

ETHICS
SANJAY BHUCKORY, SC

A. THE LAW

1. Sections 290 & 300, Criminal Code Act, 1838
2. Sections 51-55, Prevention of Corruption Act, 2002
3. Sections 3, 14, 16, 19, Financial Intelligence & Anti Money Laundering Act

B. CASES

1. Re Panglose (1991) MR 127
2. Re Geemul (1992) MR 140
3. Gooriah v. Attorney-General (1995) MR 311
4. Gooriah v. Attorney-General & Ors (1996) SCJ 311
5. Chinien v. Attorney-General & Anor (1999) MR 92
6. Chinien v. Attorney-General & Anor (2000) MR 195
7. Hurnam v. Pillay (2001) MR 183
8. Mauritius Bar Association v. Golamaully (2006) MR 72/88
9. Re Prakash Boolell, a barrister (2007) SCJ 82
10. Re Hurnam (2008) SCJ 17
11. Re Baboolall (2008) SCJ 218
12. Re Gungabissoon (2009) SCJ 37
13. Re Jagoo (2009) SCJ 307
14. Re Jagoo (2009) SCJ 318
15. Jadoo v. Attorney-General (2013) SCJ 265
16. Teeluckdharry v. Attorney-General (2013) SCJ 99/245
17. Antoine v. State (2009) SCJ 328
18. DPP v. Bholah (2011) UKPC 44

C. DISCLOSING PROFESSIONAL SECRET

Section 300 Criminal Code Act:

Any physician, surgeon, as well as any pharmacist, midwife, or any other person, who may, in consequence of his or her profession or vocation, become the depositary of any secret confided to him or her, and who, except when compelled by law, to become informer, reveals such secret, shall be punished by imprisonment for term not exceeding 2 years, and by a fine not exceeding 100,000 rupees.

1. Kramutally v. R (1989) MR 203
2. The State v. Bacha (1996) SCJ 79

D. CONFLICT OF INTEREST

9. Conflict of Interest

9.1 Without prejudice to paragraph 8.6, a barrister shall not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict or a significant risk of a conflict between the interests of those clients. He shall, in such a case, cease to act for both clients and he shall further cease to act whenever there is a risk of a breach of confidence or where his independence may be impaired.

9.2 A barrister shall refrain from acting for a new client if there is a risk of 'a breach of confidence placed in him by a former client or if the knowledge which he possesses of the former client would give an undue advantage to the new client.

9.3 Where a barrister has accepted a brief or instructions for any party in any proceedings, he shall not accept a brief or instructions in respect of an appeal or further stage of the proceedings for any other party without obtaining the prior consent of the original client if there may be a risk of a conflict of interest.

9.4 A barrister shall not act as such -

- (a) In any matter in which he is a party or has a significant pecuniary interest, without prejudice to his right to appear as a litigant in person;
- (b) either for or against any local authority or organisation of which he is a member;
- (c) against any company, firm or société of which he is a director, secretary, or officer or in which he has directly a significant pecuniary interest.

9.5 A barrister shall not accept any brief or instructions where the matter is one in which he has reason to believe that he is likely to be a witness. Where, however, having accepted a brief or instructions, it later appears that the barrister is likely to be a witness in the case on a material question of fact, he may only retire or withdraw if he can do so without jeopardising his client's interests.

E. PROFESSIONAL CONDUCT IN LAW FIRMS

Section 10D Law Practitioners Act:

1. An act or omission of a law practitioner may constitute professional misconduct even where it is only done or occurs while he provides legal services through a law firm.
2. A signing practitioner may be liable to disciplinary proceedings if the business of the law firm is conducted in a manner unbefitting the legal profession, unless such conduct can be attributed to the act or omission of a particular law practitioner.
3. A law practitioner or a legal consultant who is a partner, director or employee of a law firm shall not –
 - (a) hold shares in any other law firm;
 - (b) be a partner, director, employee of any other law firm, or foreign law firm or joint law venture, except the joint law venture in which his firm is a constituent;
 - (c) practise as a law practitioner or legal consultant on his own account, as the case may be; or
 - (d) after leaving a law firm, join as a partner, director, employee or legal consultant of another law firm, foreign law firm, or joint law venture within a period of 6 months, unless the law firm he is leaving gives its written consent.
4. Where a director of a law firm has reasonable grounds to believe that an act or omission of a law practitioner or a legal consultant who is a partner, director or employee of the law firm constitutes a breach of the relevant Code of Ethics or rules of professional practice, he shall forthwith report the matter –
 - (a) in the case of a barrister, to the Mauritius Bar Association;
 - (b) in the case of an attorney, to the Mauritius Law Society;
 - (c) in the case of a notary, to the Chamber of Notaries; or
 - (d) in the case of a legal consultant, to the Chief Justice.

F. MONEY LAUNDERING: FIAMLA

PART II - MONEY LAUNDERING OFFENCES

3. Money Laundering

(1) 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, shall commit an offence.

(2) 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 or the financing of terrorism shall commit an offence.

(3) In this Act, reference to concealing or disguising property which is, or in whole or in part, directly or indirectly, represents, the proceeds of any crime, shall include concealing or disguising its true nature, source, location, disposition, movement or ownership of or rights with respect to it.

Amended by [\[Act No. 14 of 2009\]](#)

4. Conspiracy to commit the offence of money laundering

Without prejudice to section 109 of the Criminal Code (Supplementary) Act, any person who agrees with one or more other persons to commit an offence specified in section 3(1) and (2) shall commit an offence.

5. Limitation of payment in cash

(1) Notwithstanding section 37 of the Bank of Mauritius Act 2004, but subject to subsection (2), any person who makes or accepts any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.

(2) Subsection (1) shall not apply to an exempt transaction.

Amended by [Act No. 34 of 2004]; [Act No. 15 of 2006]

6. Procedure

(1) A person may be convicted of a money laundering offence notwithstanding the absence of a conviction in respect of a crime which generated the proceeds alleged to have been laundered.

(2) Any person may, upon single information or upon separate information, be charged with and convicted of both the money laundering offence and of the offence which generated the proceeds alleged to have been laundered.

(3) In any proceedings against a person for an offence under this Part, it shall be sufficient to aver in the information that the property is, in whole or in part, directly or indirectly the proceeds of a crime, without specifying any particular crime, and the Court, having regard to all the evidence, may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, the proceeds of a crime.

Amended by [Act No. 27 of 2012]

7. Jurisdiction

Notwithstanding any other enactment, the Intermediate Court shall have jurisdiction to try any offence under this Act or any regulations made thereunder and may, on conviction, impose any penalty including forfeiture.

8. Penalty

(1) Any person who –

(a) commits an offence under this Part; or

(b) disposes or otherwise deals with property subject to a forfeiture order under subsection (2),

shall, on conviction, be liable to a fine not exceeding 2 million rupees and to penal servitude for a term not exceeding 10 years.

(2) Any property belonging to or in the possession or under the control of any person who is convicted of an offence under this Part shall be deemed, unless the contrary is

proved, to be derived from a crime and the Court may, in addition to any penalty imposed, order that the property be forfeited.

(3) Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under this Part.

PART IV - REPORTING AND OTHER MEASURES TO COMBAT MONEY LAUNDERING

14. Reporting obligations of banks, financial institutions, cash dealers and members of relevant professions or occupations

(1) Every bank, financial institution, cash dealer or member of a relevant profession or occupation shall, as soon as practicable, but not later than 15 working days, make a report to the FIU of any transaction which the bank, financial institution, cash dealer or member of the relevant profession or occupation has reason to believe may be a suspicious transaction.

(1A) Where the FIU receives a report under subsection (1), it shall provide feedback in writing on the outcome of the report to the bank, financial institution, cash dealer or member of the relevant profession or occupation and to the relevant supervisory authority.

(2) Nothing in subsection (1) shall be construed as requiring a law practitioner to report any transaction of which he has acquired knowledge in privileged circumstances unless it has been communicated to him with a view to the furtherance of a criminal or fraudulent purpose.

Amended by [\[Act No. 27 of 2013\]](#)

15. Lodging of reports of suspicious transactions

(1) Every report under section 14 shall be lodged with the FIU.

(2) For the purposes of this Part, every report shall be in such form as the FIU may approve and shall include –

(a) the identification of the party or parties to the transaction;

(b) the amount of the transaction, the description of the nature of the transaction and all the

(1) circumstances giving rise to the suspicion;

- (c) the business relationship of the suspect to the bank, financial institution, cash dealer or member of relevant profession or occupation, as the case may be;
 - (d) where the suspect is an insider, any information as to whether the suspect is still
 - (2) affiliated with the bank, financial institution, cash dealer, or member of a relevant profession or occupation, as the case may be;
 - (e) any voluntary statement as to the origin, source or destination of the proceeds;
 - (f) the impact of the suspicious activity on the financial soundness of the reporting institution or person; and
 - (g) the names of all the officers, employees or agents dealing with the transaction.
- (3) No report of a suspicious transaction shall be required to be disclosed, or be admissible as evidence, in any court proceedings.

Amended by [\[Act No. 27 of 2012\]](#); [\[Act No. 27 of 2013\]](#)

16. Legal consequences of reporting

- (1) No person directly or indirectly involved in the reporting of a suspicious transaction under this Part shall inform any person involved in the transaction or to an unauthorised third party that the transaction has been reported or that information has been supplied to the FIU pursuant to a request made under section 13(2) or (3).
- (1A) Notwithstanding subsection (1), any supervisory authority may, for the sole purpose of discharging its compliance functions, request the FIU to provide it with a copy of the suspicious transaction report made under section 14(1).
- (2) No proceedings shall lie against any person for having -
- (a) reported in good faith under this Part any suspicion he may have had, whether or not the suspicion proves to be well founded following investigation or prosecution or any other judicial action;
 - (b) supplied any information to the FIU pursuant to a request made under section 13(2) or (3).
- (3) No officer who receives a report made under this Part shall incur liability for any breach of confidentiality for any disclosure made in compliance with this Act.
- (4) For the purposes of this section -

“officer” includes a director, employee, agent or other legal representative;

“unauthorised third party” includes any of the supervisory authorities.

Amended by [Act No. 34 of 2003]; [Act No. 27 of 2013]

17. Other measures to combat money laundering

Without prejudice to section 3(2), every bank, financial institution, cash dealer or member of a relevant profession or occupation shall –

- (a) verify, in such manner as may be prescribed, the true identity of all customers and other persons with whom they conduct transactions;
- (b) keep such records, registers and documents as may be required under this Act or by regulations;
- (c) upon a Court order, make available such records, registers and documents as may be required by the order; and
- (d) put in place appropriate screening procedures to ensure high standards when recruiting employees.

Amended by [Act No. 14 of 2009]; [Act No. 27 of 2012]

18. Regulatory action in the event of non-compliance

(1) (a) The supervisory authorities may issue such codes and guidelines as they consider appropriate to combat money laundering activities and terrorism financing, to banks, cash dealers or financial institutions, subject to their supervision.

(b) The Bank of Mauritius shall supervise and enforce compliance by banks and cash dealers with the requirements imposed by this Act, regulations made under this Act and such guidelines as it may issue under paragraph (a).

(c) The Financial Services Commission shall supervise and enforce compliance by financial institutions with the requirements imposed by this Act, regulations made under this Act and such guidelines as it may issue under paragraph (a).

(2) Where it appears to the Bank of Mauritius that any bank or cash dealer subject to its Supervision has failed to comply with any requirement imposed by this Act or any regulations applicable to that bank or cash dealer and that the failure is caused by a negligent act or omission or by a serious defect in the implementation of any such requirement, the Bank of Mauritius, in the absence of any reasonable excuse, may -

(a) in the case of a bank, proceed against it under sections 11 and 17 of the Banking Act 2004 on the ground that it is carrying on business in a manner which is contrary to the interest of the public;

(b) in the case of a cash dealer, proceed against him under section 17 of the Banking Act 2004 on the ground that he is carrying on business in a manner which is contrary to the interest of the public.

Amended by [Act No. 14 of 2005]

(3) Where it appears or where it is represented to the Financial Services Commission that any financial institution has refrained from complying or negligently failed to comply with any requirement of this Act or regulations, the Financial Services Commission may proceed against the financial institution under section 7 of the Financial Services Act 2007 on the ground that it is carrying on its business in a manner which is contrary or detrimental to the interest of the public.

(3A) A regulatory body shall supervise and enforce compliance by members of a relevant profession or occupation with the requirements imposed by this Act, the regulations made under this Act and such guidelines as may be issued under section 10(2) (ba) and (c).

(4) Where it appears or is represented to any regulatory body that any member of a relevant profession or occupation over which it exercises control has refrained from complying or negligently failed to comply with any requirement of this Act or regulations, the regulatory body may take, against the member concerned, any action which it is empowered to take in the case of professional misconduct, or dishonesty, malpractice or fraud, by that member.

Amended by [Act No. 34 of 2003]; [Act No. 14 of 2005]; [Act No. 27 of 2012]

19. Offences relating to obligation to report and keep records and to disclosure of information prejudicial to a request

(1) Any bank, cash dealer, financial institution or member of a relevant profession or occupation or any director, employee, agent or other legal representative thereof, who, knowingly or without reasonable excuse –

(a) fails to –

(i) supply any information requested by the FIU under section 13(2) or 13(3) within the date specified in the request;

(ii) make a report under section 14; or

(iii) verify, identify or keep records, registers or documents, as required under section 17;

(b) destroys or removes any record, register or document which is required under this Act or any regulations;

(c) warns or informs the owner of any funds of any report required to be made in respect of any transaction, or of any action taken or required to be taken in respect of any transaction, related to such funds; or

(d) facilitates or permits the performance under a false identity of any transaction falling within this Part, shall commit 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.

(2) Any person who -

(a) falsifies, conceals, destroys or otherwise disposes of or causes or permits the falsification, concealment, destruction or disposal of any information, document or material which is or is likely to be relevant to a request to under the Mutual Assistance in Criminal and Related Matters Act 2003; or

(b) knowing or suspecting that an investigation into a money laundering offence has been or is about to be conducted, divulges that fact or other information to another person whereby the making or execution of a request to under the Mutual Assistance in Criminal and Related Matters Act 2003 is likely to be prejudiced, shall commit 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.

Amended by [Act No. 15 of 2006]; [Act No. 34 of 2003]; [Act No. 27 of 2012]; [Act No. 27 of 2013]

G. PROPERTY TRACKING: PREVENTION OF CORRUPTION ACT

51. Orders to search certain premises

(1) Subject to subsections (3) and (4), where, upon notification or after consultation with the FIU, the Commission has reasonable grounds to believe that –

(a) a bank, financial institution or cash dealer has failed to keep a business transaction record as required under section 17 of the Financial Intelligence and Anti-Money Laundering Act 2002;

(b) a bank, financial institution, cash dealer or a member of a relevant profession or occupation, has failed to report any suspicious transaction as required under section 14 of the Financial Intelligence and Anti-Money Laundering Act 2002; or

(c) a bank, financial institution, cash dealer or a member of a relevant profession or occupation is in possession of documents, books or records or other information which may assist the Commission in an investigation,

the Commission may apply to a Judge in Chambers for an order allowing the Commission, or any officer delegated by it, to enter premises belonging to, or in the possession or control of, the bank, financial institution, cash dealer or member of a relevant profession or occupation and to search the premises and remove therefrom any document or material.

(2) An application under subsection (1) shall be supported by an affidavit by the Commissioner disclosing the reason why an order is sought under this section.

(3) No order shall issue under subsection (1) with respect to a law practitioner unless the Judge is satisfied that, having regard to the need to protect legal professional privilege, it is in the public interest that the order be made without requiring the law practitioner to show cause why the order should not be made.

54. Property tracking and monitoring order

(1) Where, for the purposes of an investigation under section 46, the Commission -

(a) needs to determine whether any property belongs to, is in the possession or under the control of, a person; or

(b) has reasonable ground for suspecting that a person has committed, is committing, or is about to commit an offence which the Commission has power to investigate,

the Commission may issue a directive under subsection (2) to the Director of the Corruption Investigation Division.

(2) A directive under subsection (1) may direct-

(a) that any document relevant to the -

- (i) identification, location or quantification of any property; or
- (ii) identification or location of any document necessary for the transfer of any property,

belonging to, or in the possession or under the control of, the person named in the directive be delivered forthwith to the Director of the Corruption Investigation Division;

(b) that a bank, financial institution, cash dealer or member of a relevant profession or occupation forthwith produces to the Director of the Corruption Investigation Division, all information obtained by it about any business transaction conducted by or for that person with it during such period before or after the date of the order as the Judge may direct.

55. Enforcement of property tracking and monitoring order

A Judge in Chambers may, on good cause shown by the Commission that any person is failing to comply with, is delaying or is otherwise obstructing a directive made in accordance with section 54, order that the Commission or any officer authorised by it may enter any premises of the bank, financial institution, cash dealer or member of a relevant profession or occupation, search the premises and remove any document, material or other thing therein for the purposes of executing such order.