of anti-corruption platforms and stakeholders.
5	Consider strengthening the measures concerning gifts to public officials, in particular courtesy gifts of higher value (art. 8, para. 5)	<p>At the time of country visit, Guidelines on receipt of gifts issued by the Commission already available and relevant provisions already included in Code of Ethics for Public Officers.</p> <p>Ongoing efforts – The adoption of a gift policy is recommended in all the Corruption Prevention Reviews conducted by the ICAC.</p> <p>A gift guide is also being developed for the private sector.</p>
6	Enhance the efforts to promote accountability in the management of public finances, such as providing sanctions for late submissions of financial statements by ministries/departments (art. 9, para. 2)	<p>All Ministries and Statutory Bodies are required by law to submit their Annual Reports.</p> <ul style="list-style-type: none"> • The Annual Report on Performance of the Ministry is prepared in compliance with the statutory requirement of Section 4B of the Finance & Audit Act 1982. Every department have to report on their performance not later than 31 October of each year as follows: <p><i>(1)Every department shall, not later than 31 October in every year, submit to the Minister, a report on its performance in respect of the previous fiscal year and on its strategic direction in respect of the following 3 fiscal years.(2)A report under subsection (1) shall contain a statement showing an</i></p>

		<p><i>implementation plan for remedial action and for preventing the recurrence of the shortcomings, including wastage of public funds referred to in the report of the Director of Audit.[Inserted 1/2015, Amended 11/2018]</i></p> <ul style="list-style-type: none"> • Statutory Bodies are required under Section 6 A of the Statutory Bodies (Accounts and Audit) Act 1972 to submit not later than 30 April after the end of every financial year, the annual report to the auditor and as per Section 9 of the Act, the Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited accounts of every statutory body before the Assembly. • Section 7A provides for disciplinary action for non-compliance to Section 7 of the Act.
7	Continue the efforts of the Financial Reporting Council to monitor the compliance of the relevant entities with the Code of Corporate Governance (art. 12, paras. 1 and 2)	<p>One of the functions of the Financial Reporting Council (FRC) is to monitor compliance by the public interest entities with the National Code of Corporate Governance (Section 76 of the Financial Reporting Act 2004 refers).</p> <p>In view of the above function, FRC reviews the annual reports of the public interest entities to ensure compliance with the reporting requirements of the National Code of Corporate Governance.</p> <p>The findings from the reviews are presented to the Financial Reporting Monitoring Panel established under the Financial Reporting Act 2004, and are communicated to the public interest entities for remedial actions.</p> <p>Cases of non-compliances are referred to the Enforcement Panel to take any appropriate actions as provided under Section 79 of the Financial Reporting Act 2004.</p> <p>Statistics on the reviews are published in six-monthly bulletins available on the website of FRC.</p> <p><i>Sanctions on public interest entities</i> <i>The amended Section 79 of the Financial Reporting Act reads as follows:</i></p> <p>(1) <i>Where a public interest entity has failed to comply with any financial reporting and accounting standard, code, Code of Corporate Governance or guideline issued under this Act, and with such other financial reporting and accounting standards as may be specified under the relevant enactments, the Council may issue a warning to the public interest entity or serve a notice on the public interest entity for an immediate restatement of its financial statement, or take any remedial action as it may determine.</i></p> <p>(2) <i>Where a notice is served on a public interest entity under subsection (1), it shall, within 30 days of the service of the notice, restate its financial statements and resubmit them</i></p>

		<p><i>to the Council and to the Government department or authority.</i></p> <p><i>(3) Any public interest entity which fails to comply with the notice referred to in or take any remedial action under subsection (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5 million rupees, and the Council may refer the matter to the Registrar of Companies or the relevant Government department or authority for appropriate action.</i></p>
8	<p>Enhance transparency in procedures regarding licences and permits granted by public authorities, including through the amendments to the Business Facilitation Act (art. 12, paras. 1 and 2)</p>	<p>A National Electronic Licensing System (NELS) as a key initiative to improve the investment and doing business climate in Mauritius has been established under the EDB Act 2017 and is being operated by the Economic Development Board. NELS is a single point of entry for application, payment, processing and determination of business- related licenses in Mauritius.</p> <p>Amendments to the Business Facilitation Act 2006 and various enactments were brought in order to provide for the simplification and harmonisation of the process for the application of permits and licences with a view to facilitating enterprise development, facilitate trade, and payment of trade fees as well as align with best practices for doing business.</p> <p>Furthermore, the online centralised application system which is operational since 2018 for Building & Land Use Permit (BLP) has been upgraded with some new functionality and features.</p> <p>Link: http://la.govmu.org/portal/</p> <p>The online system enables residents and developers to apply for a BLP and make payment A computerised BLP System is used by Local Authorities for recording and processing of BLP applications.</p>
9	<p>Enhance access of general public to information, including through adopting a new law on the access to information that would fill the existing gaps, including grounds for refusal, time frames and an appeal mechanism. In addition, raise awareness among the general public regarding their right to request information (art. 10a, and art. 13, para. 1b)</p>	<p>Under consideration</p>
10	<p>Continue the efforts to engage in consultations with civil society with regard to the development of new laws, such as the upcoming law on the access to information and the law on the funding of political parties (art. 13, para. 1a)</p>	<p>Ongoing process.</p>

11	Widen the non-financial businesses and professions scope of FIAMLA applicable to other sectors that are vulnerable to money-laundering that are not currently covered by existing AML legislation (art. 14, para. 1)	<p>The Financial Intelligence and Anti-Money Laundering Act 2002 has been amended through the Anti-Money Laundering and Combatting the Financing of Terrorism (Miscellaneous Provisions) Act 2020 to include</p> <ul style="list-style-type: none"> • non-bank deposit taking institutions licensed under the Banking Act; • an institution or a person, as the case may be, licensed, registered or authorised under the Financial Services Act, the Insurance Act, other than an insurance salesperson, the Securities Act, the Captive Insurance Act, the Trusts Act; • a credit union;
12	Ensure the finalization and adoption of the AML/CFT national strategy and road map in order to establish a clear delineation of responsibilities among complementary competencies and avoid overlap and enhance inter-institutional cooperation (arts. 14 and 58)	<p>Mauritius has adopted a National AML/CFT Strategy 2019-2022 to address the risks identified following its National Risk Assessment Exercise and the recommended actions contained in the ESAAMLG Mutual Evaluation Report 2018. The newly adopted National AML/CFT strategy uses a risk-based approach and sets out the AML/CFT priorities for 2019-2022. The National AML/CFT Strategy comprises eight core themes that enhance the ability of Mauritius to prevent, detect and deter Money Laundering, Terrorist Financing and Proloferation (both in terms of legal framework and operational capacity). A National Action Plan supported by agency specific operational plans has also been developed. Progress in the planned actions is monitored by the National AML/CFT Committee.</p> <p>All relevant authorities have developed their risk based operation plans and identified their resources and technical assistance needs to enable them to mitigate identified ML/TF risks. All institutions have identified their resources and technical assistance needs to enable them to mitigate identified ML/TF risks. Following a decision of the National AML/CFT Committee, each competent authority has established an AML/CFT unit.</p> <p>The National AML/CFT Strategy 2019-2022 contains the following policy statement regarding the adoption and implementation of a risk based approach to effectively mitigate the risks of money laundering and terrorism financing. The policy statement emphasises the “follow the money” approach and reads as follows:</p> <p><i>“The Government of Mauritius is committed to protect the financial system and the broader economy from criminality and safeguard the interest of Mauritius by implementing a ‘whole of government approach’ in preventing and tackling financial crime, money laundering and terrorism financing. Relevant agencies should adopt a holistic approach to “follow the money” during investigations leading to subsequent prosecutions and confiscation of proceeds of crime. Government will ensure that a risk based approach is adopted to effectively mitigate the risks of money laundering and the terrorism financing.”</i></p> <p>In line with the policy, competent authorities have adopted institutional risk based operational plans and strengthened their</p>

		operational capability: Mauritius continues to engage with external partners to further strengthen our AML/CFT regime.
13	Introduce a reporting obligation for cash transactions above 500,000 Mauritian rupees (art. 14, para. 2)	Under Consideration
14	Clarify the scope of the provision relating to "payment" (sect. 2, FIAMLA) to mean the total amount paid and not the individual payments separately (art. 14, para. 2)	The provisions of the FIAMLA 2002 has not yet been amended. However, this issue has been cleared by the Court in the case of ICAC V SIMS INTERNATIONAL TRADING LTD 2012 INT 49, wherein three different cheques were issued at the same time for the payment of the sum Rs 850,000 for one transaction. The Court held that those three cheques do not amount to three different payments and "it is clear that there was one transaction which was the payment of Rs 850,000 and same was effected with three different cheques issued at the same time."