

THE GOOD GOVERNANCE AND INTEGRITY REPORTING BILL

Bill No. 30 of 2015

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Explanatory Memorandum

The main objects of this Bill are to —

- (a) promote a culture of good governance and integrity reporting in Mauritius;
- (b) stimulate integrity reporting in the public and private sectors;
- (c) encourage positive reports of acts of good governance and integrity;
- (d) disclose malpractices and recover unexplained wealth; and
- (e) protect and reward persons making disclosures and reports.

23 October 2015

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THE GOOD GOVERNANCE AND INTEGRITY REPORTING BILL

(No. XXX of 2015)

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A BILL

To promote a culture of good governance and integrity reporting, and for related matters

ENACTED by the Parliament of Mauritius, as follows —

PART I - PRELIMINARY

1. Short title

This Act may be cited as **the Good Governance and Integrity Reporting Act 2015**.

2. Interpretation

In this Act—

“Agency” means the Integrity Reporting Services Agency established under section 4(1);

“Board” means the Integrity Reporting Board referred to in section 7(1);

“Chairperson” means the Chairperson of the Board appointed under section 7(1)(a);

“consultant” means a person employed as such under section 4(6);

“Director” means the Director of the Agency appointed under section 4(5);

“document” includes information recorded in written, electronic or any other form, together with access to the technology enabling information in electronic form to be retrieved;

“employee” means a person employed as such under section 4(6);

“enforcement authority” means the Enforcement Authority under the Asset Recovery Act, the Mauritius Revenue Authority, the Independent Commission Against Corruption, the Financial Intelligence Unit or such other body as may be prescribed;

“liquidator” means a person appointed under section 17(2);

“member” —

- (a) means a member of the Board; and
- (b) includes the Chairperson;

“Minister” means the Minister to whom responsibility for the subject of good governance is assigned;

“public interest entity” has the same meaning as in the Financial Reporting Act;

“respondent” means a person against whom an application for an Unexplained Wealth Order is made;

“reward” includes payment to compensate victims of fraud, white collar crimes or retaliation, or such other payment as may be prescribed;

“unexplained wealth” includes any property —

- (a) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;
- (b) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or
- (c) held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person;

“Unexplained Wealth Order” means an order issued under section 16 for confiscation of property.

3. Application of Act

- (1) This Act shall bind the State.
- (2) This Act shall apply to citizens of Mauritius.
- (3) This Act shall be in addition to, and not in derogation from —
 - (a) Chapter IX of the Constitution;
 - (b) the Asset Recovery Act;
 - (c) the Financial Intelligence and Anti-Money Laundering Act; and
 - (d) the Prevention of Corruption Act.
- (4) Nothing in this Act shall affect the power of a Court to order the confiscation of

any property in pursuance of its power under any other enactment.

(5) Any application made under this Act shall constitute civil proceedings and the onus shall lie on the respondent to establish, on a balance of probabilities, that any property is not unexplained wealth.

(6) This Act shall apply to any property acquired at any time not more than 7 years before the commencement of this Act.

PART II - INTEGRITY REPORTING SERVICES AGENCY

4. Integrity Reporting Services Agency

(1) There is established for the purposes of this Act an Integrity Reporting Services Agency.

(2) The Agency shall be a body corporate.

(3) The Agency shall operate as the focal point for —

(a) receiving reports and disclosures of positive acts of good governance and integrity, acts of malpractices and unexplained wealth; and

(b) evaluating and processing any such report or disclosure.

(4) For the purpose of subsection (3), the Agency may appoint an independent service provider to set up a dedicated National Integrity Website and a hotline to receive reports and disclosures.

(5) The Agency shall be managed by a Director who shall be a professional accountant or law practitioner with substantial post qualification and managerial experience, to be appointed, subject to the approval of the Prime Minister, by the Minister on such contractual terms and conditions as he may determine.

(6) The Agency shall employ such employees and consultants on such contractual terms and conditions as it may determine.

(7) The Agency may, with the approval of the Minister, make use of the services of an officer of the Ministry to assist the Agency in the discharge of its functions.

(8) Every employee and consultant shall be under the administrative control of the Director.

5. Powers of Agency

(1) (a) The Agency shall, on its own initiative or where a report has been made in respect of a person under section 9(1) or (2), require, in writing, any person to explain the source of any funds which the person owns, possesses, has custody or control of, or which are believed to have been used in the acquisition of any property.

(b) Every person to whom a request has been made pursuant to paragraph (a) shall comply with the request within 21 working days of the date of its issue or any longer period which the Director may determine.

(2) The Agency shall, after making such enquiry as it may determine following a request made under subsection (1)(a), report the matter to the Board.

(3) Where the Agency has reported a matter to the Board, it shall not initiate any action in respect of that matter, unless directed by the Board.

(4) The Director may delegate any of his powers under this Act to any other employee.

(5) The Agency shall act and sue, and be sued under its corporate name.

(6) Service of process by or on the Agency shall be sufficient if made on behalf of or on the Director.

(7) No deed, cheque or other document shall be executed or signed by or on behalf of the Agency unless it is signed by the Director.

(8) Any person who contravenes subsection (1) (b) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

6. Exchange of information and mutual assistance

(1) Notwithstanding any other enactment, the Agency may exchange with any other public sector agency any information relevant for the purpose of discharging its functions under this Act.

(2) Any information given or received under subsection (1) may be subject to conditions specified by the Agency, including conditions restricting the use and disclosure of the information imparted.

(3) The Agency may, in furtherance of its objects and functions, enter into any agreement or arrangement for the exchange of information with a public sector agency, a foreign supervisory institution, a law enforcement agency or an international organisation, where the Agency is satisfied that the public sector agency, the foreign supervisory institution, the law

enforcement agency or the international organisation, as the case may be, has the capacity to protect the confidentiality of the information imparted, in case such a condition of confidentiality is imposed by the Agency.

7. Integrity Reporting Board

(1) There shall be an independent and impartial Integrity Reporting Board which shall consist of—

- (a) a Chairperson, who shall be a retired Judge of the Supreme Court of Mauritius or of any other Commonwealth State, to be appointed by the Prime Minister; and
- (b) 2 other members who shall be persons having sufficient knowledge and experience in the field of law, accountancy, finance, financial services, public administration, economics or fraud detection, to be appointed by the Minister, on such terms and conditions as the Prime Minister may determine.

(2) The Board shall meet as often as is necessary but not less than once every month and at such time and place as the Chairperson may determine.

(3) Any member who —

- (a) has any direct or indirect financial interest in any matter to be considered by the Board shall, immediately after the relevant facts have come to his knowledge, disclose in writing the nature of the interest to the Minister and shall not be present during any deliberation, or take part in any decision, of the Board with respect to that matter;
- (b) has or acquires, in any enterprise in Mauritius or elsewhere, any direct or indirect financial interest in any matter which arises before the Board, shall inform the Minister in writing of such fact.

8. Functions of Board

(1) The functions of the Board shall be, where a report has been made to it pursuant to section 5(2), to determine —

- (a) whether an application for an Unexplained Wealth Order shall be made;
- (b) what further action, if any, shall be taken in respect of the report; and
- (c) whether any person deserves a reward and the quantum thereof.

(2) Notwithstanding any other enactment, the Board —

- (a) shall, in case of concurrent jurisdiction with an enforcement authority, prevail in

relation to any action relating to the confiscation of property;

- (b) may request from an enforcement authority any information it considers relevant for the purposes of discharging its duties under this Act;
- (c) may call from any person for the communication or production of any relevant record, document or article.

(3) Any person who receives a request under subsection (2)(b) or (c) shall, within 14 days, comply with the request.

(4) Where an enforcement authority has already instituted any proceedings in connection with the confiscation of property, the Board may, after consultation with the enforcement authority —

- (a) request the enforcement authority to stay action;
- (b) direct the Agency to institute action for the confiscation of property pursuant to this Act.

(5) (a) Subject to paragraph (b), where suspected unexplained wealth is the subject of concurrent or conflicting complaints to an enforcement authority, the Board may, after consultation with the enforcement authority, direct the Agency to initiate action on the complaint to the exclusion of other bodies.

(b) Where the Board determines that the report submitted by the Agency discloses reliable evidence of underlying criminal activity, it shall refer the matter to the relevant enforcement authority.

(c) Where the Board determines that the Agency shall initiate action on the complaint, no further action for the confiscation of property shall be taken thereon by an enforcement authority.

9. Duty to report unexplained wealth

- (1) Notwithstanding any other enactment, where, in the exercise of his functions —
 - (a) a judicial officer;
 - (b) the Ombudsman;
 - (c) the Director of Audit;
 - (d) the Director of the Financial intelligence Unit;
 - (e) the Director-General of Independent Commission Against Corruption;
 - (f) the Director-General of the Mauritius Revenue Authority;
 - (g) the Governor of the Bank of Mauritius;
 - (h) an integrity reporting officer nominated by a public interest entity; or

(i) an officer of a statutory corporation, or body corporate, has reasonable ground to suspect that a person has acquired unexplained wealth, he shall make a written report of the matter to the Agency.

(2) Where any other person has reasonable ground to suspect that a person has acquired unexplained wealth, he may make a written report of the matter to the Agency.

(3) Any person who makes a report under subsection (1) or (2) shall, as far as is reasonably possible, assist the Director in any enquiry which he may conduct in relation to the matter disclosed

10. Promoting integrity and reward system

Where the Agency is of the opinion that a public body, body corporate or any other person has —

- (a) encouraged a culture of good governance and integrity reporting in Mauritius;
- (b) stimulated integrity reporting in the public and private sectors;
- (c) made positive reports of acts of good governance and integrity; or
- (d) disclosed malpractices which have led to the confiscation of unexplained wealth, it shall make a report to the Board and recommend a reward.

11. Good Governance and Integrity Reporting campaign

The Agency shall, in consultation with the Ministry, set up and oversee Good Governance and Integrity Reporting campaigns to enhance the standing of Mauritius as an international financial centre of excellence of unimpeachable integrity with the object of attracting investment.

PART III - PRIVILEGE AND DISCLOSURE ORDER

Sub-Part A — Privilege

12. Privilege

(1) The Agency may, before submitting a report to the Board under section 5(2), inscribe a privilege in favour of the Government on the property in respect of which the person is unable to give a satisfactory account of his unexplained wealth.

(2) The Agency shall deposit with the Conservator of Mortgages 2 identical memoranda in such form as may be prescribed and forthwith notify the person referred to in subsection (1).

(3) The Conservator of Mortgages shall, on deposit of the memoranda, inscribe the

privilege generally on the property referred to in subsection (1) and return one of the memoranda to the Agency with a statement written or stamped on it to the effect that the privilege has been inscribed.

(4) Where a privilege is inscribed under this section, it shall take effect from the date of the inscription.

(5) (a) The inscription of privilege under this section shall be erased by the Conservator of Mortgages at the request of the Agency.

(b) Where an inscription is erased pursuant to paragraph (a), the Agency shall, within 5 working days of the date of the notification of the erasure by the Conservator of Mortgages, give written notice of that fact to the person on whose property the inscription was made.

(6) Any inscription or erasure which is required to be taken or made under this section shall be free from stamp duty under the Stamp Duty Act, or registration dues leviable under the Registration Duty Act, or any other costs.

Sub-Part B — Disclosure Order

13. Disclosure order

The Agency may apply, in relation to a suspected case of unexplained wealth, to the Judge in Chambers for a disclosure order —

- (a) to obtain information on property held by a person or by any other person on his behalf or
- (b) requiring any person to disclose the sources of funds used to acquire any property.

PART IV - UNEXPLAINED WEALTH ORDER

14. Application for Unexplained Wealth Order

(1) Where the Board has reasonable grounds to believe that a person has unexplained wealth, it shall direct the Agency to apply to a Judge in Chambers for an Unexplained Wealth Order for the confiscation of that unexplained wealth.

(2) The Agency may amend an application for an Unexplained Wealth Order at any time before the final determination of the application by the Judge in Chambers where reasonable notice of the amendment is given to every person on whom the application has been served.

15. Service of application

(1) Where the Agency makes an application for an Unexplained Wealth Order, it shall serve a copy of the application on the respondent and such other person as the Judge in Chambers may direct.

(2) The absence of the respondent, or of any other person on whom service has been effected, shall not prevent the Judge in Chambers from making an Unexplained Wealth Order in his absence.

16. Unexplained Wealth Order

(1) Where the Agency makes an application for an Unexplained Wealth Order and the Judge in Chambers is satisfied that the respondent has unexplained wealth, he shall make an Unexplained Wealth Order.

(2) Where the Judge in Chambers considers that an application for an Unexplained Wealth Order cannot be granted on the basis of affidavit evidence, he shall refer the matter to the Supreme Court.

PART V - MISCELLANEOUS

17. Realisation of property

(1) Where an Unexplained Wealth Order is made and the order is not subject to an appeal, nor discharged, the property recovered and confiscated shall vest in the Agency.

(2) The Agency shall appoint a liquidator to realise any confiscated property.

18. General Fund

(1) The Agency shall establish a General Fund into which shall be paid all sums received from the Consolidated Fund and any such source as the Minister may approve.

(2) The Agency may charge to the General Fund all remunerations, allowances, salaries, grants, fees, pensions, gratuities, working expenses, and all other charges properly arising, including any necessary capital expenditure.

(3) The Agency shall, not later than 3 months before the commencement of each financial year, submit to the Minister, for approval, an estimate of its income and expenditure for that financial year.

19. National Recovery Fund

- (1) The Agency shall set up a National Recovery Fund —
 - (a) into which shall be paid all sums that may lawfully accrue to it, other than as set out in section 18, including any sums derived from the realisation of property under section 17;
 - (b) out of which may be paid any reward; and
 - (c) out of which payments may be made to alleviate poverty.
- (2) Article 910 of the Code Civil Mauricien shall not apply to the Fund.
- (3) The Director shall cause accounts to be kept for the receipts and expenses of the Agency which shall, every year, be audited by the Director of Audit.
- (4) The Director shall, at the end of every financial year, cause to be laid on the table of the National Assembly a copy of the audited accounts of the Agency.

20. Protection of persons making reports

- (1) Where a person—
 - (a) makes a disclosure or report to the Agency which is shown to be genuine; or
 - (b) at the time he makes a disclosure or report has reasonable grounds to believe that the information he discloses is true and of such a nature as to warrant an enquiry under this Act,
he shall incur no civil or criminal liability as a result of the disclosure or report.
- (2) (a) Any person who commits an act of victimisation or retaliation against a person who has made a disclosure or report pursuant to this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.
 - (b) in this subsection —
“victimisation” and “retaliation” mean an act —
 - (i) which causes injury, damage or loss;
 - (ii) of intimidation or harassment;
 - (iii) of discrimination, disadvantage or adverse treatment in relation to a person’s employment;
or
 - (iv) amounting to threats of reprisals.

(3) Any person who knowingly makes a false, malicious or vexatious disclosure to the Agency shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

21. Confidentiality

(1) The Director, member, employee and consultant shall take such oath as may be prescribed.

(2) No person referred to in subsection (1) shall, except in accordance with this Act, or as otherwise authorised by law —

(a) divulge any information obtained in the exercise of a power, or in the performance of a duty, under this Act;

(b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report submitted to the Agency.

(3) Every person referred to in subsection (1) shall maintain confidentiality of any matter, document, report and other information relating to the administration of this Act that becomes known to him, or comes in his possession or under his control during and after his appointment or employment with the Agency or Board, as the case may be.

(4) Subsections (2) and (3) shall not apply to an act done to enable the Agency or Board to carry out its functions under this Act or in the interest of the prevention and detection of crime.

(5) Any person who, without lawful or reasonable excuse, contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

22. Protection from liability

No liability, civil or criminal, shall be incurred by the Director, employee or member in respect of any act done or omitted in the execution in good faith of his functions or duties under this Act.

23. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for —

(a) the levying of fees and charges; and

(b) prescribing anything that may be prescribed under this Act.

24. Commencement

This Act shall come into operation on 1 January 2016.
