ANNUAL REPORT OF THE INTEGRITY REPORTING SERVICES AGENCY &
THE INTEGRITY REPORTING BOARD

3 January, 2018

Her Excellency Mrs Ameenah Gurib-Fakim, GCSK, CSK, PhD, DSc
President of the Republic of Mauritius
State House
Le Réduit

Your Excellency,

The Good Governance and Integrity Reporting Act 2015 makes no provision for an annual report, but the Board considers it appropriate that the Agency and the Board should report to Your Excellency on an annual basis. Accordingly, I have the honour and the pleasure to present to Your Excellency the first annual report of the Integrity Reporting Services Agency and the Integrity Reporting Board.

The Agency and the Board are happy that Your Excellency should make available the contents of this Report to whomsoever Your Excellency may consider appropriate.

Yours respectfully,

Lord Phillips of Worth Matravers K.G.
Chair of the Integrity Reporting Board

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REPORT
THE DIRECTOR OF IRSA
Established under the Good Governance and Integrity Reporting Act 2015 (the Act) the Integrity Reporting Services Agency (the Agency) commenced operations in June 2016 and became fully operational in early 2017 after its supervisory board, the Integrity Reporting Board (the Board) had been formally constituted.

The Agency completed 31 investigations in 2017 and 21 of these, totaling MUR 1.4 billion in possible unexplained wealth, were referred to the Board for its consideration and direction.

During 2017 Agency and Board acquired considerable experience of working with the Act and identified certain enhancements which may be made to it to help reduce the risk of dissipation of assets following enquiries with respondents. This and other matters relating to the Act and the Agency’s cases are dealt with in more detail in the report of the Integrity Reporting Board, which is in the Section that follows.

This ground-breaking legislation is also becoming more familiar to other Mauritian agencies which are beginning to appreciate its potential and with increased liaison between us, 2018 may hopefully witness the Act being applied to the full extent envisaged when voted into law by the Hon. Members of the National Assembly.

The Agency has not only investigated cases referred to it but has also initiated enquiries on its own and a great deal of time and effort has been spent during 2017 in building the Agency’s infrastructure, a key component of which is the online access to publicly available databases needed for timely and efficient investigations. The government’s Information Highway project has been invaluable in this regard and the Agency hopes that certain sticking points relating to data protection legislation can be addressed in 2018 to allow more efficient access to property records.

The Act is also very much concerned with attracting investment by promoting campaigns to enhance the standing of Mauritius as an International Financial Centre of the highest probity.

The coming year will see the Agency taking a higher profile in the promotion of integrity and good governance campaigns through its website, which will provide a platform for reporting both acts of good governance, suspected illicit acts and publicising the reward system.

The Agency has a deep commitment to young Mauritians and believes their future can only be secured in a culture of hard-work, good governance and integrity. Illicitly-obtained wealth has no part to play in this culture and the Agency will continue to work strenuously to deny its benefits to those who acquire it.
The Good Governance and Integrity Reporting Act 2015 is the latest in a series of Acts aimed at combatting crime and corruption in Mauritius. The Act is unusual in that it places on Mauritian citizens the burden of proving that they have come by their property legitimately. The Act is not, however, without precedent. Other countries have reversed the burden of proof in order to facilitate the recovery of the proceeds of crime or corruption.

An Act such as this requires safeguards. The powers that it confers must only be used in proper cases. Equally, where there is a proper case, there must be no suspicion that the law has not been applied because of the standing or influence of the owner of the property in question.

The primary function of the Board is to provide these safeguards.

Where the Agency exercises its statutory powers of investigation it must make a report to the Board. It is for the Board to determine whether, on the facts of the particular case, an Unexplained Wealth Order should be sought from the Court.

The Board is required by the Act to meet as often as is necessary, but not less than once every month, at such time and place as the Chairperson may determine.

Reports made by the Agency to the Board under Section 5 (2) of the Act are confidential and likely to annex confidential material. The Board meets regularly to consider such reports, usually over a series of daily meetings, in person in Mauritius. In a month where no reports fall to be considered, the meeting of the Board takes place in Mauritius but the Chair, or other Members of the Board if abroad, may attend by video link.
The Board has conducted 19 meetings. In the course of these meetings it has considered 21 statutory reports, in some instances on more than one occasion.

These reports were generated by information supplied to the Agency in respect of substantial sums of money held by Mauritian citizens in an investment fund. After careful consideration the Board determined that in respect of 19 there were no grounds for seeking an Unexplained Wealth Order. In the majority of cases this was because the holding represented the accumulation of savings going back many years. Two cases remain under consideration.

The Board considers that the results of its consideration of these cases show that the safeguards envisaged by the legislation are effective.

The Board has yet to have referred to it any report in respect of property that is suspected of being the fruits of crime. The Act is plainly designed to apply to such property and the Board understands that the reporting requirements imposed by Section 9 (1) of the Act are not yet being fully observed.

The Board has encouraged the Agency to organise with the concurrence of the Minister, a Forum to which Enforcement Authorities and others subject to Section 9 will be invited, to give publicity to the provisions of the Act and explore how greater effect can be given to these.

In the course of its work the Board identified a number of uncertainties, or possible inadequacies, in the Act. These are set out in the Section of this report which follows.
STATUTORY POWERS AND DUTIES

The first task of the Board was to consider its powers and duties under the Good Governance and Integrity Reporting Act (“the Act”). In so doing the Board identified a number of areas of uncertainty that required resolution. Ultimately the interpretation of the Act is a matter for the Court, but the Board proposes to draw attention to these areas and to explain the Board’s conclusions in relation to them.

SECTION 2 INTERPRETATION

"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.”

On the face of it this provides three alternative definitions of “unexplained wealth”. However, the Board has proceeded on the basis that, if the ownership of property is demonstrated to have been acquired without any unlawful conduct - e.g. by a gift or legacy- and thus “satisfactorily accounted for” under

(b) it will not constitute unexplained wealth even though the property might otherwise have fallen within (a) or (c).
SECTION 3 APPLICATION OF ACT

(2) “This Act shall apply to the property of citizens of Mauritius.”

One case referred to the Board involved a person who had dual nationality, Mauritian and French. The Agency was uncertain as to whether or not property that he held was subject to the Act. The Board decided that the Act applied to the property of citizens of Mauritius who enjoy dual nationality.

(6) “This Act shall not apply to: -
(a) any property acquired or having come into the possession or under the custody or control of a person more than 7 years before the commencement of the Act;”

(7) “No application for an Unexplained Wealth Order shall be made under Section 14 in relation to any property acquired or having come in the possession or under the custody or control of a person more than 7 years before the date on which the application is made.”

Having regard to the provisions of Subsection (?), (6) appears to be redundant. This may be explained by the drafting history.

In a number of cases the Agency made a statutory request in respect of funds used to purchase securities acquired within the last 7 years. The explanation given identified that the funds used for this purpose had been acquired outside the 7-year period.

The Board concluded that it had no jurisdiction to inquire into how those funds had been acquired. Thus, the Board proceeds on the basis that demonstration that the funds used to buy property were acquired outside the seven-year period constitutes a satisfactory explanation for the possession, custody or control of the property in question.

Subsection (7) is capable of unsatisfactory consequences. As the 7-year period runs from the date of the application for an unexplained wealth order, the owner of property may be able, by dragging his feet in responding to a statutory request under Section 5, to place property outside the time limit for making the application.

Subsection (6)

“This Act shall not apply to: -
(b) unexplained wealth of less than 10 million rupees.”

This might give the impression that the first 10 million rupees owned by an individual will be exempt from the application of the Act. The Board does not take that view. If property held exceeds 10 million rupees in value, the whole of that property will be subject to the provisions of the Act.
SECTION 5 POWERS OF AGENCY

Subsection (1) empowers the Agency to request any person to explain by way of affidavit the source of any funds that he owns, possesses, has custody or control, or which are believed to have been used in the acquisition of any property.

Subsection (2) requires the Agency, after enquiries following such a request to “report the matter to the Board”. The Agency has interpreted this duty as requiring a report to be made to the Board, even where the Agency has been satisfied that no further action is required. The Board endorses this interpretation of the Act. Its duties under Section 8 require it to decide whether or not an application for an Unexplained Wealth Order is to be made.

SECTION 7 INTEGRITY REPORTING BOARD

(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.”

In accordance with this requirement the Board meets in Mauritius at least once every month. Where a meeting requires the consideration of confidential documents, all members of the Board attend meetings in person. Otherwise, where the nature of the business permits, the Chairman, and other members of the Board may attend by video link in order to reduce expenditure.

SECTION 8 FUNCTIONS OF THE 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.”

Subsection (2) confers on the Board powers to request from an enforcement agency information it considers relevant for the purpose of discharging its duties under the Act and to call from any person for the production of “any relevant record, document or article”. These powers go beyond those conferred on the Agency.

The Board does not see its statutory function as being to take over from the Agency an investigation into suspicious wealth. It considers that these powers should normally be exercised in order to provide the Agency with information that it needs for the purposes of its investigation. The Board expects the Agency to request such assistance when it is required.

Subsection (3) requires any person receiving a request under (2) to respond within 14 days. It is notable that no sanction is provided for non-compliance with this requirement.

So far as Subsection 2(c) is concerned, the Board considers that this power should only be exercised pursuant to a request made by the Agency under Subsection 10(d).
SECTION 12 PRIVILEGE

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

(5) (a) “The inscription of privilege under this section shall lapse 42 days from the deposit of the memoranda at the Office of the Conservator of Mortgages and shall accordingly be erased.”

This is the only provision that the Act makes for prevention of the dissipation of unexplained wealth prior to an application for an unexplained wealth order (see Section 14(3)). It only provides limited protection, for two reasons:

(i) The inscription can only be sought after the owner of the property has failed to give a satisfactory explanation of his wealth. Thus, on being alerted by the Agency’s statutory request there is nothing to stop him attempting to place his wealth outside the reach of the Court.

(ii) The inscription lapses after 42 days. This is no doubt designed to encourage expedition on the part of the Agency. Nevertheless, if a reasonable time is to be afforded to owners of property to respond to further enquiries from the Agency, for the Agency to make its own enquiries, for the Board to consider the Agency’s report, and for any further action to be taken in the light of the Board’s response, more than 42 days are likely to be needed.
OUR ORGANISATION
THE INTEGRITY REPORTING SERVICES AGENCY

The Agency is staffed by a small team of professionals with a wide-range of backgrounds and areas of expertise. The team has very extensive experience of financial and other investigations, IT, Financial Services and Financial Accounting & consists of:

- Director
- Human Resources and Administrative Manager
- Assistant IT Manager
- Integrity Reporting Officers
- Administrative and Procurement Officer
- Facilities Management

The Director of the Agency has over 30 years' experience of investigating, detecting and building systems to prevent financial crimes in over 30 countries. He has consulted for major multi-nationals worldwide and for governments in the Caribbean, Europe, Africa and the Far East. Staff members have varied backgrounds either holding master’s degrees in accounting or having broad investigative experience in both the commercial and public sectors.

Experience of working with the Agency brings cutting edge challenges to the staff and tremendous opportunities for their professional development.

The Agency prides itself on the flexibility of team members who each contribute to every case. This brings differing approaches, ideas and strategies to what are often very complex financial and other analyses which need to be presented concisely and comprehensively to the Court. The Agency believes flexibility, innovation and in-depth investigative experience are very much needed to promote and protect the image of Mauritius as an International Financial Centre of excellence.
THE INTEGRITY REPORTING BOARD

The Integrity Reporting Board is an independent Board established to review cases investigated by the Agency and direct it accordingly. The Board comprises three Members of the highest probity to ensure the Act is impartially and properly applied and its safeguards observed. As noted in the Chairman’s Report, the Board also has powers to request information from any enforcement agency and to call for any person to provide it with documents and other records. It only exercises these powers when it considers an application for their use by the Agency is appropriate.

THE RIGHT HONOURABLE LORD PHILLIPS OF WORTH MATRAVERS, KG, PC
(Chairperson)

Lord Phillips is a retired Law Lord and past President of the Supreme Court of England and Wales. He was called to the Bar in 1962 and took silk in 1978. During his time at the Bar of England and Wales he specialised in Commercial Law and Admiralty Law. He was appointed a Judge of the Queen’s Bench Division, where he sat in the Commercial Court. In 1999 he was elevated to the Court of Appeal, appointed Master of the Rolls in 2000 and Lord Chief Justice in 2005. Lord Phillips was appointed as Senior Law Lord in 2008 and oversaw the transition of the House of Lords to the Supreme Court in 2009, when he became the Court’s first President. He remains a non-permanent judge of the Court of Final Appeal in Hong Kong and also the President of the Qatar International Court & Dispute Resolution Centre.

During his tenure in Judicial Office he presided over some of the most celebrated legal cases, including the complex prosecutions relating to the Maxwell Pension Funds, and also of Barlow Clowes. He also conducted the Public Inquiry into the causes and effects of the disastrous 1992 Bovine Spongiform Encephalopathy (BSE) outbreak in the United Kingdom which cost the country almost GBP 1 billion.
SATYABHOOSHAN GUPT DOMAH

Mr Satyabhooshan Gupta Domah is a renowned retired Judge of the Supreme Court of Mauritius. He is a member of the United Nations Sub-Committee against torture and also Judge of appeal of Seychelles. Mr Domah holds a Doctorate in Comparative Law, University of Aix-Marseilles, a D.E.S. in Comparative Law, University of Aix-Marseilles, a Masters in International Law, University of London, and a Bachelor in Laws, University of London. He is also a Fellow of the Institute of Advanced Legal Studies, University of London.

A major portion of his work on the Bench comprised application of the fundamental freedoms and liberties of the individual in a democratic system of Government. The hierarchical level of his functions is the highest national legal system of the two jurisdictions, except that for Mauritius it is just one level short of the Privy Council.

As a Parliamentary Counsel in the State Law Office, following a report of the UN Committee against Torture, he was closely involved in drafting the article of the Mauritian Criminal Code that criminalised torture in the Republic. The text was duly passed by the Mauritian National Assembly shortly after he was elevated to the Bench.

JUGDISH DEV PHOKEER

Mr Jugdish Dev Phokeer is a retired Permanent Secretary. He has successively been responsible for different ministries namely: Ministry of Cooperative, Ministry of Commerce, Ministry of Health, The National Development Unit, Ministry of Youth and Sports, Ministry of Technology Communication and Innovation and Ministry of Financial Services, Good Governance and Institutional Reforms before retiring in January 2017. He reckons more than 40 years of experience in the public Sector.

He has also serviced several Parastatal Boards / Government Companies as either Chairman, Director or Board Member.

Mr Phokeer holds a Diploma in Public Administration, a Bachelor’s Degree in Commerce, a Post Graduate Diploma in Administration and a Master’s Degree Business Administration.
The Agency has previously kept a low-profile due to the sensitivity of its work and also, as far as possible, to avoid the distractions of unbalanced media attention.

However, Section 4 (4) of the Act prescribes that the Agency establishes a website. As the Agency becomes better-established, the need for discretion must be balanced with the need to create awareness of its role and promote good governance in Mauritius.

The Agency believes publicly promoting the benefits of the Act and maintaining the strict confidentiality of its case work are not mutually exclusive and has designed the website to be simple, informative and user-friendly, with sections covering:

- **OBJECTS AND VISION OF THE AGENCY**;
- **FUNCTIONS OF THE AGENCY**;
- **THE BOARD**;
- **GOVERNING LEGISLATION**;
- **FACILITIES FOR FILING REPORTS OF SUSPICIOUS WEALTH OR ACTS OF GOOD GOVERNANCE**;
- **MEDIA CORNER**;
- **CAREERS**
The Agency’s logo has been carefully selected to reflect its key role of confiscating unexplained wealth. The logo reflects the concept of illicit money circulating and being drawn towards the Agency. The degrading blue colour is designed to have a psychological impact implying harmony and stability and is intended to instil public confidence in the Agency.

A picture of the logo is set out below:
WEBSITE AND BRANDING

IT AND INFRASTRUCTURE

The Agency has established a sophisticated and secure IT infrastructure which includes:

- The latest version of antivirus software;
- A reputed backup solution; and
- Laptop encryption by Microsoft solutions.

The system includes a range of measures including a secured server room and limited, controlled access to the Agency’s offices.

To enable us to work efficiently, access to information is vital. The Agency has been able to gain remote access from the following institutions, via the Info Highway:

- Registrar of Companies;
- Civil Status Office; and
- National Transport Authority.

The Agency is also registered with the Financial Intelligence Unit, established under the Financial Intelligence and Anti-Money Laundering Act 2002, on the GoAML platform. This platform facilitates, amongst other things, information exchanges between international agencies on suspected money laundering and terrorist funding. The Agency is able, within the limits imposed by statute, to request and receive information via GoAML to expedite its enquiries.
The Good Governance and Integrity Reporting Act 2015 has been acclaimed by the Commonwealth. Mauritius is the first country in Africa to have such legislation and Commonwealth Deputy Secretary-General Josephine Ojiambo has said that the enactment of this law to combat corruption and promote good governance can provide valuable lessons for other Commonwealth countries.

Mauritius is therefore seen as the leader in positively promoting good governance and setting this example enhances the Republic’s image and encourages other countries to adopt similar legislation.

An example of international interest arose during 2017 when the Agency established relations with Mali’s newly-formed Office Centrale de Lutte contre l’Enrichissement Illicite, which aims at combatting corruption within Mali’s public sector.

A delegation from Mali visiting Mauritius met officers from the Agency to discuss areas of co-operation in promoting good governance and anti-corruption measures. The delegation took a keen interest in the Agency’s work and how the Act under which it was established operates. On its return to Mali, the delegation maintained contact with the Agency and has mooted the idea of introducing similar legislation.
STATUTORY REPORTING

The Agency operates under the auspices of the Ministry of Financial Services and Good Governance and is subject to its financial oversight.

The Agency’s first full year of operation will be the financial year ending in June 2018 and in accordance with Section 19(4) of the Act the Agency’s accounts, audited by the Director of Audit, will be laid on the table of the National Assembly.
CONTACT DETAILS

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