

Mechanism for the sharing of confiscated property with foreign States

1. Introduction

The focus of this manual is aimed at providing practical guidance to relevant authorities in and outside Mauritius who are concerned directly and indirectly with the confiscation and sharing of assets with foreign jurisdictions. Every successful recovery represents a victory in the battle against corruption. The return of these assets is the culmination process of asset recovery. Mauritius, as a State Party to the United Nations Convention against Corruption (UNCAC), recognises the fundamental principle for the return of assets under that Convention. Articles 12-14 of the United Nations Convention against Transnational Organised Crime and article 31 of United Nations Convention against Corruption establish the measures that parties to the Conventions are expected to take an asset confiscation as a way of preventing profit from crime.

Financial Action Task Force (FATF) Recommendation 38 requires that Countries should have authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered; proceeds from money laundering, predicate offences and terrorist financing; instrumentalities used in, or intended for use in, the commission of these offences; or property of corresponding value. Countries should also have effective mechanisms for managing such property, instrumentalities or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets. The interpretive note to Recommendation 38 of the FATF further says that countries should take such measures as may be necessary to enable them to share among or between other countries confiscated property, in particular, when confiscation is directly or indirectly a result of coordinated law enforcement actions.

Mauritian law does not it make it mandatory to have an asset sharing agreement (hereinafter referred to as ASA). However, for the sake of having an effective mechanism in place, an ASA is enclosed for interested parties at **Annex A**.

When can assets be returned or shared?

Under the ARA, assets can only be returned when they have been confiscated (through criminal based asset recovery) or recovered (through non-conviction-based asset recovery). In both cases, assets may also have to be realised, if the asset in question is not cash or funds which are located in a bank account. This means that the asset, for example a vehicle or plot of land, would need to be evaluated and sold first. Its sharing will arise in a second phase. Assets which are only restrained or restricted under the ARA cannot be shared until the case is conclusively determined by the court.

Under the 2003 Act asset sharing may take place where there is a request from a foreign state. There is no further specification on any conditions required for the sharing to occur.

2. Sources of law-Mauritius Legal Framework

Mutual Legal Assistance in Criminal and Related Matters Act 2003

S 19. Sharing confiscated property with foreign States

(1) The Central Authority may enter into such arrangement as he thinks fit with the competent authorities of a foreign State for the reciprocal sharing with that State of such part of any property realised—

- (a) in the foreign State, as a result of action taken by him pursuant to section 4; or
- (b) in Mauritius, as a result of action taken by him pursuant to section 5.

(2) Where the Minister to whom the subject of finance is assigned considers it appropriate, either because an international arrangement so requires or permits or in the public interest, he may order that the whole or any part of any property confiscated under this Act, or the value thereof, be returned or remitted to the foreign State or the international criminal tribunal.

Asset Recovery Act 2011

PART VI – INTERNATIONAL CO-OPERATION

S 53. International co-operation agreements

The Attorney-General or the Enforcement Authority may enter into an agreement with any Ministry, Department, public authority or body outside Mauritius for the collection, use or disclosure of information, including personal information, for the purpose of exchanging or sharing information outside Mauritius or for any other purpose under this Act.

S 54. Foreign request in connection with civil asset recovery

(1) Where a foreign State requests the Enforcement Authority to obtain the issue of an order against property believed to be proceeds, a benefit, an instrumentality or terrorist property which is located in Mauritius, the Enforcement Authority may apply to a Judge for a Restriction Order under section 27.

(2) Where a Judge receives an application under subsection (1), he may make an Order under section 30 as if the application were an application in respect of property in Mauritius.

S 55. Foreign request for enforcement of foreign Restriction or Recovery Order

(1) Notwithstanding any other enactment, 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.

(2) The Judge shall register the foreign Restriction Order where he is satisfied that, at the time of registration, the Order is in force in the foreign State.

(3) The Court shall register the foreign Recovery Order where it is satisfied that –

- (a) at the time of registration, the Order is in force in the foreign State; and
- (b) any person who had an interest in the property the subject of the Order had the opportunity to be represented before the court that granted the order in the foreign State.

(4) Where a foreign Order is registered in accordance with this section, a copy of any amendment made to the Order in the foreign State shall be registered in the same way as the order.

(5) Notice of the registration of any foreign Order shall be published in the *Gazette* and 2 daily newspapers specified by the Court.

(6) Subject to subsection (8), where the foreign Order or an amendment thereof comprises a facsimile copy of a duly authenticated foreign Order, or amendment made to such an Order, the facsimile shall be regarded for the purposes of this Act, as the duly authenticated foreign Order.

(7) Any registration effected on production of a facsimile shall cease to have effect up to the end of the period of 14 days commencing on the date of registration, unless a duly authenticated original of the order is registered by that time.

(8) Where a foreign Order has been registered pursuant to this section, sections 25 and 26 shall apply to the registration.

S 56. Effect of registration of foreign Order

(1) Subject to subsections (2) and (3), where an Order has been registered under section 55 and the Court is notified that it has been established to the satisfaction of a foreign court that the property constitutes proceeds, a benefit, 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.

(2) The Court may make an order under subsection (1) on such conditions as it thinks fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

(3) Any person who claims to have an interest in property subject to an Order registered under section 55 may, within 21 days from the last publication of the registration under section 55(5), apply to the Court for an order under subsection (4).

(4) Where the Court is satisfied that the applicant under subsection (3) acquired the property without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of acquisition, proceeds, a benefit or an instrumentality or terrorist property, the Court shall make an order declaring the nature of the interest of the applicant.

(5) The Court shall, on application by the Enforcement Authority, cancel the registration of any foreign Order if it appears to it that the Order has ceased to have effect.

S 57. Foreign request for the location of tainted property

(1) Where a foreign State requests the Enforcement Authority to assist in locating property believed to be proceeds, a benefit, an instrumentality or terrorist property, the Enforcement Authority may apply to a Judge 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 any 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.

(2) Notwithstanding section 26 of the Bank of Mauritius Act, section 64 of the Banking Act and section 83 of the Financial Services Act, a Judge may grant an order under subsection (1) on being satisfied that –

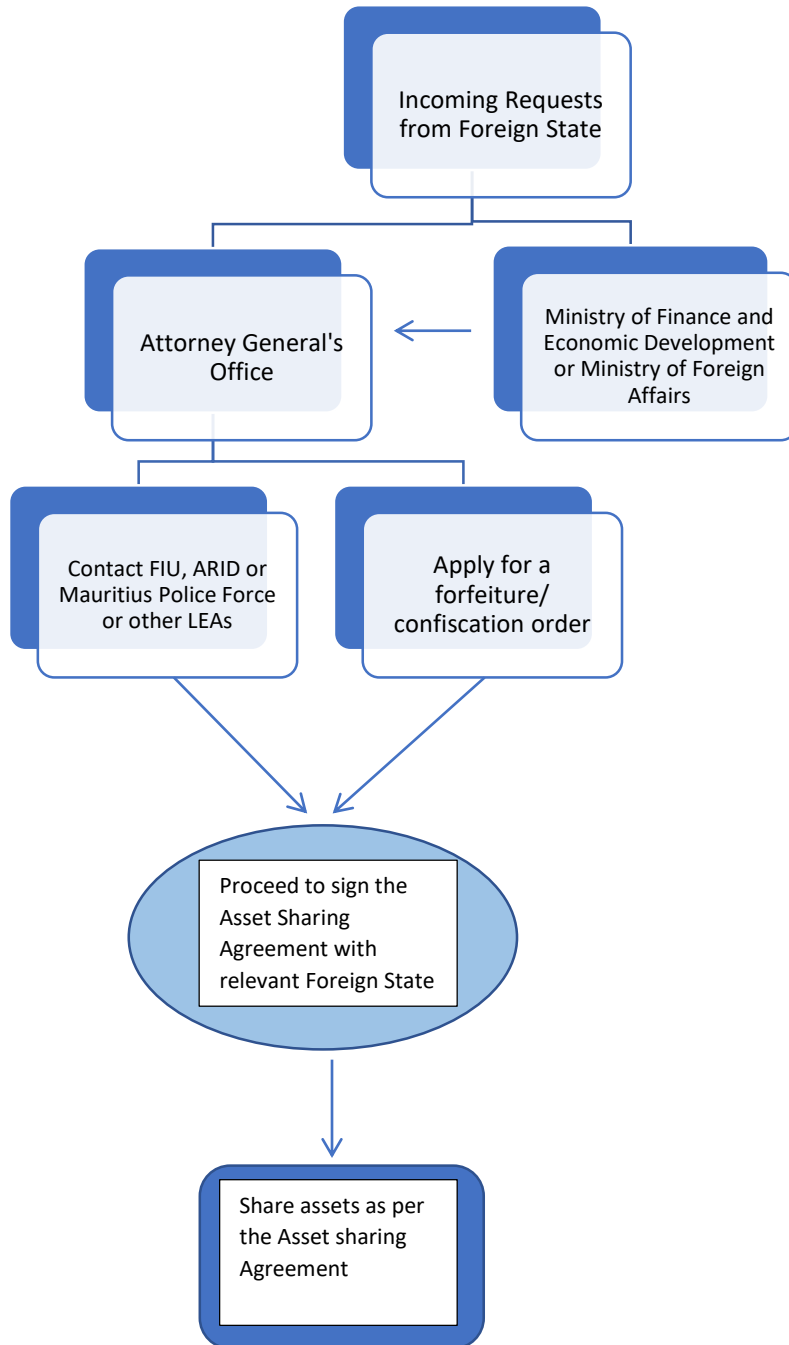
- (a) the document is material and necessary to the proceedings in the foreign State;
and
- (b) the law of the foreign State authorises the granting of such an order in circumstances similar to the one relating to the request.

(3) A Judge may, on good cause shown by the Enforcement Authority that a person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with subsection (1), order a law enforcement agent to enter and search the premises specified in the order and remove any document, material or other thing therein for the purposes of executing such order.

S 58. Disposal of proceeds of crime

- (1) On a request by a foreign State made to him, the Attorney-General shall transfer to it any proceeds, benefit, instrumentality or terrorist property recovered in Mauritius in response to a request for the enforcement of a foreign Order.
- (2) Unless the foreign State and Mauritius agree otherwise, the Attorney-General may deduct reasonable expenses incurred in the recovery, Investigation and judicial proceedings which have led to a transfer referred to in subsection (1).

3. Organisational structure



4. Mutual Legal Assistance contact persons

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5. List of acronyms

AGO	Attorney General's Office
ARID	Asset Recovery Investigation Unit
ASA	Asset Sharing Agreement
FIU	Financial Intelligence Unit
LEAs	Law Enforcement Agencies
MLA	Mutual Legal Assistance
MOFA	Ministry of Foreign Affairs, Regional Integration and International Trade
MOFED	Ministry of Finance and Economic Development