

CONSOLIDATED NATIONAL PROCEDURES FOR CONFISCATION

Approved by the National Committee for Anti-Money
Laundering and Combatting the Financing of
Terrorism/CFT on 30 October 2019

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INTRODUCTION

Confiscation of assets is conducted by several authorities in Mauritius and each of these operate within their own statutory framework. The following authorities are concerned with Asset Confiscation in Mauritius:

1. The FIU, the through the Asset Recovery Investigations Division (ARID)
2. The ICAC
3. The Police
4. IRSA
5. MRA Customs.

Each Authority has its own procedures, set out under relevant legislation or standing orders which are followed when an asset needs to be confiscated. This document consolidates these procedures and provides in great detail the steps followed by each Authority when there is a need to confiscate an asset.

Very often, the same asset may be secured by several Authorities listed above at different stages of an enquiry. As part of the IO8 Sub Committee, efforts are being made to coordinate approaches to ensure that resources and efforts are used efficiently. It is envisaged that having one procedures document will serve to inform and educate each Authority as well as other stakeholders about the respective powers and roles of each Authority described in this document.

ASSET RECOVERY INVESTIGATION DIVISION (ARID)

TYPES OF ASSET FORFEITURE AND LEGAL FRAMEWORK

There are 2 types of asset forfeiture under Mauritian law, namely, conviction-based forfeiture, and non-conviction based recovery forfeiture.

1. Conviction-based asset recovery

Here, the two relevant orders are Restraining Orders and Confiscation Orders.

Conviction based forfeiture is an in personam order, that is, an action **against the person**, and requires a criminal trial and conviction.

(i) Restraining Order

As per Section 9 Asset Recovery Act 2011 (ARA 2011), where a person has been charged with or convicted of an offence or a criminal enquiry is ongoing, the Enforcement Authority (EA) may apply to a judge for a Restraining Order, which if granted, will freeze the assets until the conclusion of the criminal proceedings. A Trustee may be appointed to manage the frozen assets.

Pursuant to Section 16(1) ARA 2011, if a Restraining Order was made on the basis that the alleged offender was the subject of a criminal enquiry, a Judge shall, on application made to him as per subsection (2) of the Act, discharge the Order if the alleged offender is not charged with that offence, or an offence arising from the same conduct or course of conduct within 12 months of the date on which the Order was made. Where Section 16(1) applies, the EA shall pursuant to Section 16(2) (a), make the necessary application to a Judge as soon as reasonably practicable.

Further, as per Section 16(2) (b), if no application is made by the EA within 7 days of the expiry of the 12-month period referred to above, any person affected by the Order may apply under this subsection for the discharge of the Order. Moreover, as per Section 16(3), if the order is likely to be discharged, the Judge may, on the application of the EA extend the operation of the Order for an additional period not exceeding 3 years. The Restraining Order is thus granted for an initial period of 12 months and can be extended for an additional period not exceeding 3 years. This applies to all the orders referred to in this document.

(ii) Confiscation Order:

After the delivery of judgement in the criminal trial, the EA can apply for a Confiscation Order. As per Section 17(b), the EA shall attach to the application a statement setting out an assessment of the value of the benefit obtained or likely to be obtained by the alleged offender. Further, as per Section 17(2), except with the leave of the court, the application must be made within 6 months of the date on which a person was convicted of the offence. If the Court finds that the defendant has benefited from an offence or any other unlawful activity, a Confiscation Order will be granted ordering the alleged offender to pay to the State, within such time as it may determine, an amount equal to the value of his benefit.

Where a Confiscation order is made, it is not enforced, except with leave of the court before the relevant appeal date. After the appeal date, if the order has not been set aside or discharged, the Confiscation Order may be enforced and any amount recovered.

2. Non-conviction based asset recovery

The two relevant orders here are Recovery Orders and Restriction Orders. Non-conviction based asset forfeiture, also commonly referred to as “civil forfeiture”, is on the other hand an action in rem, that is, an action against the asset itself and not the individual. It is a separate action from any criminal proceedings.

(i) Restriction Order

As per Section 27(1), when applying for a Restriction Order, the EA must show that the property is proceeds, a benefit or an instrumentality or terrorist property without having to show that the property was derived directly or indirectly from a particular offence or that any person has been charged in relation to such an offence. Further, the application may be made even if the alleged offender is deceased at the time of the application.

As per Section 27(2), if a Restriction Order is granted, it may authorize, require, or secure the delivery up, seizure, detention or custody of the property or appoint an Asset Manager to manage the secured properties. Further, as per Section 27(5), where an Order has been granted, the EA must within 21 days or such longer period as the Judge may direct, serve notice on all concerned parties. Also, under the same section, if the owner of the property is unknown or cannot be found, the Judge shall cause to be published a notice of the Order in 2 newspapers of wide circulation.

(ii) Recovery Order

As per Section 34(1) ARA 2011, if the EA reasonably believes that any property is proceeds or a benefit derived from an offence or any unlawful activity which

the court finds to be sufficiently related to that offence, the EA may make an application to the Court for the grant of a Recovery Order. Further, as per Section 34(2), the EA shall within 14 days of an application give notice to every person known to the EA to have an interest in the property subject to the application.

As per Section 35(4), the Court making a Recovery Order shall publish a notice of the Order in 2 daily newspapers of wide circulation as soon as reasonably after the Order is made. Further, as per Section 36(1), any person affected by the Order may within 45 days after the last publication of the notice apply for an Order excluding his interest in the property or varying the Order in respect of the property. Moreover, as per Section 5 Court of Civil Appeal Act 1963 (CCA 1963), an appeal can be made within 21 days, against the grant of a Recovery Order or a Recovery Order not being granted. Importantly, Section 5 CCA 1963 applies to all Orders referred to in this document. As per Section 35(5) ARA 2011, a Recovery Order shall not take effect before the period allowed for an application under Section 36(1), or an appeal against the grant of a Recovery Order or against a Recovery Order not being granted (as per the CCA 1963) has expired or before such an application or appeal has been disposed of.

THE ASSET FORFEITURE PROCEDURE:

1. Referral of cases:

The asset recovery process is launched when law enforcement authorities, namely the Independent Commission Against Corruption (ICAC), Police, as well as Financial Intelligence Unit (FIU), refer a case to the EA. This is done by the law enforcement authorities sending an Enforcement Authority Referral Form

(EARF) in the name of the suspect(s) to the Asset Recovery Investigation Division (ARID), established under Section 5 Asset Recovery Act 2011.

(1) Referrals by the Police:

Thus, as per the Commissioner of Police's Circular (CP's Circular) No. 09/2016, following enquiries carried out by the Police, cases are referred to the Enforcement Authority, ARID, in accordance with the following criteria:

- (i) All offences involving amounts of Rs100,000 or more;
- (ii) All drug dealing cases involving amounts of Rs100,000 or more;
- (iii) Any case in which the Police have seized money amounting to Rs100,000 or more in circumstances which are deemed suspicious;
- (iv) Instrumentality cases in which a vehicle, house, or other valuable property was used in the commission of the offence; and
- (v) Any other case which the Division Branch/Unit deems fit for referral to the ARID.

(2) Referrals by the FIU:

As per s13(1) Financial Intelligence and Anti-Money Laundering Act 2002, where there are grounds to suspect money laundering, predicate offences or terrorism financing, the Director of the FIU shall disseminate information and the results of the analysis of the FIU to the ARID (defined as the "relevant investigatory authority" under the Act).

2. Customer Information Order (CIO)

The second step usually involves the EA making a CIO. By virtue of s48 ARA 2011, the ARID may require a financial institution to provide such customer information as it may have relating to a person specified in the notice. This is called making a Customer Information Order (CIO) request to a financial

institution requiring the financial institution to state whether or not the person holds a bank account at the institution. Requests for CIOs as well as replies to the requests may be electronically made.

A CIO will be made where there is reasonable ground for suspecting that:

- (a) any property in the possession of a person is proceeds, an instrumentality, or terrorist property, or the person has derived a benefit from any unlawful activity;
- (b) the customer information is likely to be of substantial value to an application or an investigation; and
- (c) it is in the public interest that the customer information should be provided.

3. **Disclosure and Protection Order (DPO)**

If the financial institution states that the suspect is an account holder, the ARID may then require the financial institution to disclose the bank statements (for a period determined by the EA) of the suspect to it. This is called making a Disclosure and Protection Order (DPO) to the financial institution. A DPO is made pursuant to s47 ARA 2011.

***(Depending on the complexity of the case, the ARID may also require CIOs and DPOs for persons connected to the suspect such as accomplices, friends, and relatives)**

4. **Investigations**

Investigations are carried out by the ARID's officers. The investigation includes the following:

1. Banks

Following receipt of bank statements, ARID investigators undertake analysis of the bank statements, closely examining inflows and outflows of money.

2. Civil Status Office

The ARID investigators undertake searches on the suspect in order to obtain information regarding his marital/relationship status and whether he has any children, his parents, siblings, other relatives, as well as other connections such as accomplices.

3. Passport and Immigration Office

The ARID requests information in order to monitor the travel movements of the suspect.

4. Economic Development Board (EDB)

As per Section 47 and Section 59(2)(3) ARA 2011, the ARID may require the EDB to provide information such as whether the suspect holds an occupation permit, the date of application for the occupation permit, and its validity.

5. Financial Intelligence Unit (FIU)

A Standard Operating Protocol agreed between the FIU and the ARID allows information exchange between the two departments.

6. Conservator of Mortgages

Investigation is undertaken to find out whether the suspect owns any immovable property.

7. Registrar of Companies (ROC)

Searches at ROC are carried out to check if the suspect is involved in any company or business.

8. National Transport Authority (NTA)

The ARID requests information from the NTA about whether any vehicle is registered in the name of the suspect.

9. Crime Record Office (CRO)

The ARID requests information on any previous convictions which the suspect may have.

10. Mauritius Revenue Authority (MRA)

Searches are conducted at the MRA to determine whether the suspect and anyone connected to him are registered either for income tax or VAT.

11. Social Security Office

ARID investigators undertake searches to know whether any contributions have been made to the National Pension Fund.

12. District Council or Municipality

ARID may request information from a District Council or Municipality regarding a suspect. For example, if the suspect had a building erected, the ARID may wish to find out whether the suspect had the requisite building permit which allowed the construction.

13. Tourism Authority

As per s59 ARA 2011, the ARID may require the Mauritius Tourism Authority to provide information to know whether a suspect holds any pleasure craft licence. An example of such a licence would be a licence issued to a vessel used for fishing as a sport, for water sports, or pleasure purposes

Recording of statements by ARID

Having completed the above mentioned analysis and searches, ARID investigators take a statement from the accused. This involves questioning the suspect on a number of matters such as his source of funds, previous jobs, current job, and whether he has any dependents. Where appropriate, statements may also be taken from the suspect's friends, relatives, and/or accomplices. When the statement is taken, the interviewee is not interviewed under caution. This witness statement cannot be used in criminal proceedings. This statement can be used only with regard to asset recovery, which is a civil procedure.

ARID's internal report

Based on the above mentioned searches and analyses undertaken by the ARID, and witness statements taken, the ARID investigator in charge of the case makes a report. If the investigator is of the opinion that there is a need for the EA to secure any assets pursuant to the ARA 2011, he will in the report, make a reasoned recommendation accordingly. If the investigator determines that there is no need for the EA to intervene, he will recommend to the Chief Investigating Officer in the first instance report that the case should be set aside. The Director of the FIU will then either give final approval to set aside the case or reject the proposal to set aside.

Legal Advice from State Law Office (SLO)

If the request to apply for an Order under the ARA is approved by the Director of the FIU, the report is sent to the Solicitor-General for legal assistance, who delegates the report to an officer of who is a legal practitioner. This law officer may then ask the ARID for clarifications on the report and may also suggest that further information be added. Depending on the case, the Director of the FIU

may consult the in house legal advisor prior to taking a decision or sending the file to the SLO.

Swearing of affidavit

The law officer drafts an affidavit based on all the information contained in the ARID's report. The ARID investigator responsible for the report swears the affidavit, which is forms part of an application to the Judge in Chambers.

Application before Judge

Either a state attorney from the SLO or in very limited cases, an attorney in private practice, submits the affidavit in support of the application for an Order to a Judge in Chambers. Any supporting documents are also submitted. The Judge, after considering the application delivers his judgment where an Order can be granted or declined. The process is the same for any extension or variation of any orders already in place. When an order is granted and as already specified earlier, where appropriate, the EA notifies concerned parties of the Order granted.

Custody of recovered properties

Any sum of money restrained or restricted by the ARID is credited into the FIU's Restraining/Restriction bank account. Moveable properties such as vehicles are held by the police and can be sold at auctions. Confiscated/Recovered sums are credited to the Recovered Assets Fund or attached in the hands of the accused. Importantly, if a charge against an alleged offender is dismissed, he can apply for the discharge of the order made against him in order for his properties to be returned to him.

INDEPENDENT COMMISSION AGAINST CORRUPTION

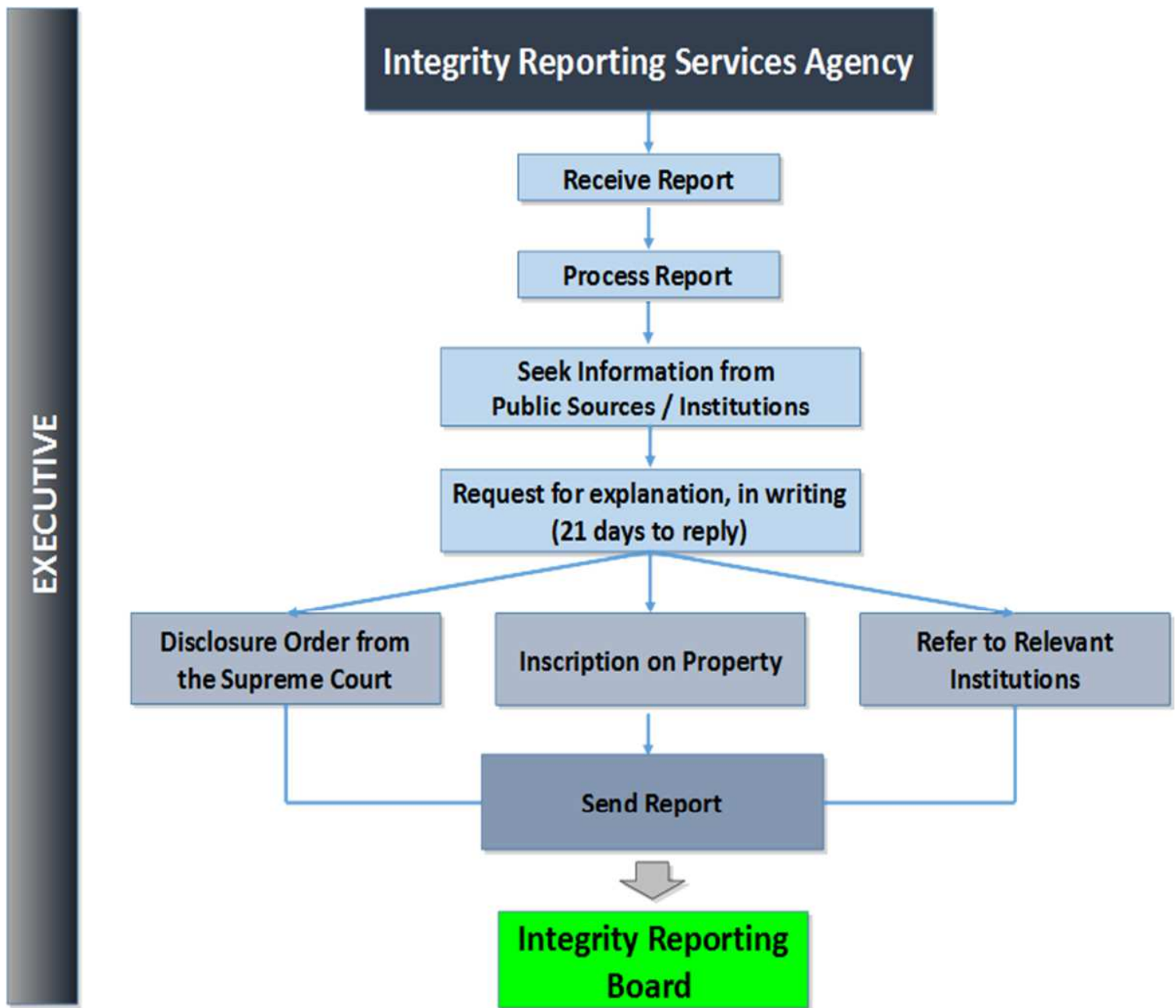
PROCEDURES FOR ATTACHMENT ORDERS

1. On receipt of a Case of Money Laundering to investigate, the Investigating Team will, above all, identify the assets of the suspect which are suspected to be directly or indirectly the proceeds of the alleged crime.
2. When the assets (moveable or immovable property) are identified, the Investigation Team will send a report to the Director General for authorisation to apply for an attachment order on the property.
3. Upon receipt of authorisation from the Director General, the Investigation Division will send a report to the Legal Division requesting the Chief Attorney to draft an affidavit and prepare a praecipe to request a judge in chambers to grant the order to attach the property in the hands of the owner, possessor or holder of the said property.
4. As soon as the order is received, an usher of the Supreme Court will serve same to each of the persons named in the order and on the suspect mentioned in the order.
5. On receipt of the Attachment Order, as per section 56(2)(b) of the POCA, the person named in the order shall declare in writing to the Commission, within 48 hours of service of the order, the nature and source of all moneys and other property so attached;
6. The Attachment Order, as per section 56(2)(c) of the POCA shall prohibit the person from transferring, pledging or otherwise disposing of any money or other property so attached except in such manner as may be specified in the order.
7. Where an order is made under this section, the Commission shall cause notice of the order to be published in the next issue of the *Gazette* and in at least 2 daily newspapers published and circulated in Mauritius; and give notice of the order to all notaries and all banks, financial institutions and cash dealers.
8. Once the declaration in writing is received from the suspect and/or persons named in the order, the Investigation Team will analyse all documents.
9. The Attachment order may be renewed for successive periods of 60 days on application made by the Commission, where the Judge in Chambers is satisfied that the Commission has obtained or is likely to obtain substantial new information relating to an offence under the POCA or the FIAMLA.

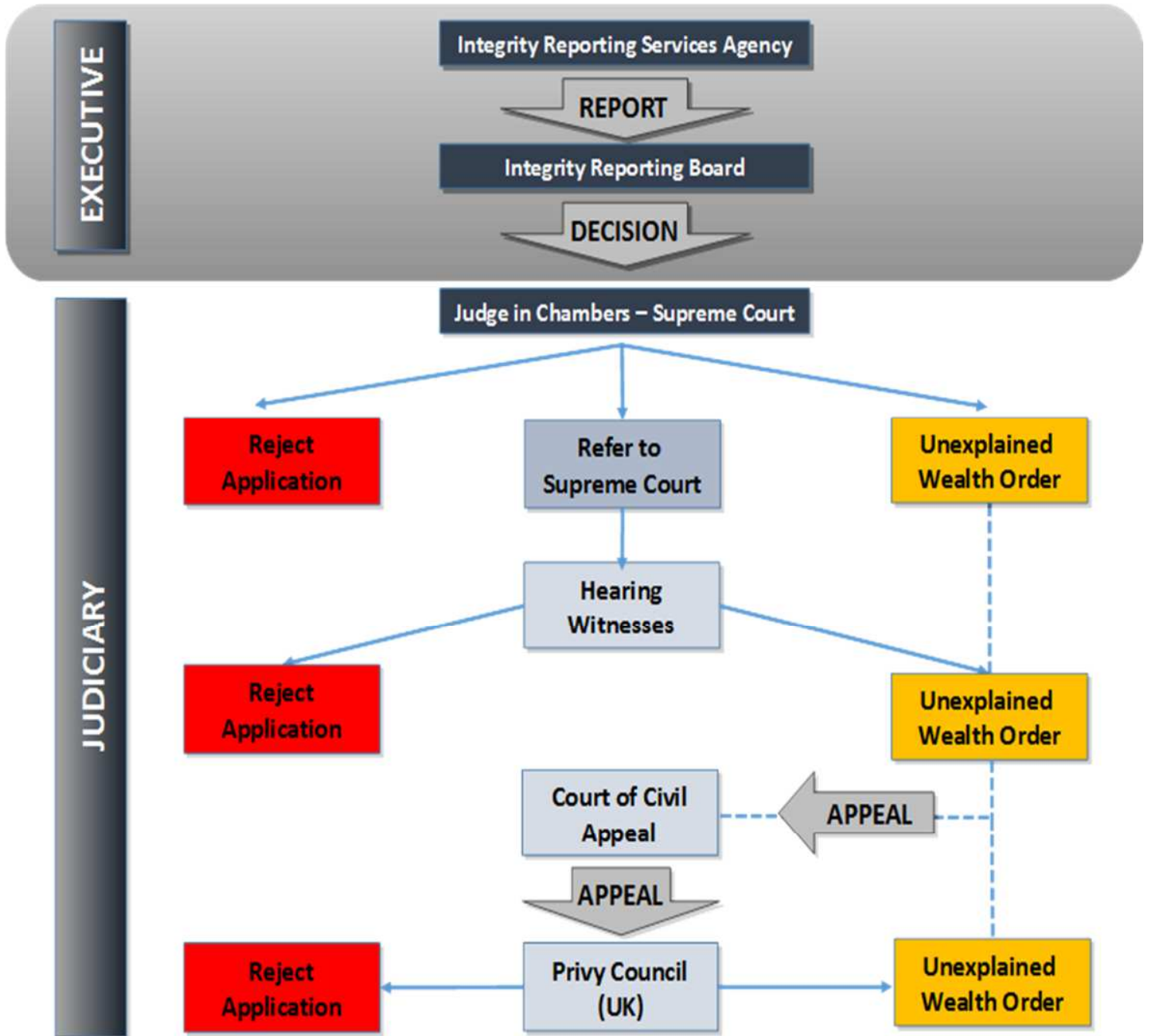
10. Note that any period of time during which the suspect is absent from Mauritius, as certified to the Judge in Chambers by the Commission, shall not be reckoned as part of any period of validity of an attachment order.

INTEGRITY REPORTING SERVICES AGENCY

PROCEDURE FOR UNEXPLAINED WEALTH ORDER:
INVESTIGATION AND REPORTING



APPLICATION TO THE COURT



MAURITIUS POLICE FORCE

PROCEDURES IN RELATION TO THE CONFISCATION OF EXHIBITS

- a) An entry is made in the officer's Pocket Note Book, the Diary Book and in the Exhibit Register, giving a full description of it and the circumstances in which he came in possession of it. The officer gives a complete statement.
- b) The exhibit is properly wrapped, labeled and marked. The officer shall mark the exhibit using his own initials as code (e.g. S.R I; S.R II).
- c) The Exhibit Officer shall then date and sign on the packed exhibit and will cause the person from whom the exhibit has been secured to sign it. In case there is refusal to sign, a note will be made to that effect and will be countersigned by the next senior officer available.
- d) The exhibit will then be handed over to the Station Manager to be kept under lock and key until it becomes necessary to transfer it for further examination or to be handed over to Police Prosecutor for production in court. An entry will be inserted in the exhibit register.
- e) Where there is a need for identification of exhibit in the course of the enquiry, the exhibit officer should be present. In case of a sealed exhibit, when there is a need for the identification thereof, the exhibit officer and the person from whom it was secured must be present.
- f) An exhibit should be moved around only by the exhibit officer and the chain of continuity in handling the exhibit should not be broken except in unavoidable circumstances.

ANTI-DRUG AND SMUGGLING UNIT (ADSU)

PROCEDURES FOR SECURING, SEALING AND SAFEKEEPING OF EXHIBITS

In line with:-

- (I) Standing Orders 138**
- (II) Section 58 of the Dangerous Drugs Act**

1. WHEN DANGEROUS DRUGS ARE SECURED.

The securing officer will confront the accused with the exhibit secured, inform him of the evidence against him, duly cautioned and informed of his constitutional rights.

At ADSU Office:

- An entry is inserted in the Diary Book respecting the facts and circumstances of the case;
- The officer who has secured the exhibit will have same weighed in presence of the accused and a Police officer who witnessed the occurrence;
- The exhibit is then placed in a transparent evidence bag before being placed in a clean and empty envelope;
- The securing officer gives a description of the exhibit in writing on the envelope, and codes same with his initials;
- The exhibit is then sealed in presence of the accused party and the witness;
- The securing officer as well as the witness affix their signatures on the envelope and insert the date. The accused is invited to do the same.

- In the event the accused refuses to sign on the envelope, an entry is inserted to that effect in the Diary Book to that effect.
- The envelope is then countersigned by an independent witness.
- The securing officer calls at ADSU Headquarters for registration of the exhibit. There, the exhibit is given an 'ER' Number (Exhibit Book Registration).
- The exhibit is brought to the Forensic Science Laboratory for purpose of examination as far as possible on the same day by the securing officer.

If the circumstances are such that the exhibit cannot be brought to ADSU HQ for Registration and onwards conveyance to FSL on the same day, same is kept under lock and key at the Divisional ADSU Unit concerned and needful is done within the least possible delay on the next working day.

- As per arrangements made with the FSL, all exhibits whereby the value of drug exceeds Rs 100,000/, a written request is forwarded to the FSL for an early appointment.
- After examination of the exhibit by the Forensic Scientist, a memo is sent to ADSU for the securing officer to collect the exhibit together with its report (FSL Report).
- The exhibit is taken from the FSL by the securing officer and left at ADSU Exhibit room for safe keeping pending production in court at a later stage. The FSL Report is attached to the relevant case file.

The chain of continuity in handling the exhibit is not broken except in unavoidable circumstances.

Court Procedure

- When the case is called for Hearing or Trial before Court, the securing officer calls at ADSU Exhibit Room from where he collects his exhibit after relevant entries are inserted
- After production of the exhibit in Court, the securing officer fills in a certificate, indicating the date the exhibit has been produced and in which court.
- The certificate is handed over to the officer In charge of the ADSU Exhibit Room for filing.
- If the exhibit has for some reason not been produced, it is brought back to the exhibit Room and kept under lock and key.

2. WHEN MONEY IS SECURED

Money suspected to be proceeds of Dangerous Drug is being secured in line with section 47(5) Of the DDA 2000

1. The securing officer will confront the accused with the exhibit secured, inform him that the money is suspected to be proceeds of a drug transaction and of the evidence against him, duly cautioned and informed of his constitutional rights.
2. The money is counted in his presence and he is informed of the amount secured;
3. An entry is inserted in the Diary Book respecting the facts and circumstances of the case.
4. The exhibit is then placed in a transparent evidence bag in presence of the accused;
5. The securing officer writes the description of the exhibit on a clean A4 paper, and codes same with his initials; The securing officer as well as the witness affix their signatures on the A4 paper and insert the date. The accused is invited to do the same;

6. The A4 paper is then placed inside the transparent evidence bag, together with the exhibit. The exhibit is then sealed in presence of the accused party and the witness;
7. The envelope is then countersigned by an independent witness;
8. The sealed evidence bag is then left at ADSU Exhibit Room for safe keeping. Proper entry will be made in the Exhibit Book and a reference number (ER) will be given to it. The exhibit is kept there pending enquiry and production in Court or is referred to ARID as per CP's Circular 09/2016
9. Investigation started for money laundering offence.

3. WHEN VEHICLES ARE SECURED

Vehicles are being secured in line with section 47(5) of the DDA 2000

- The securing officer will inform the accused of the facts and circumstances of the case which lead to his vehicle being secured;
 - The vehicle will be searched and examined in his presence;
 - Proper entry in the Diary Book will be inserted as to the fact and circumstances the vehicle is secured,
 - The exhibit will then be registered at ADSU HQ (ADSU Exhibit Room) where an ER number will be given to it. The vehicle will be kept at ADSU HQ compound Line Barracks.
10. Enquiry will start, and a referral will be made to ARID as per CP's Circular 09/2016.

MRA CUSTOMS

PROCEDURES FOR CONFISCATION

1. The subject matter of the offence is detained for investigation.
2. Detained Receipt is issued to the person.
3. The subject matter is placed in evidence bag and sealed.
4. The evidence bag is kept in the safe.
5. Arrangement has been made with BOM for the safe keeping of currency/BNI pending completion of investigation.
6. Arrangement with the Assay office has been made to obtain the value and purity of precious stones and metals.
7. Arrangement with Ministry of Arts and Culture is pending in relation to work of arts.
8. Regarding suspected cases of ML, all the evidence gathered during our investigation and the subject matter of the offence are handed over to the ICAC.
9. Regarding suspected cases of CFT, the case is referred to the Police.
10. Upon conviction, the subject matter of the offence may be confiscated by the court.