"In this world nothing can be said to be certain except death and taxes."
(Benjamin Franklin)

1. Introductory Observations

Most of us pay our taxes. Equally most of us do not have a real choice on how much tax we pay, the money being deducted at source by our employer. But some people choose the path of dishonesty and fraud when it comes to paying their taxes. They hide their income and wealth to evade tax, claim tax relief to which they are not entitled and subvert the tax system to make money for them.

These people, make no mistake, are criminals motivated by greed. And very often-corrupt professionals assist them. Their criminal activity may be less visible than other familiar criminal activity such as simple theft or robbery but they belong to the same category of criminals. Tax evasion is a willful attempt to defeat and circumvent the tax law in order to illegally reduce one's tax liability. Very often, tax evasion does not constitute a stand-alone crime and may serve, as a predicate to other offences, like money laundering.

Tax crime has to be dealt with robustly all the time. And at a time when there is an economic downturn and law-abiding citizens are suffering from the dire consequences of such economic downturn, the need to deter, detect and prosecute those who evade tax is greater than ever.

Money laundering is the means by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have been derived from a legitimate source. Money launderers exploit both the complexity inherent in the global financial system as

well as differences between national anti-money laundering laws and systems, and they are especially attracted to jurisdictions with weak or ineffective controls where they can move their funds more easily without detection. Moreover, problems in one country can quickly spread to other countries in the region or in other parts of the world. But in the global society in which we are now living, and with the paramount role that technology today plays in our world, it would be illusionary to think that any nation can tackle the problem of financial crimes alone.

To combat efficiently tax, money laundering and other financial crimes, we need to put a greater emphasis on co-operation and better information exchange between tax and law enforcement agencies involved in the fight against financial crimes both on a domestic and an international level. As the Director for Fiscal Affairs of the OCDE so aptly puts it "*Growing interactions, between national economies and markets and advances in communications and information technology have aided international financial abuses and raised new challenges for policy makers, regulators, supervisors and law enforcement authorities*".

We should nevertheless be extremely careful since today; organised crime has penetrated jurisdictions, which have always been considered safe. Last month a reputed bank was fined over US $1 billion by the US authorities for laundering drugs money from the Mexican cartel. The presumption that money is clean since it emanates from a reputed bank does not hold anymore.

Not surprisingly, global authorities like the IMF and the OCDE are asking for tougher rules and appropriate measures to combat financial crimes. There are legitimate concerns that not enough is being done for improved transparency on corporate vehicles that are often misused for money laundering, bribery/corruption, shielding of assets from creditors, illicit tax practices, insider

dealings and other illicit activities. The United Kingdom taking the cue from the United States, which has implemented the Foreign Account tax Compliance Act, has now signed agreements with all its dependent jurisdictions dealing in offshore accounts with a commitment to disclose information to its main European partners and ensure transparency.

The whole global tax architecture is evolving and soon the days of anonymity and secrecy will be behind us. Authorities worldwide are now paying closer attention not only to illegal schemes but also more importantly to those schemes which avoid the arm of the law under the guise of tax planning. The emphasis is equally being made on efficient and effective prudential regulatory norms. Operators of the financial sectors have a legal duty to demonstrate that their compliance policy is stringent enough and proportionate to the kind of risks that they are confronted with.

Mauritius is certainly alive to those threats and armed itself with appropriate legislations to try to curb the rise of those offences and has been reviewing regularly its regulatory norms. Thus, we have promulgated the Prevention of Corruption Act in 2002, which repealed the Economic Crime and Anti-Money Laundering Act of 2000. We also have the Financial Intelligence and Anti-Money Laundering Act 2002. In 2003, came into force the Convention for the Suppression of the Financing of Terrorism Act, which repealed some of the provisions of the Prevention of Terrorism Act. That Convention provides for the International Convention for the Suppression of the Financing of Terrorism to have force of law in Mauritius. Moreover Mauritius has signed the UN Convention Against Corruption (UNCAC) and the UN Convention against Transnational Organised Crime. I should mention that the UNCAC is itself a multilateral treaty for signatory parties to exchange information. Mauritius is at present negotiating Tax Information Arrangements with a number of jurisdictions including India. The Mutual Legal Assistance in Criminal and Related Matters Act, in addition commits

Mauritius to disclose evidence of any transaction, which may be linked to an illegal activity to a requesting State. In addition Mauritius regularly submits itself to the reviewing panel of the Eastern and Southern Africa AML–CFT (ESAAMLAG).

I should perhaps mention that in spite of its robust legal framework to fight financial crimes and money laundering, the offshore sector still gets mentioned in some unsubstantiated articles as a tax haven where money laundering cannot be discarded. It is a case of guilty until proven innocent for Mauritius. Yet I know of no request for information from a requesting State, which has not been attended to, to the satisfactory of the requesting party. For the purposes of this presentation, I shall first consider the Mauritius legislative framework. I shall then examine some examples of the most common money laundering techniques before looking at international standards on that matter.

I shall conclude by looking at some of the measures that Mauritius may adopt to step up its investigative and compliance regimes and its network of international cooperation.

2. The Legislative Framework in Mauritius

- *Financial Intelligence and Anti-Money Laundering Act 2002*

One of the first major legislations to tackle the problem in Mauritius dates back to the year 2000 when was enacted the **Economic Crime and Anti-Money Laundering Act**. This piece of legislation targeted mainly fraud and corruption. The Financial Intelligence and Anti-Money Laundering Act later replaced it in 2002 [referred to as FIAMLA]. This Act allows for financial institutions to submit suspicious transaction reports directly to the Financial Intelligence Unit (FIU), which is the central agency in Mauritius responsible for receiving, requesting,

analysing and disseminating to the investigatory and supervisory authorities' disclosures of financial information, while before that the common practice was to submit those reports to the Bank of Mauritius. The Prevention of Corruption Act 2002 also provides for the investigation of money laundering offences to be undertaken by an Independent Commission against Corruption.

Under FIAMLA, a financial institution has a duty to forthwith make a report to the FIU of any transaction, which the financial institution has reason, to believe may be a suspicious transaction. The FIU has devised a form to that effect. Financial institutions are required to use that form which is available at the FIU to report suspicious transactions.

A suspicious transaction is defined as a transaction which:

(a) gives rise to a reasonable suspicion that it may involve:

(i) the laundering of money or the proceeds of any crime; or

(ii) funds linked or related to, or to be used for, terrorism or acts of terrorism or by proscribed organisations, whether or not the funds represent the proceeds of a crime.

(b) is made in circumstances of unusual or unjustified complexity;

(c) appears to have no economic justification or lawful objective;

(d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or

(e) Gives rise to suspicion for any other reason.

We should read carefully the definition of suspicious transaction. Every operator in the sector, be it a financial institution or a member of a relevant profession, has a duty to lift the corporate veil and look closely at the nature of the transaction.

It is only then that he would appreciate whether the transaction amounts to a suspicious transaction. Paragraphs (b) and (c) could not be written in clearer language. In order to ascertain whether the transaction is unusual one or unjustified, it requires a thorough demand of particulars from the officer accepting the transaction in the first instance. His responsibility is not simply one of box ticking. That is why it is important to have qualified

Personnel in the compliance department to ensure that a proper due diligence is carried out in accordance with the duties arising under the FIAMLA.

Following a Suspicious Transaction Report made to the FIU by a financial institution, the Director of the FIU is empowered to request additional information from the financial institution in respect of that suspicious transaction and also from any other financial institution, which is or appears to be involved in the transaction.

Reporting a suspicious transaction may involve breaching the client's confidentiality. Therefore, there might be reluctance to come forward with such a report. This is the reason why Section 16 of the Act provides immunity from suit for reports made in good faith, even though the suspicion ultimately proves not to be well founded and protects those reporting or receiving reports of suspicious transactions of money laundering or additional information thereon from claims in respect of any alleged breach of client confidentiality or for disclosure of confidential information.

Section 3(1) of the Financial Intelligence and Anti-Money Laundering Act defines money laundering as follows:

> Any person who –
>
> (a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or
>
> (b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime,
>
> where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime.

According to section 3(2) of the Act, a bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence shall commit an offence.

With a view to secure an audit trail and as a preventive measure against the laundering of the proceeds of crime, a limit on cash payments has been imposed under the Act. Accordingly, apart from certain exempt transactions, which are listed under the interpretation section, Section 5 tells us that transactions in cash in excess of 500,000 rupees are prohibited altogether.

According to Section 18 (2), any financial institution or any director or employee thereof who knowingly or without reasonable excuse fails to lodge a report of a suspicious transaction, commits an offence and shall on conviction be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

- *Prevention of Corruption Act 2002*

"*Among a people generally corrupt, liberty cannot long exist*", said Edmund Burke. Mauritius is ranked 43rd on Transparency International 2012 Corruption Perceptions Index. On the African continent, only two countries do better than us, and these are Botswana and Cape Verde. But as Transparency International itself confesses, this index is limited in scope, capturing perceptions of the extent of corruption in the public sector, from the perspective of business people and country experts. Nevertheless, we can say that we cannot be ashamed of that rank as many developed and western countries have scored lower, like South Korea, which is 45th or Italy, which ranked 72nd. But it is not to say that we should rest on our laurels and not try to improve. Corruption can play an important role in the building up of criminal organizations. Criminal entrepreneurs may expand their illegal activities by bribing officials.

But what do we mean when we speak about "corruption"? The Prevention of Corruption Act defines corruption inter alia as being any conduct whereby, in return for a gratification, a public official does or neglects from doing an act in contravention of his public duties; it also includes any form of violence, or pressure by means of threat, upon a public official, with a view to the performance, by that public official, of any act in the execution of his functions or duties, or the non-performance, by that public official, of any such act. Public

officials are also required not to put themselves in a situation of conflict of interest.

The Independent Commission Against Corruption is vested under the Act with powers to, *inter alia*, detect or investigate any act of corruption, investigate the conduct of any public official which, in its opinion, is connected with or conducive to, corruption, detect and investigate any matter that may involve the laundering of money or suspicious transaction that is referred to it by the FIU and take such measures as may be necessary to counteract money laundering in consultation with the FIU.

- *Prevention of Terrorism Act 2002*

Terrorist activities constitute threats to every country's safety and security. An effective response involves, among other things, efforts to detect and curtail the flow of money needed to finance such activities.

Money laundering and terrorist financing often display similar transactional features, most having to do with concealment. Money launderers send illicit proceeds through legal channels so as to conceal their criminal origins, while those who finance terrorism transfer funds that may be legal or illicit in origin in such a way as to conceal their source and ultimate use, which is the support of terrorism.

By their very nature, money laundering and terrorist financing are geared towards secrecy and do not lend themselves to statistical analysis. Money launderers do not document the extent of their operations or publicize the amount of their profits, nor do those who finance terrorism. Moreover, because these activities take place on a global basis, estimates are even more difficult to produce.

The Mauritius Prevention of Terrorism Act proscribes terrorism in general and empowers our legal system to adequately deal with the phenomenon of terrorism. The Act, *inter alia*, contains provisions for the prevention, suppression and combating of terrorism: offences relating to terrorism; intelligence gathering, investigatory and enforcement measures for implementing the international commitments of the Republic of Mauritius in respect of terrorism.

Section 15 of the Act is of particular significance as it deals with terrorist property, which includes money. According to that section, any person who enters into, or becomes concerned in, an arrangement, which facilitates the retention or control by, or on behalf of, another person of terrorist property, in any manner, including by concealment, by removal from the jurisdiction, or by transfer to any other person, shall commit an offence.

And according to Section 17, where the Commissioner of Police has reasonable grounds to suspect that a person has committed, is committing or is about to commit an act of terrorism or is in possession of terrorist property, he may, for the purposes of an investigation under this Act, apply to a Judge in Chambers for an order compelling the suspect to deliver to him any document relevant to identifying, locating or quantifying any property to, or in the possession or control of that person, and may require any other financial institution, trustee, cash dealer or custodian to produce to him all information and deliver to him all documents regarding any business transaction conducted by or on behalf of the suspect.

- *Income Tax Act 1995*

According to the Financial Services Commission, I quote: "*Mauritius is misrepresented as a tax haven. Instead, Mauritius has a very simple tax system, transparent and predictable. We are known to be a very cooperative country.*

Mauritius understands the importance of tax information exchange and cooperation in tax matters. We have all the necessary elements in place to achieve effective exchange of information and continue to work with the respective authorities worldwide." Nevertheless, we cannot deny that some try to slip through the cracks.

The failure to comply with national income tax laws is one of the most prevalent financial crimes in many countries. We should first of all distinguish between tax evasion and tax avoidance. While the former is illegal and defined as the wilful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability, the latter is not illegal and not subject to prosecution. However the effect of avoidance from a particular country's perspective is the same as tax crimes especially tax evasion. Both nibble away the revenue of a country. The difference is that tax evasion is usually more obvious but in reality the line of demarcation is blurred.

Lord Templeman in his article entitled "Tax and the Taxpayer" had this to say "*A taxpayer who avoids tax by artificial means frustrates the intention of Parliament that a taxable event shall be taxed. The scheme reduces the yield of tax to the Treasury and thus to the public. … tax avoidance schemes are also unfair to taxpayers who accept the fiscal consequences of taxable events, or who do not know or cannot afford or are not in a position to indulge in such schemes*".

Tax evasion is not a victimless crime. It deprives States from raising sufficient revenues therefore preventing them from implementing social, economic, environmental, cultural and other policies. Tax evasion undermines the efforts of the government to promote welfare and social cohesion; it prevents it from performing its social function. Moreover, it erodes the credibility of democratic institutions, while injuring the trust of citizens in the means and ends of a legitimate, democratic government. In a nutshell it can brew feelings that might

evolve into anti-social, anti-democratic mentalities. Secondly, those who are in a better position to avoid taxation are the people who can siphon their income into foreign banks or jurisdictions, which usually means that they are better off. In avoiding their duties and responsibility vis-à-vis society and the state, the tax evaders are in effect placing a greater burden on those who eventually pay off the effective costs of taxation, who are in their majority, members of the lower and middle parts of the income distribution. As such tax evasion fosters or widens social inequality while it produces a *de facto* division of citizens between privileged and non-privileged. Thirdly, tax evasion provides incentives to established financial institutions as well as authorities or persons to engage in corrupt activities, in quest of their own enrichment or other benefit. Financial institutions or banks are interested in increasing their profits by making use of this stream of funds, even if that implies circumventing the existing rules. Authorities may be enticed to turn a blind eye in this process, so that their own position in power may be consolidated. An example of such pertains to the latest scandal in Greece concerning the so-called 'Lagarde list', named after former French finance minister Christine Lagarde and present director of the MIF, which is a spreadsheet containing roughly 2,000 potential tax evaders with undeclared accounts at Swiss HSBC bank's Geneva branch.

Section 145 of our Income Tax Act thus provides that any person who fails to register as an employer, fails to make necessary arrangements to obtain from the Director-General a Tax Account Number in respect of an employee from whose emoluments tax is withheld, fails to pay the amount of tax required to be withheld, fails to pay the amount of tax in arrears required to be deducted, fails to give the Statement of Emoluments and Tax Deduction to his employee, or submits to his employer an Employee Declaration Form which is incorrect or false in any material particular, shall commit an offence. And Subsection 2 reads as follows: "*Any person who gives a Statement of Emoluments and Tax Deduction which is false or misleading in any material particular or without lawful*

authority discloses any information concerning his employee, shall commit an offence".

3. Money Laundering Techniques

I shall cover some of the money-laundering techniques that authorities have encountered and there are probably countless others that have yet to be uncovered. Here are some of the more popular ones:

- ***Black Market Colombian Peso Exchange***

This system, which the DEA calls the "largest drug money-laundering mechanism in the Western Hemisphere", came to light in the 1990s. This complex setup relies on the fact that there are business people in Colombia -- typically importers of international goods -- who need US dollars in order to conduct business. To avoid the Colombian government's taxes on the money exchange from pesos to dollars and the tariffs on imported goods, these businessmen can go to black market "peso brokers" who charge a lower fee to conduct the transaction outside of government intervention. That is the illegal importing side of the scheme. The money-laundering side goes like this: A drug trafficker turns over dirty US dollars to a peso broker in Colombia. The peso broker then uses those drug dollars to purchase goods in the United States for Colombian importers. When the importers receive those goods (below government radar) and sell them for pesos in Colombia, they pay back the peso broker from the proceeds. The peso broker then gives the drug trafficker the equivalent in pesos (minus a commission) of the original, dirty US dollars that began the process.

Structuring deposits

Also known as smurfing, this method entails breaking up large amounts of money into smaller, less-suspicious amounts. The money is then deposited into one or more bank accounts either by multiple people (smurfs) or by a single person over an extended period of time.

- *Overseas banks*

Money launderers often send money through various "offshore accounts" to countries that have bank secrecy laws, meaning that for all intents and purposes, these countries allow anonymous banking.

- *Underground/alternative banking*

Some countries in Asia have well-established, legal alternative banking systems that allow for undocumented deposits e.g. "hawalla" in India, withdrawals and transfers. These are trust-based systems, often with ancient roots, that leave no paper trail and operate outside of government control.

- *Shell companies*

These are "dummy" companies that exist for no other reason than to launder money. They take in dirty money as "payment" for supposed goods or services but actually provide no goods or services; they simply create the appearance of legitimate transactions through fake invoices and balance sheets.

- *Investing in legitimate businesses*

Launderers sometimes place dirty money in otherwise legitimate businesses to clean it. They may use large businesses like brokerage firms or casinos that deal in so much money it is easy for the dirty stuff to blend in, or they may use small, cash-intensive businesses like bars, car washes, strip clubs or check-cashing stores.

Most money-laundering schemes involve some combination of these methods, although the Black Market Peso Exchange is pretty much a one-stop-shopping system once someone smuggles the cash to the peso broker.

The UK is “à l’avant-garde” in combatting tax evasion. For example, where tax is deliberately evaded the minimum penalty cannot go below 20% or 30% where there is concealment. This minimum can be achieved only with a reduction for the quality of the disclosure, a powerful incentive for evaders to help HMRC (Her Majesty’s Revenue and Customs) correct matters. Without this reduction the penalty can be as much as 100% of the tax. So those caught evading tax will always be worse off than those who come clean spontaneously. The Finance Act 2009 brings a further deterrent: the publication of the name and identifying details of serious evaders. This applies to anyone who is found to have deliberately evaded more than £25,000 tax and who does not make a full disclosure of his or her evasion at the earliest opportunity. And because investigations can cover several return periods it will apply to those who persistently evade smaller sums, not just those who evade more than £25,000 in one return period. In addition, those who are penalised for the deliberate evasion of more than £5,000 tax will face further reporting requirements for up to the next five years, so that their future tax compliance can be closely monitored. This is likely to involve having to provide detailed profit and loss and balance sheet information, along with the nature and amount of any balancing figures used in arriving at the sums returned. Furthermore, HMRC uses a special procedure – Civil Investigation of Fraud (CIF) -- in the most serious cases as an alternative to

criminal prosecution. Where it decides to take the CIF approach as set out in Code of Practice 9, it will not seek a prosecution for the tax fraud that is the subject of that investigation. However, where materially false documents are provided with intent to deceive in the course of a civil investigation, it may then conduct a criminal investigation with a view to a prosecution. As part of a civil sanctions regime, CIF gives taxpayers the opportunity to cooperate knowing that they are free from prosecution. It offers a procedure where both the taxpayer and HMRC know their positions and can act safely in dealing with the tax dispute. Tax evasion of UK taxes whether or not cloaked in legal transactions, is demonstrably a UK indictable offence, i.e. constitutes criminal conduct. Under the Criminal Justice Act 2003 “criminal conduct” is extended to any act, which would be an indictable offence if it had occurred in the UK. It is still subject to debate as to whether this includes the evasion of foreign taxes. It might be argued that it is not a UK offence to evade another country's tax.

4. International Standards

The FATF, the Financial Action Task Force, is an intergovernmental organization founded in 1989 on the initiative of the G7, and which purpose is to develop policies to combat money laundering and terrorism financing. It has developed a series of Recommendations that are recognised as the international standard for combating money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field. The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level

vulnerabilities with the aim of protecting the international financial system from misuse.

FATF has evolved seven sets of measures in all, comprising 40 recommendations. The **first set** is about anti-money laundering and countering the financing of terrorism policies. Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. Countries should also have national AML/CFT policies, informed by the risks identified, which be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies

The **second set** encourages countries to criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries are to apply the crime of money laundering to all serious offences, with a view to include the widest range of predicate offences. Competent authorities should be able to freeze or seize and confiscate the following, without prejudicing the rights of *bona fide* third parties:

(a) Property laundered;

(b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences;

(c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations; or,

(d) property of corresponding value.

Terrorist financing and financing of proliferation is what the **third set** is about. Countries should not criminalise only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts. They should also implement targeted financial sanctions regimes to comply with United Nations Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing.

The **fourth set** deals with preventive measures and states that countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations. Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names. They should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers and also maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities. Countries should ensure that financial institutions include required and accurate originator information, and required beneficiary information, on wire transfers and related messages, and that the information remains with the wire transfer or related message throughout the payment chain.

According to the **fifth set**, countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should

ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

The **sixth set** revolves around powers and responsibilities of competent authorities and other institutional measures. Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities or financial supervisors should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a financial institution. Countries should also not approve the establishment, or continued operation, of shell banks. Moreover, supervisors should have adequate powers to supervise or monitor, and ensure compliance by, financial institutions with requirements to combat money laundering and terrorist financing, including the authority to conduct inspections. Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis. Furthermore, countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including through a declaration system and/or disclosure system and ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing, money laundering or predicate offences, or that are falsely declared or disclosed.

Finally, the **seventh and last set** is about **international cooperation**. Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate

offences and terrorist financing investigations, prosecutions, and related proceedings. Countries should have an adequate legal basis for providing assistance and, where appropriate, should have in place treaties, arrangements or other mechanisms to enhance cooperation. In particular, countries should not prohibit, or place unreasonable or unduly restrictive conditions on, the provision of mutual legal assistance. They should ensure that they have clear and efficient processes for the timely prioritisation and execution of mutual legal assistance requests. Countries should use a central authority, or another established official mechanism, for effective transmission and execution of requests. To monitor progress on requests, a case management system should be maintained and neither refuse to execute a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters nor refuse to execute a request for mutual legal assistance on the grounds that laws require financial institutions or Designated Non-Financial Business Professions to maintain secrecy or confidentiality, except where the relevant information that is sought is held in circumstances where legal professional privilege or legal professional secrecy applies. Countries should also maintain the confidentiality of mutual legal assistance requests they receive and the information contained in them, subject to fundamental principles of domestic law, in order to protect the integrity of the investigation or inquiry. If the requested country cannot comply with the requirement of confidentiality, it should promptly inform the requesting country.

Where dual criminality is required for mutual legal assistance, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence. Countries should ensure that they have the 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. They should constructively and effectively execute extradition requests in relation to money laundering and terrorist financing, without undue delay. Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations.

Countries should ensure that their competent authorities can rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing. Countries should do so both spontaneously and upon request, and there should be a lawful basis for providing cooperation. Countries should authorise their competent authorities to use the most efficient means to cooperate. Should a competent authority need bilateral or multilateral agreements or arrangements, such as a Memorandum of Understanding (MOU), these should be negotiated and signed in a timely way with the widest range of foreign counterparts. Competent authorities should use clear channels or mechanisms for the effective transmission and execution of requests for information or other types of assistance. Competent authorities should have clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information received.

5. Concluding Observations

Financial crimes do not constitute a monolithic block. They are plural in essence and thus require a plural response. Neither are they isolated. Tax evasion may give rise to money laundering and the leitmotiv in both money laundering and terrorist financing is concealment. It would be naive to think that in a global world we can fight financial crimes by acting unilaterally. Criminals launder between

$500 billion and $1 trillion worldwide every year. The global effect is staggering in social, economic and security terms.

The fight against money laundering, tax evasion and other financial crimes will not be won without the cooperation of enforcement authorities both at domestic and international level. In spite of the progress achieved I am of the opinion that that we could improve on the efficiency of our regulatory, investigative and enforcement regimes by adopting the following:

(A) Cooperation between national authorities

In many countries including ours cooperation between national authorities leaves much to be desired. Tax and customs authorities, police, financial regulators, company, property registries carry out their functions in separate compartments. Financial regulators and tax authorities especially operate in isolation. They are not wired into the wider business of combating crime. They have no obligation to volunteer information to the police or other authorities and are reluctant to do so. Those who oppose using tax or bank data to help combat crime, base their argument very often on data privacy or human rights. This can be dangerous since criminals very often abuse these safeguards and escape detection and justice. I agree however that a balance must be struck between these two competing rights, the need on the one hand to secure public interest in the protection of public revenue against any wrongful evasion of tax through the withholding of vital information and on the other the need to ensure certainty in financial administration by affording protection to the tax payer against prolonged interference. In the Supreme Court Case Ex parte: The Commissioner of Income

Tax [1996] MR 92 when addressing the question of confidentiality of information the Court observed: "*Bankers are more liable to be compelled to reveal the secrets they hold when the public interests and particularly the detection of crime so desires*".

(B) Cooperation with international agencies

Similarly international cooperation in the pursuit of crime and tax collection leaves to be desired. There still exists mistrust among many national authorities to share sensitive information. A recurrent problem that many countries face relate to the onerous and complex procedures for disclosure coupled with understaffing leading to chronic delays in attending to requests. The importance of signing agreements for the exchange of information and mutual legal assistance to fight crime cannot be overemphasised. Mauritius has already shown its commitment by being proactive member of the OECD Working Group promoting international cooperation in tax matters through exchange of information.

In that context it is worth mentioning that British Virgin Islands, Bermuda, Montserrat and Turks and Caicos, all offshore "*Tax Havens*" have signed information – sharing agreements with the Revenue Authorities of UK with a view to revealing the identities of all those persons sheltering money illegally. The information obtained will be shared with other European countries. UK has already signed similar information sharing deals with Guernsey, Jersey and the Isle of Man. The US government for its part has introduced Foreign Account Tax

Compliance Act to enable US authorities to obtain details from other jurisdictions on suspected American tax evaders and avoiders.

Capacity Building

The obligation on financial institutions to report all suspicious transactions relating to the proceeds of crime can only be effective if carried out by qualified personnel. They have to understand the nature of the transactions to be able to pick up the relevant ones. The role of our regulator should not be one of box ticking. Nor should they adopt a policy of wilful blindness simply because a bank is too big to fail or the transaction has a reputable frontage. The legislator has seen far ahead when it I had imposed a duty on all operators of the sector to lift the corporate veil and look at the substance of the transaction.

We must not also underestimate the link between taxation and terrorism. Michelle Gallant, from the Faculty of Manitoba, Canada, wrote in the *Journal of Financial Crime*, in its November 2007 issue, that the same strategies and tactics used to evade the payment of taxes are identified as the methods used to move terrorist finance and that with the increased interest in confronting terrorism, tax havens are coming under increasing scrutiny as the demons of terrorist finance, the sanctuaries and the conduits for the movement of blood money. Classically, these entities were principally criticized for depriving states of tax revenues, not for their possible function in facilitating terrorist finance. Terrorism helps to re-cast the tax havens as terrorist finance havens and serves to amplify the condemnations.

Finally, we must be extremely vigilant when it comes to the misuse of corporate vehicles, notably companies and trusts to mask criminal activities and hide assets and income. As is well documented criminals commit crimes and launder the proceeds not under their own names but through company or trusts format.

There is a need not only to ascertain the true identity of the beneficial ownership and control of these companies. Such information is crucial when an illicit activity is suspected.

Mauritius has proved over the years its willingness and determination to ensure that its financial sector satisfies standards of transparency and accountability, and good governance. Equally when it comes to exchange of information it has bound itself through tax exchange agreements to an open book policy. Its institutions are well equipped to deter, detect and punish crimes and prevent abuses of its financial sector.

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