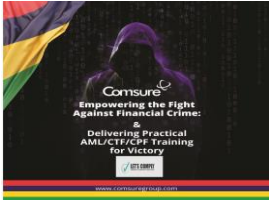


Usaama Dauharry  
Latest updates in the Mauritian AML/CFT  
Framework – Guard rails or Roadblocks?  
AUGUST 30 2024



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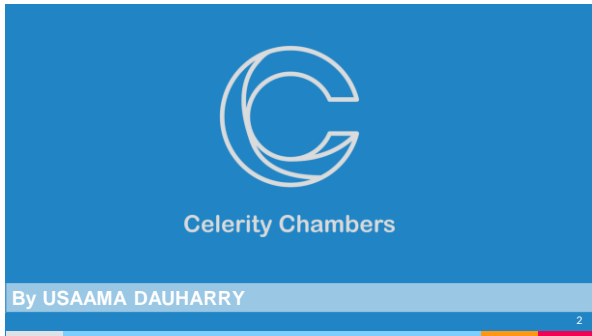
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### Course Outline

- ▷ Part I – General Observations on the amendments in the AML/CFT Framework
- ▷ Part II – The Beneficial Ownership Regime
- ▷ Part III – Increased Supervisory Power of Supervision of the FSC
- ▷ Part IV – Non-Profit Organizations: Target Achieved?
- ▷ Part V – International Reach of the AML/CFT Framework

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Amended legislations by the –

The Anti-money Laundering and Combatting The Financing Of Terrorism and Proliferation (Miscellaneous Provisions) Act 2024



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## Amendment to Companies Act

### NEED TO KNOW –

s11(3) The Registrar shall keep a Beneficial Ownership Register which shall –  
 (a) contain the information required under section 91(3A)(a)(iii) and such other information as the Registrar may determine; and  
 (b) be accessible to all competent authorities and such other public sector authority as may be prescribed.

### What is s. 91(3A)(a)(ii) and what information to include?

- (A) the full name and usual residential address of the beneficial owner or, in case no natural person is identified or where there is a nominee, the full name and the usual residential address of the nominee, if applicable, and the ultimate beneficial owner;
- (B) the National Identification Number or passport number, as applicable;
- (C) the citizenship or nationality, as applicable;
- (D) an ownership structure identifying the ultimate beneficial owner; and
- (E) such other information as may be prescribed

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## Amendment to Companies Act

### GOOD TO KNOW –

- 91(1). Company to maintain share register
- ▷ (1) A company shall maintain a share register which shall record the shares issued by the company and which shall state...
    - ▷ (i) where the shares are held by a nominee, the names in alphabetical order and the last known addresses of the beneficial owners or the ultimate beneficial owners and the information required under subsection 91(3A)(a)(iii), giving to the shareholder instructions to exercise a right in relation to a share either directly or through the agency of one or more persons;
  - ▷ Garbage in Garbage Out : Similar information as provided and kept at the Registrar

### New Additions of subsections: 91(3A)(a)(i) and (ii) as follows:

- (3A) (a) (i) A company shall, at all times, identify its beneficial owner or ultimate beneficial owner and, where applicable, any nominee.
- (ii) A company shall record the information under subparagraph (i) in a separate register.

### What does this mean? Should a Company have both;

- The Share Register containing information about the UBO, pursuant to 91(3)(a)(i), and
- A Separate Register to record information of the same UBO under section 91(3A)(ii)?



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### Double Trouble - Are We Overlapping Regulations in the Companies Act and FIAMLA?

GOOD TO KNOW -

FIAML Regulations -	Companies Act
6.(1) Where the customer is a legal person, the reporting person shall identify and take reasonable measures to verify the identity of beneficial owners by obtaining information on— (a) the identity of all the natural persons who ultimately have a controlling ownership interest in the legal person;	91(1) A company shall maintain a share register...which shall state... (i) where the shares are held by a nominee, the names in alphabetical order and the last known addresses of the beneficial owners or the ultimate beneficial owners and the information required under subsection (3A)(a)(iii)...
(2) A reporting person shall keep records of the actions taken under paragraph (1) as well as any difficulties encountered during the verification process.	91(3A) (a) (i) A company shall, at all times, identify its beneficial owner or ultimate beneficial owner and, where applicable, any nominee. (ii) A company shall record the information under subparagraph (i) in a separate register.

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### Amendment to Companies Act

GOOD TO KNOW

in section 190, in subsection (6) -

(a) Notwithstanding any other enactment, a company shall appoint ~~at least one officer~~ **an authorised person and his alternate** who shall be ordinarily resident in Mauritius, for providing all basic information and available beneficial ownership information to competent authorities upon request.

► **Implications?** - More clarity to the law, and all Companies shall now appoint an authorised person, as well as an alternate;

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Part III- Increased Supervisory Powers of the FSC

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# New Inspection Powers: Off-Site Access and Expanded Scope

## NEED TO KNOW

### Financial Services Act 2007 – Section 43(1)

The Commission may, at such time, at such place and in such other manner as it may determine, cause to be carried out an inspection into the business activities of a licensee and an audit of its books and records to check whether the licensee

- (a) is complying or has complied with the AML/CFT legislation, the Prevention of Terrorism Act, and any applicable enactment, or guidelines or the conditions of its license, authorization, or registration; or
- (b) satisfies criteria or standards set out in or made under any of the relevant Acts under which it is regulated, or any regulations made thereunder.

Addition of Law: Section 43(1)(e) grants the FSC the power to:

- (e) request the licensee to provide it with off-site access to such information and systems as may be required for the conduct of the inspection.

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## FSC's Expanded Inspection Powers: Opportunities and Challenges Dissected

- ▶ **Enhanced Inspection Methods:** The FSC can now conduct inspections remotely, eliminating the need for physical visits to licensees' premises.
- ▶ **Flexible Approaches:** The phrase "in such manner as it may determine" empowers the FSC to choose from on-site visits, off-site data access, virtual audits, and other methods.
  - **Pros:** Flexibility enables the FSC to address emerging risks more effectively.
  - **Cons:** Uncertainty arises for licensees regarding inspection expectations, potentially leading to over-preparation, oversharing or fears of overreach.
- ▶ **Data Privacy Concerns: Efficiency vs. Security:** Off-site access improves efficiency but raises data privacy and cybersecurity issues.
  - **Recommendations:** Licensees must implement strong safeguards, and the FSC should provide clear guidelines to prevent data breaches and unauthorized access.

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## FSC's New "Inspection" Power: Intensity

### GOOD TO KNOW -

#### Section 43A of the Financial Services Act

**Subsection (1):** The amendment replaces "on-site" with "intensity of an inspection,"

The frequency of ~~an on-site~~ and intensity of an inspection carried out under section 43 shall be determined on the basis of, but not limited to...

#### "Intensity" – Risk Based:

The FSC can adjust the intensity of inspections based on an institution's risk profile.



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### FSC's New "Investigative" Power - Failure to Attend an Investigation

#### NEED TO KNOW

Existing Power- Section 44(3)(e)	Additional Power - (Section 44(c))
Any person <b>who intentionally</b> obstructs an investigator, when acting in the execution of his powers under this section, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years	Any person who fails, <b><i>without reasonable excuse, to attend before an investigator when summoned</i></b> in accordance with subsection (3)(e), shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

#### Food for Thought:

- Is it fair to impose same level of criminal liability for non-attendance at an investigation, equating it to intentional obstruction?
- Does this broaden the scope of liability beyond what is reasonable?

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### FIAMLA – FIU's Addition of Supervisory Power

#### GOOD TO KNOW

#### Section 19K of FIAMLA – Addition of Power

*A regulatory body may, at any time, and in such manner as it may determine, cause to be carried out on the business premises of a member falling under its purview or at such other place as it may determine, an inspection and an audit of its books and records to verify whether the member is complying or has complied with this Act or the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Act, or any regulations made or guidelines issued under those Acts.*

- What is "in such manner as it may determine?"



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### FIU's New Subcommittees and Committees -

#### Section 19AA (3A) of FIAMLA

*The Core Group may set up any subcommittee to initiate and coordinate all preparations for the business of the Core Group and perform such other functions as may be necessary to assist the Core Group in the discharge of its functions under the FIAMLA.*

- ▷ Our Expectations:
  - ▷ New subcommittees of the Core Group and committees formed by the Minister are expected to strengthen compliance under the Act.
  - ▷ Subcommittees may focus on specialised areas like sector-specific anti-bribery efforts, monitoring high-risk industries, or coordinating international compliance. These bodies will help the Core Group stay responsive to emerging threats and streamline compliance efforts.

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### Implementation of the FATF Recommendation



**A Guide to Non-Profit-Making Organization  
(Foundations and Companies Limited by Guarantee)**

Registrar of Companies/Foundations

Issued by  
Companies and Business Registration Department

**Scope of the Risk Assessment**

The risk assessment identified the following types of NPOs as meeting the FATF definition of NPOs.

- > Associations
- > Charitable Foundations
- > Charitable Trusts
- > Companies Limited by guarantee

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### Company Limited by Guarantee and Financial Terrorism

- GOOD TO KNOW**
- ▶ New Law: Section 269A: Risk-Based Approach & Registrar's Powers
  - Objective: Enforce terrorism financing prevention in companies limited by guarantee.
  - Registrar's Powers:
    - Conduct risk-based inspections.
    - Identify, assess, and periodically review terrorism financing risks.
    - Issue guidelines and directives to ensure compliance.
    - Require information or statistical data from companies.
  - Implementation: Aligns with FATF recommendations to protect non-profits from terrorism financing.
  - Penalties: Non-compliance can result in fines up to MUR 1 million and imprisonment up to 5 years.
  - Next Steps: Anticipated guidelines and directives from the Registrar in line with FATF.
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### Beneficial Ownership Registers – Charitable Foundations

▷ Section 28 of the Foundations Act

(a) The Registrar shall maintain a Beneficial Ownership Register which shall contain the information required under section 36(1A)(ii).

(b) The Beneficial Ownership Register shall be accessible to all competent authorities and such other public sector authority as may be prescribed.



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## Beneficial Ownership Registers

▷ Implications on Foundations

- Foundations must maintain accurate and up-to-date information on their beneficial owners, requiring them to implement mechanisms for continuous monitoring and updates, potentially increasing administrative burdens.
- Over-compliance may deter foreign investors who value privacy. Disclosure of personal details could make some reconsider Mauritius as a base.
- Balancing transparency with privacy is crucial. The register's accessibility raises concerns about data security and confidentiality.

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## Risk Assessments and Compliance of Charitable Foundations

▷ Section 30 of the Foundations Act

- **Subsection (3)**
  - Charitable Foundations must implement terrorism financing prevention programs commensurate with their risk exposure, size, and nature of business.
- **Subsection (4)**
  - The Registrar may conduct risk-based inspections and take necessary measures to assess terrorism financing risks.
- **Subsection (6)**
  - The Registrar has the authority to issue guidelines, directives, and impose administrative sanctions, including penalties, cease and desist orders, and removal from the register.
- **Subsection (7)**
  - Non-compliance with guidelines or orders may result in fines up to one million rupees and imprisonment for up to 5 years.

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### FIAMLA - Introduction of Foreign Bribery and the OECD Convention

**GOOD TO KNOW**

Section 19AA of FIAMLA - OECD Convention

▷ The functions of the Core Group shall: *oversee and coordinate all matters in relation to, including accession to and implementation of, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and its 2021 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions;*

▷ What is the OECD Convention?  
 This convention is a critical international agreement that requires signatory countries to criminalise the act of bribing foreign public officials and to implement stringent measures to prevent, detect, and prosecute such offences.

**Expectation from Core Group:** to develop detailed guidelines for financial institutions, providing clear instructions on how to implement anti-bribery measures in accordance with OECD standards.

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### Freezing of Assets – “Internationally” Outreaching Powers

**NEED TO KNOW**

Addition of Wording to Financial Services Act s50(1):

▷ (1) *Where, on an application by the Commission, the Judge in Chambers is satisfied that the Commission offence under the relevant Acts or has been involved in a financial crime in Mauritius or another jurisdiction, the Judge in Chambers may order –*

- ▷ Scenario:
  - John, a businessman having his assets in Mauritius, is accused of financial misconduct in another country but hasn't been tried or convicted.
  - Implication: The FSC can request to freeze John's assets in Mauritius solely based on accusations from a foreign jurisdiction.

▷ Concern: Does this approach lead to unjust asset freezing based on unproven accusations abroad, potentially violating due process?

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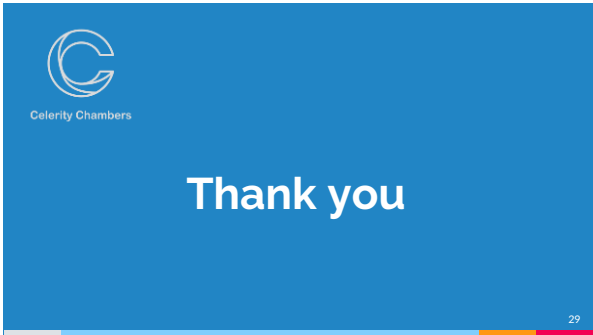
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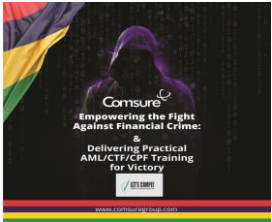
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COMSURE AND LET'S  
COMPLY THANK YOU FOR  
YOUR SUPPORT



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