



CONFERENCE OF THE STATE PARTIES TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

OPEN-ENDED INTERGOVERNMENTAL
WORKING GROUP ON ASSET RECOVERY
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THE NEW MAURITIAN ASSET RECOVERY ACT 2011



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GOVERNMENT PROGRAMME 2010-2015

- Establishment of “an independent law enforcement agency under the aegis of the Office of the Director of Public Prosecutions to reinforce the fight against transnational crime and to recover ill-gotten gains”
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SECTION 45 DANGEROUS DRUGS ACT

- Persons convicted of drug dealing/trafficking offences
- Drugs Commissioner's enquiry following conviction
 - DPP institute forfeiture proceedings against property suspected to be proceeds of unlawful dealing in dangerous drugs
- In 10 years existence of Drugs Commissioner's Office only 3000 Euros have been forfeited
 - Law too restrictive – only against property held in the name of convicted person
- Section 45 DDA repealed by Asset Recovery Act 2011

THE ASSET RECOVERY ACT 2011

Passed in April 2011 – Not in Force yet

- Modern piece of legislation
- IMF conducted 3 technical assistance missions to assist in the elaboration of the Act
 - Wide consultations with all stakeholders such as Enforcement Agencies, Financial Institutions and Professional Bodies
 - Main objectives – to forfeit proceeds of crimes to compensate victims of crimes, whether it is the State or individual and to act as a deterrence for unlawful activities

TWO TYPES OF RECOVERY

- CONVICTION-BASED ASSET RECOVERY – *IN PERSONAM* – CRIMINAL TRIAL/CONVICTION OF THE PERSON
 - CIVIL ASSET RECOVERY – *IN REM* – AGAINST THE ASSET AND NOT THE PERSON – ONLY REQUIRES PROOF THAT PROPERTY IS TAINTED – NO CRIMINAL PROCEEDINGS REQUIRED

MAIN FEATURES OF THE ACT

- The 2 types of recovery – conviction-based and civil
 - Not restricted to drug offences – all offences against the laws of Mauritius punishable by a maximum term of imprisonment of not less than 12 months
 - Applies to any offence committed in a foreign State which, if committed in Mauritius, would constitute an offence in Mauritius
 - No retrospective effect – applies to any offence committed, and property obtained, after the commencement of the Act

THE ENFORCEMENT AUTHORITY

- Part II of the Act
- Establishment of an Enforcement Authority
 - DPP as Enforcement Authority
- Investigative Agency – law officers and law enforcement agents under control of Enforcement Authority
- Enforcement Authority responsible for the enforcement of the provisions of the Act
 - Recovered Assets Fund – Enforcement Authority to credit all moneys recovered into this fund

CONVICTION-BASED ASSET RECOVERY

- PART III OF THE ACT
- RESTRAINING ORDER - where a person has been charged with or convicted of an offence or a criminal enquiry is ongoing, the Enforcement Authority may apply to a Judge for a Restraining Order in order to protect –
 - (a) specified property that is reasonably believed to be proceeds or an instrumentality of the offence, or terrorist property; or
 - (b) any other property in which the person has an interest other than a lawful interest

CONVICTION-BASED ASSET RECOVERY (continued)

- CONFISCATION ORDER – where a person is convicted of an offence, the Enforcement Authority may apply to the Supreme Court for a Confiscation Order in respect of the benefit derived by the person from that offence

CIVIL ASSET RECOVERY

■ PART IV OF THE ACT

- RESTRICTION ORDER – where specified property is reasonably believed by the Enforcement Authority to be recoverable under the Act and to be proceeds or an instrumentality or an instrumentality or terrorist property, it may apply to a Judge for a Restriction Order in respect of that property
- No need to show property derived directly or indirectly from a particular offence or any person has been charged in relation to such an offence
- Applies even where the act which is the subject matter of the application was committed by a person who is deceased at the time of the application

CIVIL ASSET RECOVERY (continued)

- RECOVERY ORDER – 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 (around 13, 000 Euros) 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 Supreme Court for the grant of a Recovery Order in respect of the property

CIVIL ASSET RECOVERY (continued)

- TRACING OF ASSETS
- Where any property which constitutes proceeds or an instrumentality or terrorist property has been disposed of since it was used or obtained in connection with an offence it would be recoverable under the provisions of the Act if it is held by a person into whose hands it may be followed or traced

ANCILLARY ORDERS

■ PART V OF THE ACT

- The Enforcement Authority may for the purpose of, or in connection with, an application for, or the enforcement of, any of the Orders which can be obtained under the Act, apply to a Judge for ancillary orders such as production orders, search and seizure orders, disclosure orders, customer information orders and account monitoring orders
- It is an offence for financial institutions to 'tip off' persons in relation to whom customer information or account monitoring orders have been obtained

COMPENSATION ORDER

- Compensation Orders may be granted by the Supreme Court in the interests of justice
- Amount of compensation is that which the Supreme Court deems reasonable having regard to loss suffered and any other relevant circumstances




IMMUNITY

- No action or other proceeding shall be instituted against the Enforcement Authority, or any person acting on behalf of the Enforcement Authority or against a Trustee or an Asset Manager for any act done in good faith in the performance or intended performance of any duty under the Act or in the exercise or intended exercise of any power under the Act, or for any default in the performance or exercise in good faith of any such duty or power



INTERNATIONAL COOPERATION

- International Cooperation with other Agencies in different countries
 - Information Sharing – Collaboration
 - Drafting of MOUs
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THE WAY FORWARD

- PROCLAMATION OF THE ACT
 - LOGISTICS IN PLACE
 - RECRUITMENT OF STAFF
 - APPROPRIATE OFFICE SPACE
 - CAPACITY BUILDING
- FULLY OPERATIONAL JANUARY 2012



THANK YOU
FOR
YOUR ATTENTION