

## 2<sup>nd</sup> Mauritius Compliance Risk and Economic Crime Conference

**Westin Turtle Bay Resort  
Balaclava  
Mauritius  
10 – 11 July 2019**

▶ **RAJESH RAMLOLL SC**  
▶ **DEPUTY SOLICITOR GENERAL**  
▶ **July 2019**



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## 2<sup>nd</sup> Mauritius Compliance Risk and Economic Crime Conference

- ▶ Exchange of Information in Preliminary Proceedings on Money Laundering
- ▶ Money laundering as a crime
- ▶ Section 3 of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA)
- ▶ Section 2 of the FIAMLA - Definition of crime
- ▶ Much broader than Article 4 of the Criminal Code (of 1743!) - (replaced by 1810 CCP)



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## 2<sup>nd</sup> Mauritius Compliance Risk and Economic Crime Conference

- ▶ "crime"
- ▶ (a) means an offence punishable by
  - (i) penal servitude
  - (ii) imprisonment for a term exceeding 10 days
  - (iii) a fine exceeding 5,000 rupees
- ▶ (b) includes -
  - (i) an activity carried on outside Mauritius and which had it taken place in Mauritius would have constituted a crime; and
  - (ii) an act or omission .....
- ▶ Much broader concept with an element of extra territoriality



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- ▶ “inclusion of imprisonment for a term exceeding 10 days –
- ▶ – amendment made in 2002 following obiter dicta by Court on certain predicate offences could not be characterised as ‘crime’ under section 3 –
- ▶ – Money laundering – see also land mark
- ▶ – Privy Council case:
- ▶ DPP v/s A. A. Bholah – [2011] UKPC 44
- ▶ First money – laundering case in Mauritius




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- ▶ No need to prove a specific predicate offence
- ▶ Para 33: The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under section 17(1) of the Economic Crime and Anti-Money Laundering Act (ECAMLA).
- ▶ In the Board’s view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a particular crime is not an essential ‘element’ of the offence of money laundering.
- ▶ See also commentary in the Law Society Gazette [2012] UK




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- ▶ Exchange of Information
- ▶ –Mutual legal Assistance
- ▶ Multilateral treaties
- ▶ Bilateral treaties
- ▶ Voluntary arrangements et.
- ▶ Amongst Commonwealth Countries (Harare Scheme)
- ▶ Domestic Law – eg. MACRMA
- ▶ Letter of Request
- ▶ Informal Assistance (IAP)




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## 2<sup>nd</sup> Mauritius Compliance Risk and Economic Crime Conference

### ▶ MULTILATERAL TREATIES

- ▶ Multilateral conventions as powerful tool for international cooperation and exchange of information.
- ▶ UN Convention against transnational organised crime (UNTOC 2000) or Palermo Convention.
- ▶ Article 18: provides for assistance for taking evidence or statements ... providing information.
- ▶ Article 18(21): Makes clear that assistance cannot be refused on the ground of bank secrecy 18(8) or for offences considered to involve fiscal matters (18(22)).




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### ▶ BILATERAL TREATIES

- ▶ Tailor made by UNODC
- ▶ Provides a high degree of certainty
- ▶ Timely resolution of process




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### ▶ LETTERS OF REQUEST RULES

- ▶ Rules made by Chief Justice under section 198 of Courts Act.
- ▶ 2(1) Where, in relation to any civil, commercial or criminal matter which is pending before a Court or tribunal of another State, provision is made in an enactment or a Convention to which Mauritius is party, or it appears desirable -
  - ▶ (a) to obtain the testimony of a witness in Mauritius, or
  - ▶ (b) to serve any process on a person in Mauritius,
- ▶ A Judge may, on an ex parte application by the Attorney-General or a person duly authorised to make the application on behalf of that foreign Court or tribunal, and on production of the Letter or Request and such other evidence as the Judge may require, including a further copy of any process to be served, make an order in compliance with the Letter of Request.




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▶ REFUSAL OF A MUTUAL LEGAL ASSISTANCE  
REQUEST

- ▶ (a) Legal basis
- ▶ (b) Reciprocity?
- ▶ (c) National or public interest
- ▶ (d) Severity of punishment
- ▶ (e) Tax offences/Bank Secrecy?
- ▶ (f) Political offences
- ▶ (g) Absence of Dual criminality
- ▶ (h) Double jeopardy
- ▶ (i) Human Rights considerations



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***THANK YOU***



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