**Inputs – Promotion and Protection of Human Rights and Fundamental freedoms while encountering terrorism**

1. **The mandate of relevant actors, bodies and initiatives, their governance structure as well as the rules and mechanisms governing their functioning;**

A Counter Terrorism Unit (CTU) has been set up for the collection and analysis all terrorism- related intelligence which is disseminated to relevant authorities for appropriate actions. The other main bodies engaged in counterterrorism financing are the Financial Services Commission(FSC) and the Financial Intelligence Unit(FIU).

**The Legal Framework in Mauritius are:**

* 1. **The Prevention of Terrorism Act 2002 - "POTA"**

The Prevention of Terrorism Act (POTA) aims at combating terrorism in general and empowers our legal system to adequately deal with the phenomenon of terrorism. This Act –

1. provides for the prevention and suppression of terrorism;
2. reinforces intelligence gathering, investigatory and enforcement measures relating to terrorism offences; and
3. implements the international commitments of the Republic of Mauritius in respect of terrorism.
4. the mandate of the relevant actors and bodies for counterterrorism are contained within part IV of the POTA (inserted by s.10 of Act 27 of 2016 w.e.f 9 January 2017)

***1.1.1 Counter Terrorism Unit***

The Counter Terrorism Unit (CTU) has been set up within the Prime Minister's Office by virtue of Section 18 of the Prevention of Terrorism Act 2002.

**Functions of Counter Terrorism Unit (section 19 of POTA)**

*The Counter Terrorism Unit shall* –

1. *) collect, collate and analyse terrorism-related intelligence;*
2. *disseminate* to *investigatory authorities such intelligence concerning any suspicious person or activity or terrorism-related offence;*
3. *transmit terrorism-related information* to *the Commissioner;*
4. *educate the public against terrorism;*
5. *enlist and foster public support in combating terrorism.*

**Staff of Counter Terrorism Unit (Section 20 of POTA)**

*(1) The Secretary* to *Cabinet and Head of the Civil Service may, on the recommendation of the Prime Minister's Office and subject* to *the Public Service Commission Regulations* –

*(a) designate such public officers as may be necessary* to *assist the Counterterrorism Unit;*

*(b) enlist, as may be necessary, the services of suitable counterterrorism experts* to *advise the*

(2) *Any officer designated or expert enlisted under subsection* (1) *shall be under the administrative control of the Director.*

There is also the Prevention of Terrorism (Special Measures) Regulations 2003 in the Counterterrorism context.

**1.2 The Financial Intelligence and Anti-Money Laundering Act 2002 - "FIAML Act"**

The principal anti-money laundering legislation in Mauritius is the FIAML Act which repealed the Economic Crime and Anti-Money Laundering Act 2000. The offences of money laundering are contained within Part II and part iv of the FIAML Act and may be summarised as follows:

1. **Part II of The Financial Intelligence and Anti-Money Laundering Act (FIAML Act)**

***Section 3(1) (a)*** Engaging in a transaction involving property which represents the proceeds of any crime while suspecting or having reasonable grounds to suspect that the property derives from any crime.

***Section 3(1) (b)*** Receiving, possessing, concealing, disguising, transferring, converting, disposing or   
removing from or bringing into Mauritius property which represents the proceeds of any crime while   
suspecting or having reasonable grounds to suspect that the property derives from any crime. Reference   
to property within both offences means any property (of any kind, nature or description, whether moveable or immoveable, tangible or intangible) which is in whole or in part, directly or indirectly the proceeds of any crime. The term is also defined under Section 2 of the FIAML Act. Crime includes any crime in Mauritius as defined under Section 2 of the FIAML Act, any activity carried on outside Mauritius and any act or omission which occurred outside Mauritius (whether or not it is regarded as a crime in the country in which it is committed), which if it had taken place in Mauritius would have constituted a crime in Mauritius.

**(b)Part IV of The Financial Intelligence and Anti-Money Laundering Act (FIAML Act)**

**(i)Suspicious Transaction Reporting**

Section 14 of the FIAML Act imposes an obligation upon all Licensees to report all suspicious transactions to the Financial Intelligence Unit ("FlU"). Licensees should note that failure to report a suspicious transaction is an offence under the FIAML Act. Failure to report can render a person liable to prosecution for the offence of failing to report under section 19 of the FIAML Act. By prohibiting proceedings against any Licensee that reports in good faith or that provides information to the FlU upon the request of the latter, section 16 of the FIAML Act affords Licensees protection against liability resulting from making a suspicious transaction report. This protection is against both civil and criminal proceedings.

**(ii)** **Tipping Off**

Section 19 (l)(c) of the FIAML Act provides for the offence of 'tipping off' - which offence is committed when a person, knowingly or without reasonable excuse, warns or informs the owner of any funds of any report or any action that is to be taken in respect of any transaction concerning such funds.

***1.2.1 The Financial Intelligence Unit (FlU)***

The Financial Intelligence Unit (FIU) was established under section 9 of the Financial Intelligence and Anti-Money Laundering (FIAML)Act 2002.1t is the central agency for the request, receipt, analysis and dissemination of financial information regarding suspected proceeds of crime and alleged money laundering offences as well as the financing of any activities or transactions related to terrorism to relevant authorities.

The Financial Intelligence Unit (FlU) also issues guidelines to banks, financial institutions, cash dealers and members of relevant professions on the manner in which a suspicious transaction report should be made. In this respect, there is a cooperation between the FlU and domestic investigatory authorities and exchange of information with overseas FlU s and comparable bodies.

Furthermore, the Financial Intelligence Unit (FlU) is assigned to conduct research on cases and consequences of money laundering and terrorist financing through participation in projects. The FlU is also a member of the National Committee on Anti-MoneyLaundering/Combatting Terrorist Financing (AML/CFT) and is involved in instruction and awareness creation on AML/CFT issues.

**1.3 The Financial Services Act 2007 -"FS Act"**

The Financial Services Act (FS Act) regulates the conduct of business by Licensees and makes provisions for the regulatory and supervisory powers of The Financial Services Commission, (FSC). Pursuant to section 7(1) of the FS Act, the FSC has such powers as necessary to enable it to discharge its functions, including those which arise under section 7(1) and section 43 of the FS Act. Further, section 18 (3) of TheFinancial Intelligence and Anti-MoneyLaundering Act **(**FIAML Act) empowers the Commission to proceed against a Licensee under section 7 of the FS Act on the grounds that it is carrying on its business in a manner which is contrary or detrimental to the interests of the public. For the purposes of the exercise of this power, the FSC will have regard to the extent to which a Licensee takes positive action to protect itself against the threat of money laundering and terrorist financing by complying with the ***CODE ON THE PREVENTION of MONEYLAUNDERING & TERRORIST FINANCING* (**Issued under Section 7(1)(a) of the Financial Services Act 2007 and Section 18(1)(a) of the Financial Intelligence and Anti-Money Laundering Act 2002) March 2012 [Updated as at 25 May 2017].

**1.3.1 The Financial Services Commission**

The Financial Services Commission ('FSC') has the mandate to establish norms and standards in order to   
preserve and maintain the good repute of Mauritius in the financial services sector and inter alia ensure   
that the financial services sector in general, and its Licensees in particular, are not used for money laundering and **terrorist financing purposes.**

Pursuant to section 18(1)(c) of the Financial Intelligence and Anti-Money Laundering Act 2002 ('FIAML Act'), the FSC has a statutory duty to supervise and enforce compliance by its Licensees in respect of the requirements imposed under the FIAML Act and Regulations or guidelines which are made under the FIAML Act. The FSC first issued its Codes on the Prevention of Money Laundering and Terrorist Financing in April 2003, which were consistent with the revise Financial Action Task Force (FATF) 40 Recommendations and Eight Special Recommendations on Terrorist Financing and national AML/CFT strategies. Following a number of developments on both national and international fronts, the Codes of April 2003 was subsequently revised in July 2005. The legislative framework has been set by the FIAML Act, followed by the Financial Intelligence and Anti-Money Laundering Regulations 2003 ('FIAML Regulations') which came into operation in June 2003. The FIAML Act has been amended over the years to ensure compliance with international standards. Since September 2007, the FSC is governed by the Financial Services Act 2007 ('FS Act'). Together with the Insurance Act 2005 and the Securities Act 2005 (both of which came into operation in September 2007), the FS Act has brought about a streamlined and consolidated regime for financial services and a new conceptual approach to the global business sector.

**1.3.2 Purpose and Status of the Code on the prevention of Money Laundering (ML) and Terrorist Financing (TF)**

In terms of regulatory hierarchy, the Code is a form of 'Guidelines' issued by the FSC pursuant to its   
functions and powers under sections 6(c) and 7(1) (a) of the FS Act and section 18(1) (a) of the FIAML   
Act. The Code is intended to assist Licensees to comply with the obligations contained within the FIAML   
Act. The Code is designed to serve as a statement of minima criteria and to describe operational practices expected of Licensees. The extent to which a Licensee is able to demonstrate adherence to this Code will be considered by the FSC in the supervision of Licensees and in particular in the conduct of its compliance visits. As such, a Licensee's commitment to prevent the wrongful exploitation of its services by the implementation of policies, procedures, staff training and the creation of an effective internal compliance culture will be directly relevant to its ongoing status as a Licensee and to the assessment of the fitness and properness of its principals.

**1.4“Non-Statutory Investigative Bodies set up within the Police Force”**

However, non-statutory investigative bodies have been set up "within the Police Force in the context of counter-terrorism. Such bodies are the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Unit and the Terrorism Investigation Cell. They represent "soft law" as they are aimed at combating terrorism offences under the Prevention of Terrorism Act 2002. Both the AML/CFT Unit and the Terrorism Investigation Cell are headed by a Chief Inspector of Police.

The Anti-Money Laundering/Combating the Financing of Terrorism AML/ CFT unit investigate into all cases of financing of terrorism and other financial wrongs including money laundering, Ponzi Schemes (with national and international ramifications), and other fiscal frauds involving massive monetary losses.

1. **Rules governing the standard-setting and other processes leading to the establishment of soft law instruments and standards. I am particularly interested in information on ways to ensure the inclusiveness and transparency of such processes, such as through meaningful consultation of relevant stakeholders, including domestic, regional and international human rights mechanisms, civil society organizations and other actors with pertinent expertise;**

On the international front, the Financial Action Task Force (FATF) completed the revision of the   
Forty Recommendations, resulting in a more comprehensive framework for combating money laundering and terrorist financing. For instance, in February 2007, the FATF adopted the revised AML/CFT Methodology *2004****(The Anti-Money Laundering/Combating Terrorist Financing (AML/CFT)Methodology 2004,*** *including the assessment criteria, is designed to guide the assessment of a country's compliance with the international AML/CFT standards as contained in the FATF Forty Recommendations and the FATF Nine Special Recommendations on Terrorist Financing (referred to jointly as the FATF Recommendations). The criteria within this Methodology do not expand upon* or *modify the Forty Recommendations and Nine Recommendations which constitute the international standard. The Methodology is a key tool to assist assessors when they are preparing AML/CFT detailed assessment reports/mutual evaluation reports. It will assist them in identifying the systems and mechanisms developed by countries with diverse legal, regulatory and financial frameworks, in order to implement robust AML/CFT systems. The Methodology is also useful for countries that are reviewing their own systems, including in relation to technical assistance projects)*

In 2007, Mauritius underwent a second Financial Sector Assessment Program (FSAP) of its AML/CFT   
regime using the AML/CFT assessment methodology 2004, as updated in February 2007, to assess   
Mauritius's level of compliance with the FATF 40+9 recommendations. Further to the changes on both local and international fronts and with a view to adopting the recommendations made in the FSAP report 2007, the FSC initiated a review of the Codes. A major step in this review was to harmonise the requirements of the three Codes issued and come up with a single comprehensive Code on AML/CFT for all Licensees, with specific sectoral guidance as necessary. This approach is in line with the consolidated licensing and supervisory framework put in place by the FS Act.

Mauritius fully supports international initiatives to prevent money laundering and to combat terrorist financing. The present Code takes account of all relevant international standards, FSAP Recommendations and national commitments which include-

* the Financial Action Task Force's (FATF) Revised Forty Recommendations and the FATF's Nine   
  Special Recommendations on Terrorist Financing(ln February 2012, the FATF has issued the revised Forty Recommendations, i.e. the International Standards on combating money laundering andthe financing of terrorism &proliferation)
* the Basel Committee's Paper on Customer Due Diligence, (which has been endorsed by the FATF);
* IOSCO's Principles on Client Identification and Beneficial Ownership for the Securities Industry;
* IAIS' Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities;
* the recommendations made by IMF/World Bank Assessors in FSAP 2007 on how certain aspects of the system could be strengthened, using AML/CFT Methodologies of 2004;
* balancing the regulatory burden with the effectiveness of the requirements;
* providing a level playing field to all Licensees and eliminating unnecessary duplication of   
  obligation;
* aligning with other Codes issued to Financial Institutions i.e. Guidance Notes issued by Bank of Mauritius to ensure one form of language tor enforceable measures and for guidance.

1. **Ways in which international law norms and standards are incorporated in the work of these actors, bodies and initiatives, with particular focus on international human rights law, as well as international humanitarian law and refugee law, if and when relevant to the standard-setting activities in question. Pertinent information includes ways in which such instruments and standards incorporate human rights benchmarking, both when it comes to the standard-setting process as well as dissemination and implementation of resulting standards; as well as on mechanisms for monitoring, evaluation and oversight of the human rights impact of their implementation and use.**

**3.1 The Constitution of Mauritius**

The Constitution of Mauritius, a written document bequeathed to Mauritius by an Order-in-Council   
of the British Government at the time of independence in 1968, is based on the Westminster model   
and rests on two fundamental tenets: the rule of law and the doctrine of the separation of powers. It is provided under Section 1 of the Constitution that the Republic of Mauritius shall be a "sovereign   
democratic State", this being clearly in consonance with the fundamental rights and freedoms guaranteed under Chapter II of the Constitution which is largely inspired from the European Convention on Human Rights. Those fundamental rights and freedoms include the right to life, the right to personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection of the law, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement and protection from discrimination.

Section 7(1) of the Constitution guarantees the right to freedom from torture, inhuman or degrading   
punishment or other such treatment thus, placing the enforcement of the provisions of the Convention on Torture, Inhuman or Degrading Treatment or Punishment into the ambit of the jurisdiction of the Supreme Court. The Constitution itself makes provision under Section 17 for redress to be afforded by the Supreme Court to any individual whose rights under Chapter 11 have been, are being or are likely to be contravened. In addition, any law which violates the Constitution will be struck down by the Supreme Court. The Supreme Court has on 9th June 2004 held in the case of**Police v Abdool Raschid Khoyratty** that Section 5(3A) of the Constitution, in so far as it provides for automatic denial of bail to a person arrested for a drug offence when he has already been convicted of a drug offence, or arrested or detained for a drug offence whilst on bail for a drug offence, is void. It must be noted that the Constitution (Amendment) Act 2002 ***extended Section 5(3A) of the Constitution* to *offences related* to *terrorism.***

**3.2 The Convention for the Suppression of the Financing of Terrorism Act 2003**

The objective of this Act, which came into force in 2003, is to give force of law to the International   
Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, endorsed by Mauritius. The Act provides for offences relating to the financing of terrorism as well as for the forfeiture of funds of convicted persons

* 1. **Refugee law**

***3.3.1 Surrender of offender to foreign State (Section* 7 *of Extradition Act 1970)***

The Extradition Act provides with regard to extradition crimes, namely in its Section 7, that an offender shall not be surrendered to a foreign State where the offence in respect of which the request for his surrender is one of a political character or where the Minister has reasonable grounds for believing that the request for surrender is being made for the purpose of prosecuting or punishing the offender on account of his race, caste, place of origin, nationality, political opinions, colour or creed or where the Minister is satisfied that it would be unjust, oppressive or too severe a punishment to surrender the offender, amongst others.

***3.3.2 Prosecution and extraterritorial jurisdiction (section 30* of *POTA)***

A Mauritian Court shall have jurisdiction to try an offence and inflict the penalties specified in this Act   
where the act constituting the offence under sections 3, 4, 5, 6, 7, 11, 12, 14 and 15, has been done or   
completed outside Mauritius and

(a) the victim is a citizen of the Republic of Mauritius or has an effective link with Mauritius or is dealing with or on behalf of the Government of Mauritius;

(b) thealleged offender is in Mauritius; or 23 (c) the alleged offender is in Mauritius, and Mauritius does not extradite him.

* 1. **International conventions**

Mauritius has also adopted a number of conventions and resolutions and has contracted partnership agreements to show its strong commitment to addressing all forms and manifestations of terrorist threats. Consequently, as a member of the United Nations, the Republic of Mauritius is a signatory to the following legal document:-

a) United Nation Security Council Resolution 1373;

b) United Nation Conventions on the Suppression ofTerrorists Bombing 2003;

c) United Nation Convention against Transnational Organised Crime 2003;

d) United Nation Conventions on the Prevention and Punishment of Crimes against Internationally   
Protected Persons 2003;

e) International Conventions for the Suppression of Acts of Nuclear Terrorism 2005;

f) United Nation Global Counter Terrorism Strategy 2006

* 1. **International *AML/CFT* initiatives**

The international community has taken and continues to take concerted action against money laundering and terrorist financing. The FSC wishes to draw Licensees' attention to some of the more influential initiatives with which Mauritius as a financial centre must comply.

***3.5.1 Financial Action Task Force (FATF)***

The FATF's Forty Recommendations and Nine Special Recommendations on Terrorist Financing are the most influential supra national initiatives in this arena. Mauritius has confirmed its adherence to The Financial Action Task Force (FATF) Recommendations through its membership of the **Offshore Group of Banking Supervisors (“**OGBS"). Mauritius is also an active member of the **Eastern and Southern African Anti Money Laundering Group** (“ESAAMLG"), which is an FATF style regional body (“FSRB"). FSRBs are important components of the global network of international organisations and bodies that combat money laundering and terrorist financing. These bodies, are committed to implementing the FATF Recommendations.

***3.5.2 Basel Committee on Banking Supervision***

Whilst its name suggests that the Basel Committee is concerned solely with the conduct of banking business, it has been highly influential in shaping opinion on the importance of effective customer due diligence across the financial sector. The Basel Committee's Paper on Customer Due Diligence clearly demonstrates the importance of Customer Due Diligence information in the management of risk.

***3.5.3 The Wolfsberg Group***

The Wolfsberg Group, which comprises some of the world's leading private banks, has issued Global Anti-Money Laundering Guidelines and a Statement on the Suppression of the Financing of Terrorism.

***3.5.4 International Organisation of Securities Commissions (IOSCO)***

In 1992, the International Organisation of Securities Commissions (IOSCO) adopted a resolution inviting its members to consider issues relating to minimizing money laundering. In May2004,***International Organisation of Securities Commissions (IOSCO)*** adopted a paper on Principles of Client Identification and Beneficial Ownership for the Securities Industry. The IOSCO Statement of Principles provides a comprehensive framework relating to Customer Due Diligence requirements that complements FATF's Recommendations and addresses the securities regulator's role in monitoring industry compliance with AML obligations.

**4.Information on the dissemination and use of these instruments and standards and on ways in which they influence policy- and norm-making in other domestic, regional or international fora, with particular focus on their influence on norm- and standard-setting at the level of the United Nations.**

**4.1 Exchange of Information between the Financial Services Commission (FSC) and the Financial Intelligence Unit (FlU)**

***Section 21(1) of the Financial Intelligence Anti-Money Laundering Act (FIAML Act***)empowers the Financial Intelligence Unit (FlU) to pass on to the Financial Services Commission (FSC) any information which may be relevant to any of the FSC's functions. Section 22 of the FIAML Act and section 83(7)(d) of the FS Act imposes an obligation on the FSC to pass on to the FlU any information suggesting the possibility   
of a money laundering offence or suspicious transaction. In June 2004, the FSC and the FlU signed a Memorandum of Understanding (MOU) in order to facilitate the exchange of information between   
the two institutions .

**4.2 Prevention of Terrorism Act 2002. *Section 22C. Dissemination of information by Director of Counterterrorism Committee***

* Where there are grounds to suspect any terrorism-related activity, the Director shall disseminate information and the results of the analysis to the Commissioner or, where appropriate, to the overseas intelligence agencies, for appropriate action.
* Notwithstanding any other enactment, where the Director becomes aware of any information which gives rise to a reasonable suspicion that a terrorism-related activity might have been committed or is about to be committed, the Director may request any such information from any institution that may provide useful elements relevant to the terrorism-related activity, and the institution shall, as soon as practicable, furnish the Director with the requested information.
* In this section - "institution" means any Government or non-government organisation, financial or non-financial institution, law enforcement authority or any other regulatory body. Added by [Act No. 27 of 2016]

**4.3 Regional and International Fora**

***4.3.1***The Financial Intelligence Unit (FlU) also issues guidelines to banks, financial institutions, cash dealers and members of relevant professions on the manner in which a suspicious transaction report should be made. In this respect, there is an exchange of information with overseas FlU s and comparable bodies.

***4.3.2***As part of the South African Regional Police Chiefs Cooperation Organization, Mauritius actively shares information with member states to prevent cross border crime. As a member of the African Union, Mauritius has signed and ratified the 1999 African Union Convention on the Prevention and Combating of Terrorism and contributes to the African Centre for the Study and Research on Terrorism, established in Algiers in 2004 as to raise the African Union's capacity to prevent and combat terrorism in Africa. Lastly, the Government of Mauritius has signed a Memorandum of Understanding with the Government of India in 2008 to facilitate the exchange of information relating to money laundering and terrorist financing.

**4.4United National Security measures and the Financial Services Commission (FSC)**

The Financial Services Commission (FSC), as part of its supervisory framework to combat Money Laundering (ML) and Terrorist Financing (TF), regularly communicates to its licenseesupdates issued by the United Nations Security Council(UNSC) on the:

Sanction lists of individuals, entities, groups and undertakings associated with the Taliban in constituting a threat to peace, stability and security of Afghanistan established pursuant to resolution 1988(2011)

Sanction lists of individuals, entities, groups and undertakings associated with the Al qaida organization pursuant to UN resolutions 1267(1999) and 1989(2011)

**4.5 Mutual Legal Assistance(MLA)**

Pursuant to the provisions of the MLA in criminal and related matters Act 2003, a foreign authority may, in relation to a serious offence(e.g Terrorism), may request the Attorney General for assistance in any judicial proceedings carried in their jurisdiction state.