

ICAC v MCB -JUDGMENT

2017 INT 369

IN THE INTERMEDIATE COURT OF MAURITIUS

(Criminal Division)

Cause No 950/09

In the matter of:

Independent Commission Against Corruption

V

Mauritius Commercial Bank Ltd as represented by Mr C. Allet

JUDGMENT

Accused Company duly represented by Mr Clifford Allet stands charged for wilfully, unlawfully and criminally failing to take such measures as are reasonably necessary to ensure that the services offered by it were not capable of being used by a person to facilitate the commission of a money laundering offence in breach of sections 3(2) and 8 of “The Financial Intelligence and Anti Money Laundering Act” (hereinafter referred to as ‘FIAMLA’) coupled with section 44(2) of “The Interpretation and General Clauses Act”. It is averred that in or about the year 2002, the Accused Company failed to implement proper internal control systems and procedures in relation to fixed deposit accounts held on behalf of the National Pensions Fund.

The Accused Company pleaded not guilty to the charge and was assisted by Counsel. The prosecution case was conducted by Counsel.

I. Part 1: The Case for the Prosecution

Mrs Oaris, Principal Compliance Officer at the Registrar of Companies deposed to the effect that the Accused Company was incorporated on 18 August 1955 as borne out on Doc A dated 02 September 2008 which also listed the names of the directors of the Accused Company.

Under cross examination, she stated that the directors changed from year to year. Under re-examination, she clarified that although the Doc A dated back to 2008, the Accused Company is still a live company.

Mr Roshan Oree, witness no 11, deposed to the effect that in 2002, he occupied the post of Economic Analyst at the Ministry of Finance. He was the secretary of the National Pensions Fund and National Savings Fund (NPF/NSF) Committee when it was set up. The main objective of the Committee was to manage the investment of the surplus of funds of the NPF/NSF in view to generate additional return for employees. He stated that two meetings were held namely on the 26 November 2002 as per Minutes of Meeting -Doc B and on 30 December 2002 as per Minutes of Meeting -Doc C. Mr Hosany, Permanent Secretary for the Ministry of Social Security, Mrs Rojoa, Principal Accountant and himself were in attendance.

Under cross examination, he was referred to Document B and he agreed that Mrs Rojoa opined that there was an overexposure of fund at the MCB and that it would be appropriate to reduce the fixed deposit from two hundred million rupees to one hundred million rupees. He agreed that as a result the Committee took the decision to place one hundred million rupees at the Accused Company for 24 months. He stated that as per Paragraph 5.1 of Document C, Mrs Rojoa informed the Committee that the fixed deposit of one hundred million rupees was renewed with the MCB. He further stated that Mr Nakuda, the Financial Secretary at the time conveyed to him that the one hundred million rupees was not totally invested.

Mr Reshad Hosany, witness no10, deposed to the effect that from 2002 to 2003 he was Permanent Secretary for the Ministry of Social Security, National Solidarity and Reform Institutions and stated that the National Pensions Fund was meant for the private sector and the Ministry was responsible for collecting contributions from employers (6%) and employees (3%). The NSF was funded by contribution of 2.5% from both the private and public sectors employers and employees. He stated that the role of the Investment Committee chaired by the Financial Secretary was to decide upon the investment of surplus relating to both the NPF and NSF funds. He highlighted that between 2002 and 2003, Mrs Rojoa, the Principal Accountant, was in charge of accounts section at the Ministry. Her responsibilities entailed collecting daily contributions of pensions and the management of funds. She was a member of the Investment Committee and had the duty to execute the decisions of the said Committee. He stated that at the meeting held on the 26 of November 2002, one deposit of two hundred million matured and it was decided to reinvest it into one hundred million rupees at the Accused Company and another one hundred million rupees in treasury bills at the Bank of Mauritius.

He explained to the Court that on 6 February 2003, he received a phone call from Mrs Rojoa to the effect that the NPF/NSF fund deposited was missing at the Accused Company and the latter had met and informed the Prime Minister. He stated that the matter was taken up at Cabinet level.

On the 14 February 2003, the Accused Company issued a press “communiqué” namely a statement pertaining to prejudice caused to clients. Mrs Rojoa was assigned to liaise with the Accused Company in view to reconcile the figures and by the end of March 2003, the deposits held were refunded. He stated that in fact Rs 25 million were reinvested in the Accused Company and Rs 75 million for the purchase of treasury bills instead of investing the whole one hundred million rupees in treasury bills as decided by the Committee. He stated that Mrs Rojoa admitted at the Investment Committee that she failed to comply with instructions.

Under cross examination, he stated that the Mrs Rojoa should have kept a book containing all the Certificates of Deposit. She was appointed to oversee the reconciliation at the bank. The press communiqué dated the 14 February 2003 (Doc D) was produced. Two letters from Mr Hosany addressed to the Bank, dated 21 and 24 February 2003 (Doc E and F) were produced. A further correspondence dated 27 March 2003 (Doc G) sent by the Bank to the Ministry of Social Security stipulated the total sum of deposits for the NPF and NSF held at the bank. An undated letter (Doc H) was produced and Mr Hosany confirmed that the said letter related to the repayment of the investments on 31 March 2003. He stated that the said letter was shown to him by Mrs Rojoa and the latter queried whether such an undertaking from the MCB could be acceded to. He argued such undertaking could not be accepted as the letter was undated, unsigned and no sum for repayment was mentioned therein. He agreed that he received a phone call from Mr Manraj who told him that there was no reason to panic and that all the money was there. He was also shown a letter dated 17 March 2003 sent to him as well as to the Permanent Secretary signed by Mr Pierre Guy Noel of the MCB asking for all copies of relevant correspondence (Doc J). He added that around Rs 800 million rupees worth of deposits were held at the MCB which could be verified through deposit certificates, books and interest accruing.

Mrs Bibi Amina Rojoa, witness no15 deposed to the effect that she joined the public service as a clerical officer in 1970. She was promoted to the position of financial analyst at the Ministry of Finance in 1985. She qualified as an accountant in 1989 and was seconded for duty at the Ministry of Social Security, responsible for the management of the National Pensions Fund. She explained that contributions collected were remitted to the cash office and deposited in the NPF account at the Bank of Mauritius.

Funds were transferred to an account at the State Bank of Mauritius to meet expenses and to another account for pension to be paid. She stated that the Investment Committee was responsible for the investment of the surplus of fund in the NPF as per the National Pensions Act. She explained that in 1992 the Investment Committee decided to place money in a fixed deposit account at the MCB.

She received a Certificate of Deposit as evidence deposit made, confirming the rate of interest and the maturity date. She stated that the decision to renew a fixed deposit was taken by the accounts section at the Ministry as per the rate of interest and in line with the guidelines of the Investment Committee. A summary of all investments made with an updated portfolio was then submitted to the Investment Committee.

On 26 November 2002, she was present at a meeting of the Investment Committee, in her capacity as Principal Accountant at the Ministry. She stated it was decided that the NPF fixed deposit of Rs 200 million at the MCB would be renewed for Rs 100 million at an agreed rate of interest and the remaining Rs 100 million in Bank of Mauritius for the purchase of treasury bills. She agreed that she was the one responsible to implement the decision taken by the Committee. She decided to transfer only Rs 75 million to the Bank of Mauritius and left Rs 25 million at the MCB at a higher rate of interest as proposed and agreed. She took such a decision in light of a proposal made by an officer of the MCB, Mr Robert Lesage. She pointed out that Mr Lesage told her to invest the Rs 25 million as the MCB was encountering some liquidity problem. She agreed that the MCB was giving a higher rate of interest than the rate of the treasury bills at that material time. It was then put to her that she stated in her statement that she left the deposits at the Accused Company in good faith as she was getting the same rate as the treasury bill at the Bank of Mauritius to which she agreed.

She stated that in 1992, it was Mr Robert Grant who was responsible for the NPF account at the MCB and from 1996 till January 2003 it was Mr Lesage who was the file manager of the said account. She highlighted that on the 27 January 2003 she made a phone call to the MCB in relation to the deposit which was meant to come to maturity on 31 January 2013 and was thereby informed by the receptionist that Mr Lesage had left and was on pension. A meeting was held on the 28 January 2003 at the MCB with Mrs Decotter an employee of the bank who was unable to account the amount of Rs 800 million. The only entry that could be traced out was the Rs 100 million that was renewed in November. Further, the said employee could not say who was currently handling the NPF file. She contacted Mr Lesage on his mobile phone and the latter stated that everything was in good order and that the said money was at the bank.

He further explained that it was Mr Leung who was handling the NPF file. She claimed that Mr Leung did not schedule any appointment or meeting and therefore she did not get any further information from the bank as to who was handling the NPF file.

She explained that an undated and unsigned letter (Doc H) was brought by a messenger to her office and the said document was shown to Mr Hosany, the Permanent Secretary of the Ministry. She contacted Mr Lesage again in light of some corrections that were meant to be done to the said document but the latter stated that he could not get hold of the letter. She claimed that her assistant Ms Koodoruth and herself were dealing with Mr Lesage concerning the NPF account but she has never personally met the latter at the bank. The Prime Minister was informed of the situation and subsequently the bank reimbursed the whole capital with interests to the Ministry based on the deposit papers and figures as regards the interests worked out by the assistant of Mrs Rojoa as the MCB did not have any paper.

Mrs Rojoa was referred to an extract of the Annual Report (Doc K) of the bank whereby it was stipulated that Mr Lesage retired in May 2001. She agreed that the NPF fund was a shareholder of MCB and was communicated with a copy of the said Annual Report. She claimed not to be aware of that fact until she was informed by the receptionist in the year 2003. She would communicate with Mr Lesage by phone or letters that were duly signed by him and the said letters were delivered by a messenger from the period 2001 to 2003. She clarified that Certificates of Deposit had never been given to the accounts section at the Ministry but instead letters stipulating the lists of deposits were delivered. She was shown a copy of a 'communiqué' issued by the MCB dated 14 February 2003 (Doc L) whereby it was stated in the first paragraph: *'La Mauritius Commercial Bank Limited tient à porter à la connaissance du public en général qu'une enquête interne est actuellement en cours à la suite de sérieuses irrégularités perpétrées au cours de ces dernières années à l'encontre d'un de ses importants clients avec l'aide de complicité interne à haut niveau et portant sur un montant estimé potentiellement à ce jour à de centaines de millions de roupies'*.

She opined that the Accused Company should have implemented proper procedures, an internal control system and risk management system to ensure that the deposits from the public were safeguarded. She confirmed that she was arrested in relation to the present case and a provisional charge was lodged against her which was subsequently struck out after nine years. No main case was lodged against her nor any action taken against her at the departmental level.

Under cross examination, she admitted that the main purpose of the Investment Committee was to decide upon investing the surplus of funds collected. The portfolio was updated and a

financial statement was prepared namely a revenue and surplus account. The portfolio was audited by the Government Auditor.

It was agreed that the decision to invest or renew a fund was based upon the rate of interest that the particular bank was willing to offer and the procedure was that the bank notified the Ministry in writing beforehand as to when the deposit would come to maturity. It was also agreed that deposit certificates were issued in relation to deposits made at the Accused Company. In the event it was decided to renew the deposit, the bank would send a new deposit certificate. Pertaining to the meeting held on the 26th of November 2002, she agreed that Rs 100 million was to be renewed at the MCB and the remaining Rs 100 million to be transferred to the Bank of Mauritius for the purchase of treasury bills. She admitted that after a proposal from Mr Lesage she decided to renew another Rs 25 million at the MCB and as a result did not abide to the decision of the Investment Committee. She further agreed to have misled the Committee during a meeting held on the 30 December 2002 whereby she stated that Rs 100 million was used to purchase of treasury bills. She also agreed that she changed the maturity date of the fund upon her own volition. She opined that such an act was a usual procedure and the Investment Committee would accordingly be informed afterwards.

Commented [V1]:

She was shown Docs M-M13 and she agreed that she dealt with other persons at the Bank besides Mr Lesage but it was when the latter was on leave. She denied to have acted in collusion with Mr Lesage or contrary to all rules of procedures as set by the Investment Committee. She was shown a Deposit Certificate of Rs 5 million at 10% per year for six months (Docs N and N1) and another Deposit Certificate for six months for the sum of Rs 12.7 million (Docs P and P1). Reference was made to a letter dated the 30th of August 1999 (Doc Q) in relation to fixed deposit for Rs 17.7 million and enclosing a cheque in settlement of interests after the maturity date which was the 19th of August 1999. She admitted that the procedure related therein was not complied with.

A letter dated the 15th of September 1999 (Doc R) was shown to Mrs Rojoa and the latter stated that no rate of interest was stipulated in the said letter as same was already agreed with Mr Lesage. A letter dated 29 February 2000 (Doc S) was also referred whereby there was a verbal confirmation from Mrs Rojoa to Mr Lesage to invest a deposit of Rs 17.7 million for 9 months rather than 6 months.

She denied to have acted contrary to procedures in respect of that transaction. She stated that letters issued were signed by the Chief Manager of the Bank as deposit certificates.

She was referred to Doc T dated 21 February 2001 emanating from Mr Lesage. The deposits upon maturity were renewed following telephone conversations between Mr Lesage

and herself as per Docs U to U6. She contended that it was the best interest rate obtained as compared to other Banks. It was put to her that the letter was issued three months after the expiry dates of the maturity dates to which she replied that the agreement was made before and the letter would follow afterwards. It was put to her that the verbal agreement between Mr Lesage and herself rolled over the years and there was no ethical conduct in the said transaction.

She stated that the renewal of a further amount of Rs 25 million was made as Mr Lesage conveyed to her that the bank was facing some liquidity problem. She claimed not to have met Mr Lesage from the year 1996 until the 17th of January 2003 when the latter came for the first time to seek advice in relation to a company called "Agricola" in which he was a majority shareholder. When she came to know from the receptionist that Mr Lesage went on retirement, she stated to have called the latter on his mobile phone as she was concerned with the bank and the NPF fund. On the 27 January 2013 she agreed to have called Mr Yanassee an employee of the bank on three occasions to ascertain as whether Mr Lesage was on retirement. However, she also called Mr Yanassee in relation to a sum of 1000 pounds that was credited to her account from overseas.

She agreed that on the 27 January 2003, she contacted Mr Lesage on his mobile phone and a meeting was scheduled the next day. She stated that the meeting was important in order to ascertain who would henceforth deal with the NPF file. She could not answer as to why she did not write to the bank to seek further details about the NPF file in view of the retirement of Mr Lesage. She admitted having met Mr Lesage on the 28 January 2013 and asked the latter for a letter in order to ascertain that the fund was safe at the MCB. She could not convey an answer to the Court as to the reason requesting for a letter from Mr Lesage though she was informed that the latter was on retirement. She admitted that Mr Lesage handed over his passport to her and said that he would provide the said letter as requested. On the 3rd of February 2003 she stated that Mr Lesage told her that the funds of the NPF invested at the MCB were deposited at the Barclays Bank in England and that such a decision was made upon the request of Mr Manraj. She explained that on the 10th of February 2003, Mr Lesage phoned her and stated he would send a letter stipulating that the funds would mature on the 31 March 2003.

Under re-examination, she stated that on the 28 January 2003, she was not informed by the bank as to who was handling the NPF file. Pertaining to the letter dated the 30th of August 1999 (Doc Q), she claimed that the phone conversation with Mr Lesage was before the maturity date and that the rate of interest amounting to 12.75 % was stipulated therein.

Mrs Koodoruth, witness no 16, Financial Operation Officer deposed to the effect from the year 1994 till 2003, she was posted to the accounts section of the National Pensions Fund as the assistant of Mrs Rojoa. The latter was the responsible officer for the management of the NPF. Her responsibilities entailed maintaining ledger records, the preparation of portfolio statements at the end of each month and keeping of records pertaining to any investment as decided by the Investment Committee of the Ministry. She was not a member of the Investment Committee and therefore she was not participating in the decisions making process but acted as instructed by Mrs Rojoa concerning the amount to be invested in any fixed deposit account at the MCB.

She explained that when a decision to reinvest a sum of money was taken, the MCB was informed by way of letter normally signed by 2 persons namely the Principal Accountant and the Assistant Secretary or Permanent Assistant Secretary. Thereafter, the bank would send a deposit certificate stipulating the amount invested, the maturity date and rate of interest. She said that she dealt with the fixed deposit accounts of the NPF held at the MCB and that it was a current practice for the NPF to issue letters for certain specified sums of money to be reinvested over a short period of time and that the MCB would issue deposit certificates accordingly. However, she could not remember the exact format of the deposit certificates that were sent to the NPF.

She added that Mr Lesage was the file manager of the NPF fund at the MCB and that she would usually contact him by phone. Upon her memory being refreshed, she admitted having met Mr Lesage at the MCB in the year 2002 to reconcile the funds held at the bank. She further admitted that in the year 2003 she went to the MCB together with Mrs Rojoa in view to ascertain whether the money in the NPF/ NSF accounts was still held as deposit at the bank. At that time, they were told that Mr Lesage was no more working at the bank and after verification and reconciliation effected at the bank, it was discovered that only one hundred million rupees was available out of the eight hundred million rupees deposited.

Under cross examination, she maintained the fact that she was not involved in any decision taken by the Investment Committee but instead was receiving instructions and directives from Mrs Rojoa. She stated that a deposit certificate was issued for deposit being invested for one or two years and for shorter lapse of time, a correspondence was issued by the bank.

She stated that she could not remember if in the year 2003, she was instructed by Mrs Rojoa to deposit an envelope containing pounds sterling in the latter's bank account. She agreed that she called Mr Lesage on the 27th of January 2003 upon being requested to do so by Mrs Rojoa as she was concerned was about his retirement. She explained that it was necessary

to have two signatures on the deposit certificates for security purposes. She claimed not to remember about the seizure of the passport of Mr Lesage despite the fact that she admitted in her statement that Mrs Rojoa told her about an envelope containing the passport of Mr Lesage. In re-examination, she stated that the decision to reinvest any matured fund or to withdraw same depended on Mrs Rojoa. She stated that she did communicate with Mr Lesage only in relation to book entries.

SI Naiken, witness no4, senior investigator at the ICAC deposed to the effect that on the 17th of May 2005 a written statement, prepared by the MCB, was submitted by Mr Allet and same was produced and marked Document V. He further produced a statement recorded from Mr Allet vide Document V1 together with Annexes, Documents V2, V3, W1 to W26, X to X4920, Y, Z and AA. He was referred to Document V and he stated that as per the said statement, the ICAC carried out an investigation as from April 2002 in light of the alleged occurrence of fraud at the MCB. Document W was also referred to and Mr Naiken stated that a flowchart was prepared in relation to several transactions effected at the MCB. He explained that as per the flowchart; there was a fixed deposit of Rs 200 million held at the MCB and Rs 100 million was reinvested in a fixed deposit account.

A sum of Rs 75 million was transferred to the Bank of Mauritius and the remaining Rs 25 million deposited in an intermediary account at the MCB. He explained that the said Rs 25 million was subsequently credited into an office cheque account in the current account department. Out of that said sum, Rs 10,972,000 was credited to an MCB account bearing number 019005083, Rs 5 million by virtue of an office cheque paid to HSBC each on two occasions, a further payment of Rs 4,028,000 to the HSBC and Rs 1,911,395 paid to the order of the Government of Mauritius and credited to the Accountant General section. The flowchart further depicted that the sum of Rs 3 million was paid to Sea Rock Paradise by way of an office cheque and Rs 2 million was deposited in the account of Handsome Investment at the MCB.

Several cheques were also issued and amongst other payments, the sums of Rs 2,640, 000 and Rs 1,019,535 were paid to the account of Mr Appasamy at the SBM, Rs 10, 000 to Mr Ramdewar, Rs 56, 000 to Air Mauritius credited at the MCB. In support of those transactions, cheques were produced vide Documents AE to AZ, BA- BZ.

It was explained that the persons who issued the said cheques were employees of the MCB acting under the instructions of Mr Robert Lesage. Paragraph 2.111 was referred in Document W and it was agreed that on the 2nd of December 2002, a larceny amounting to Rs 11, 520. 55 was committed by Mr Lesage. Paragraph 2.111 was subsequently referred whereby it was stipulated that Mr Lesage committed a theft of Rs 25 million from the funds

belonging to the MCB. It was further stated Mr Appasamy was the main beneficiary of the alleged fraud committed at the MCB.

He added that Mr Lesage could not authorise the several transfers that were made to Mr Appasamy as he was no longer an employee of the MCB at the material time. Document V2 was referred in order to confirm that Mr Lesage in fact retired from the MCB in May 2001. It was further said that on two occasions Mr Lesage made requests to the MCB so that he could extend his stay and put in order certain credit files. The MCB did accede his requests and he was allowed to stay until October 2001. Mr Lesage stayed at the MCB until mid-January 2003 and occupied the same office, had the assistance of a secretary and the benefit of a parking slot which was "au vu" and "au su" of everyone. During that said period of time he stayed at the MCB, he was neither accountable to nor was he reporting to any senior employee at the MCB. Mr Naiken stated that Mr Lesage was giving instructions to subordinates to issue cheques and the latter was still dealing with the NPF account by issuing letters to the NPF department. His signature was still accepted at the level of the bank and was therefore acting as the bank's authorized signatory.

He was shown Document AC and he stated that several persons were arrested following the investigation carried out and Mr Lesage was not prosecuted but was granted immunity in the present case. Mr Pierre Guy Noel and Mr Ramdewar were prosecuted before the Intermediate Court and Mr Lesage was made a prosecution witness in the said case. Pertaining to the companies called Handsome Investment and Sea Rock Paradise, he stated that the file manager at the material time was Mr Phillipe Forget, the assistant manager of the bank.

Under cross examination, Mr Naiken was referred to several correspondences that were exchanged between the MCB and ICAC. A letter marked Doc CG was shown to the witness whereby the latter admitted that the said letter contained an averment to the effect that the SBM, Hong Kong and Shanghai Banking Corporation Ltd would be contacted in light of various transactions. Another letter dated the 20th of February 2003, (Doc CH) was referred whereby the ICAC gave instructions to the MCB not to take or initiate any action against any third party pending the completion of inquiry.

He agreed that Mr Raisin and Mr Allet collaborated with the ICAC from the very outset of the inquiry and at no point in time they refused to appear before the said Commission. He did explain that an inventory had to be carried out again in the year 2006 following certain documents which were secured from Mr Raisin and such an exercise was part of the investigation in view to assess any possible offence which might have been committed by the

MCB. It was conveyed to the Court that the ICAC did not take any action against Mr Lesage as the latter was granted immunity under Section 50 (4) of the Prevention of Corruption Act.

He stated that the ICAC did lodge a case against Mr Pierre Guy Noel, the CEO of the MCB for conspiracy to commit an offence of money laundering but said that the matter was stayed on the grounds of abuse of process. It was further agreed that the case lodged against Mr Philip Forget was set aside and the matter against Mr Raisin was struck out. He was unaware if the Bank of Mauritius took any action against the MCB.

The flowchart namely Document BH, was shown to Mr Naiken whereby he stated that money amounting to Rs 200 million which came from the deposit of the NPF/NSF fund was transferred to the beneficiary Mr Appasamy through the HSBC bank. An investigation was carried out pertaining to such transactions but no action was taken against the HSBC or the South East Asia banks. The other flowchart vide Document AB was also referred to whereby the split sums amounting to Rs 5 million, Rs 5 million and Rs 4,0285 million were transited through HSBC to Barclays Bank Croydon.

It was highlighted that the extent of the fraud was worth Rs 881 million and money was being defrauded from deposits through a “layering” mechanism. He explained that money was being transferred from clients’ accounts then deposited into several accounts at the MCB and subsequently office cheques were issued namely a concept called “splitting”.

He admitted that a number of persons were signing on the office cheques issued and they acted under the instructions of Mr Lesage. He did agree that a number of managers were still working at the MCB after their retirement as compared to Mr Lesage who stopped drawing a salary as from June 2001. As per the investigation conducted, Mr Lesage occupied the 11th floor prior to the year 2002 and after his retirement he continued to occupy same throughout until 2003. He admitted not to have read or examine any audit reports that were filed or published concerning the bank.

In re-examination, he stated that external auditors’ reports relating to the alleged fraud committed at the MCB were not communicated to the ICAC. The NTan report was remitted following a disclosure order made in the year 2009.

Mr Andre Wong Tin Fook, witness no17, deposed to the effect that he joined the MCB in April 1993 and was the Chief Accountant. In the year 2002, he became a Manager responsible for the accounting department. He had known Mr Lesage by the nickname “Bob” and they were both working on the same floor. He was referred to an email dated the 17 April 2001 whereby all staff of the MCB were informed that Mr Lesage would retire on the 1st

of May 2001. He added that despite the communication, Mr Lesage continued to work at the MCB until 2003. Till that time, he continued to contact Mr Lesage in a professional capacity to discuss all major flow of funds. He explained that Mr Lesage was in charge of the NPF portfolio at the MCB in April 2001 before his announced retirement and continued to so until the year 2003. He continued to occupy the same office during that span of time. He stated that it was not an unusual practice for some managers to work under a “special post retirement contract”, which was an arrangement between the employee and the bank. However, he was not aware of any such contract between the bank and Mr Lesage. He highlighted the fact that he was not personally informed that Mr Lesage would continue to work at the bank and had no reason to believe that there had been any flaws in the procedure adopted as the decision to extend his employment must have been approved by the top management of the MCB.

Under cross examination, he stated that he was based in the accountancy department at the bank and that said section was responsible to monitor the flow of funds and liquidity. He admitted that employees namely Mr Tennant and Mr Provencale did stay beyond their retirement and continued to work at the bank. He pointed out that there was nothing suspicious for an employee to be requested by the bank to work after his retirement date. He stated that Mr Lesage was a much respected employee and he benefitted the esteem of the whole class of employees at the bank. Mr Andre further claimed that he considered Mr Lesage to be an employee operating above any suspicion and the latter would usually consult him concerning interest rates. Several movements of funds as to the flowchart were put to the witness but the latter pointed out that the said funds did not concern his department in as much as the amounts did not fall within the ambit or purview of the materiality limits.

Mr Jayendra Kumar Ramtohol, witness no13, an Assistant Secretary based at the Bank of Mauritius deposed to the effect that he joined the said institution as a clerk in the year 1980. He was promoted to the post of accountant in the year 1993 and after having worked in the banking supervision and accounting department, he became the head of corporate services in 2007. He is a fellow member of the Association of Chartered Certified Accountants and holds an MBA from the University of Mancosa.

He explained that one of the main functions of the Bank of Mauritius is to ensure the stability of the financial sector in Mauritius and also to safeguard the depositors' money in banks. In practice, the Bank of Mauritius regulates and supervises the banking sector by carrying out offsite and onsite monitoring. He explained that the offsite monitoring is conducted through the returns that the banks are required to provide to the Bank of Mauritius on a regular basis

and onsite monitoring whereby inspectors carry out physical inspection at a particular bank. He referred to Section 54 of Banking Act and stipulated that the concept of internal control system within a bank is to ensure compliance with statutory policies and that the business of bank is being conducted in a safe and prudent manner in view to prevent any element of fraud. He stated that the internal control system should clearly stipulate the rules and procedures to which the employees of the banks have to comply whilst performing any operation. He said that one of the fundamental factors in an efficient internal control system is to adhere to the concept called segregation of duties whereby no transaction or operation is conducted from the outset till the end by only one person. The Board of a bank is responsible for designing and implementing an efficient system of internal control. It was highlighted that the internal control system ought to commensurate with the nature and volume of activities taking place in a bank. The principle of "occupational fraud" was referred and described as a type of fraud committed by someone working in a bank who has full control over a particular transaction and thereby using the said mechanism for his own benefit.

The Guidance Notes (Doc CX) dated November 1994 were referred to and he stated they were issued to banks to ensure compliance with the statutory regulations of the Bank of Mauritius. He pointed out that the guideline is a set of rules and regulations which ensure that the operation of a bank is carried out in an efficient manner and also that statutory obligations are adhered to. He stated that it is the responsibility of an internal auditor to monitor and review the system of internal control and the latter should report any issues to the Board of Management. An internal auditor should be professionally qualified and have the necessary experience in order to carry out any auditing function. Paragraph 5.1 of the Guidance Notes was referred concerning the Audit Committee structured within a bank.

He highlighted that an Audit Committee comprises of non-executive board directors who have the responsibilities of reviewing the accounts of the bank, advising upon the efficiency of the bank and also ensuring the independence of the internal and external auditor.

Mr Ramtohol further explained that there was an onsite inspection made by the Bank of Mauritius in the year 1999 at the MCB in view to identify the risks pertaining to credit policies and whether the provisions of the Banking Act were being complied with. He stated that he was informed in February 2003 by the Governor of the Bank of Mauritius, Mr Basant Roi about the fraud relating to the NPF deposit account at the MCB. Several officers from the Bank of Mauritius including himself were mandated to conduct an onsite investigation in view to determine the mechanism of the alleged fraud and to scrutinize the internal control system at the MCB.

During the investigation, they were given access to all documents at the said bank and files from the period 1997 to 2003 were duly scrutinized. He expatiated in Court that the investigation revealed that the controls in the fixed deposit department were overridden and too much authority was invested in Mr Lesage. There was a total absence of the “Four-Eyes Principle” whereby the task carried out by one officer of the bank was subject to the scrutiny or check by the another officer. He explained that though Mr Lesage went on retirement in the year 2001, the latter continued to act as an officer of the bank and carried out transactions which he was not mandated to execute. Document AD was referred to and he observed that the mechanism of the fraud was structured in a way whereby the money held in the fixed deposit upon maturity was channelled into an intermediary account and subsequently disseminated to various other accounts. He contended that the Rs 200 million held in the fixed deposit account of the NPF was reinvested after the maturity period. Part of the money was then transferred to the office cheque accounts and further distributed to several other accounts. Document BH was referred to and it was observed that part of the funds were moved to the order of the HSBC bank and to other companies namely Handsome Investment and Sea Rock Paradise. Mr Ramtohum stated that both Handsome Investment and Sea Rock Paradise were customers of the

MCB bank and it was Mr Lesage who was the file manager of both companies at the material time the transfers were being made. Upon inspection of the credit files at the MCB, it was discovered that the said files did not contain the necessary information in respect of customers and the procedures relating to the granting of credit were not in line with the guidelines issued by the Bank of Mauritius.

Furthermore, it was revealed that it was only Mr Lesage who was responsible for all the procedures, hence contrary to the principle called the “segregation of duties”. Concerning to cheques (Docs AE – AZ) that were signed by the bank signatories, the latter conveyed to him that they were instructed by Mr Lesage to do so.

He claimed that if the proper diligence framework or internal control elements had been followed, the fraud could have been prevented. It was further contended that Mr Raisin who was the responsible for the internal audit at the MCB was not a professional accountant but only a senior officer of the bank being entrusted with duties relating to internal auditing function. He stated that an internal auditor should normally be professionally qualified and a member of one of the professional accountancy bodies. The overall assessment made in relation to the internal audit department at the MCB flagged many weaknesses including the audit team which was inadequately staffed for the size of the financial institution.

There was also the absence of a compliance department and audit committee at the MCB at the material time the investigation was being conducted. He was referred to a table (Doc W) whereby he agreed that fraudulent transactions were being carried out by Mr Lesage from the year 1989 till 2002. The investigation also revealed that Mr Lesage was not taking compliance leave during his term of office and even after his retirement he continued to occupy his position. Following the investigation, the Bank of Mauritius recommended the bank to enhance its internal control system.

Under cross examination, he admitted that the issue relating to compliance leave was not mentioned in his statement given to the ICAC. He stated that all the notes were left with the lead investigator which would have helped him whilst giving the statements. It was claimed that though a structure existed for credit facilities as per MCB's annual report, the investigation that was conducted did not demonstrate the presence of such a framework. The credit files did not contain the necessary information such as the Memorandum of Incorporation, Articles of Association, the application form and other documents. It was contended that the credit files pertaining to Handsome Investment and Sea Rock Paradise were not in compliance with the laid down rules and regulations. The General Instruction Book contained all the procedures concerning the monitoring of loans but the physical assessment done at the bank revealed that the credit files were not arranged or structured as per the Guidelines.

He maintained that an internal auditor should be professionally qualified and that holders of banking certificates were not fit to be auditors. It was necessary for an internal auditor to be a member of a professional body namely ICAEW or ACCA.

He stated that there was an implied recommendation that internal auditors ought to be professionally qualified. Concerning the Audit Committee, he agreed to the existence of one at the MCB but same was not properly constituted in as much as the Committee did not comprise of non-executive directors. He admitted that Mr Marion was the zone manager to the Audit Committee but highlighted that the latter was not an executive director. He contended that Mr Raisin, the Chief Internal Auditor and Mr Allet were not professionally qualified to act as auditors. He however admitted that as per the guidelines issued in 1994 by the Bank of Mauritius, the internal audit department could be staffed by individuals who either have the requisite experience or hold professional qualifications.

He further added that the leave that Mr Lesage was taking did not fall within the ambit of "compliance leave" as the breaks were for a short period of time. However, he did admit not to recall as whether Mr Lesage was on leave between the 28th July 2001 and 17 August 2001. In relation to the audit reports that were submitted between January 2000 and

December 2002 by the MCB, he insisted on the fact that the auditing was not properly carried out as the reports failed to identify the internal weaknesses. Mr Ramtohul agreed to the movement of the split funds as per the flowchart namely the Rs 75 million and Rs 25 million and the cheques.

Concerning the guidelines on credit documentation, he pointed out that though the original documents were kept in the legal department of the bank, nevertheless copies of documents ought to have been in the files of the customer. He further claimed that the guidelines as per the General Instructions Book were not being followed in as much as customers were not being circularized as to the amount of fixed deposit they had at the bank. He admitted that he did not check as to whether a government auditor did verify the NPF and NSF accounts.

In re-examination, he confirmed the fact that Mr Lesage was not taking any compliance leave as the latter was not replaced by anyone pertaining to the duties that he was performing. During the course of the investigation, it was disclosed that the people who signed on the cheques were instructed by Mr Lesage to do so. Concerning the movement of funds, he explained how office cheques were being used to transfer money from the bank to third parties outside the bank and had there been a reconciliation mechanism any queries or issues would have flagged up. Such a state of affairs was due to the internal audit department not being adequately staffed and the employees were not professionally qualified to work therein.

Mr Ramsamy Chinniah, witness no12, a Chartered Accountant deposed to the effect that he joined the Bank of Mauritius in the year 1983 as a clerk. In the year 1999-2000, he was the assistant director in the supervision department at the Bank of Mauritius. He stated that from the 26 October 1999 to the 25 February 2000, an inspection was carried out at the MCB in view to ascertain as whether the bank was complying with the guidelines issued by the Bank of Mauritius and a report (Doc DD) was duly produced to the Court. He confirmed that several issues were addressed in the said report including the procedure relating to the granting of credit facilities.

He stated that on or about the year February 2003, in light of a fraud that was identified at the MCB another investigation had to be carried out and he was accompanied by Mr Ramtohul to effect the inspection. He explained that there was no major improvement in the implementation of recommendations which were made in the year 1999/2000. He further highlighted that in the year 2003 the MCB was the largest bank in Mauritius in terms of assets and market share.

Under cross examination, he stated that the guidelines issued by the Bank of Mauritius were meant to be followed by every bank in view to safeguard clients' deposits and to reduce the risks of fraud. He agreed that after the recommendations in 1999/2000 were published, the MCB was notified in writing and as a result it took a commitment to implement those recommendations step by step. He stated that the issue in the year 1999 was that the bank did not have a formal credit policy and the situation was found to be the same when the investigation was concluded in the year 2003. The credit files carried only minutes of approval but the types of risks, approval levels, pricing approaches and credit monitoring polices were not included in the files of customers. He further claimed that in the year 2000 there was a lack of monitoring of accounts in relation to loans granted in as much as the arrears payments were not checked by the bank. He however admitted that the file concerning arrears payment was usually transferred to the file manager and executive committee. He noted the absence of the zone manager in the structure. He did admit having not enquired as whether the details of companies were kept in the legal department.

He contended that in the course of the investigation, it was revealed that funds were being diverted from deposit accounts of customers and granted as loans to companies. Concerning the internal audit department, he insisted on the fact that the members of the staff therein were not professionally qualified. He pointed out that though the relevant experience was important but to be professionally qualified was mandatory.

In the year 2003, in the course of the investigation, the staff in the audit department were still not professionally qualified.

Mr Raisin, the chief officer working in the said department did not have the required experience and professional qualifications. He explained to the Court that the guidelines dated 1994 stipulated of either having the necessary experience or professional qualifications. He pointed out that recommendations had however been made as per the Report (Doc DD) that staff be professionally qualified. He stated that there was no written policy in respect of the liquidity management at the bank and opined that it was very essential to have a written one in view of the size and structure of the MCB.

He was referred to a flowchart (Doc D) whereby he highlighted the fact that there was a lack of segregation of duties but in relation to flowcharts marked Documents AD, he was of the opinion that the principle of segregation of duties was respected as the said documents contained two signatures.

In re-examination, he pointed out that the issue relating to the lack of segregation of duties was in relation to credit policies as per the Report in the year 2000. He insisted on the fact

that an officer working in the audit department had to be professionally qualified that is to the grade or rank of an accountant. His investigation revealed that no officer in the audit department at the MCB was a qualified accountant. The staff prior joining the audit department was related to operational transactions. Pertaining to the recommendations made in the year 1999/2000, it was claimed that though two and a half years were given to the MCB to comply but same were not implemented as per the investigation carried out in the year 2003.

II. Part B: The case for the Defence

Mr Allet, the representative of the Accused Company deposed on behalf of the defence. He explained that he has been the manager of the Anti-Money Laundering and Fraud Prevention Unit of the MCB since the year 2005. He was working in the audit department of the MCB before the year 2005 and the head of department at the material time was Mr Raisin. He averred that after the enactment of the Economic Crime and Money Laundering Act in the year 2000, Mr Marion was appointed as the Money Laundering Reporting Officer at the bank and the latter was also the zone manager responsible for the audit and litigation departments. Following the promulgation of the Financial Intelligence and Anti-Money Laundering Act in 2002, the MCB issued an anti- money laundering handbook with new banking guidelines. He contended that in line with the new legislation, the Bank of Mauritius issued guidance notes on or about September 2003. He was referred to a deposit certificate pertaining to the Rs 100 million which was then produced in Court vide Document DF. The said document was dated the 2 December 2002 and duly signed by two employees of the bank namely Mrs Decotere and Mrs Walter. The rate of interest stipulated was 6.25% per annum and he believed that the original deposit certificate should have been in possession of the client.

He pointed out that the proper approach adopted when a client was willing to renew his deposit, was to issue another deposit certificate with new terms and conditions and same handed over to the customer. Extracts of the General Instructions Book were produced and marked as Document DG in Court. He highlighted that the GIB contained all the general guidelines regarding the approach to be adopted in relation to banking activities at the MCB. He added that there were other instruction books which were available in support of the GIB. Instruction "C 125" of the GIB relating to "cheques and vouchers" was referred to and Mr Allet purported that the guidelines propounded that all banking transactions had to be subjected to a dual control approach. Instruction "C 310" pertaining to the treatment of vouchers was also put to the witness to which he stated that current account vouchers were processed by the Electronic Data Processing Department (EDP) and subsequently

transferred to another department such as the back office for verification purposes hence adhering to the concept of “segregation of duties”. He also conveyed to the Court that as from the year 2002, updated policy guidelines were uploaded over the intranet of the MCB. Instruction “F 50” concerning the “fixed deposits” was referred to, in particular the “fixed deposit receipt”. Mr Allet explained that the said receipt was issued following strict verification and upon confirmation of the existence of sufficient funds by two employees of the bank. Furthermore, the fixed deposit department would issue a certificate which was subsequently sent to the audit department thus conforming to the principle called segregation of duties. The “spoilt” fixed deposit receipts were kept at the deposit department until destroyed under the supervision of the inspection department now called the audit department.

Concerning the payment of interests, he claimed that same was processed by the EDP and sent to the fixed deposit department for verification and signature purposes. Instruction “175” relating to the interests of deposits was similarly addressed and it was highlighted that a request for higher rates of interest had to be approved by the top management of the bank, who were normally Mr Pierre Guy Noel or Mr Lesage. Instruction “L 74” regarding the “banking facilities” was also put to the witness whereby he stated that requests for renewal of overdraft would depend upon the amount being claimed. If the amount claimed was more than Rs 100, 000 the details were kept in a register whereas for sums exceeding Rs 500, 000 or Rs 1 million the details were channelled in a minute book.

He stated that the said instruction was last updated on the 8th of March 1994 and that the inspection team from the Bank of Mauritius would have been in a position to locate same if a search or request would have been made. The sanctioning powers of different committees concerning loans granted as per instruction “F1” were also addressed. Different committees such as the executive committee, IS committee and management committee were involved whilst assessing the application for a loan. He explained that details relating to a loan request were usually taken by the customer service department at the bank and then approval was obtained from the manager together with the assistant manager. It was after the documents had been verified again that the money was credited to the customer’s account and such responsibilities fell on the “Loans and Guarantees Department”.

It was further contended that the internal audit department changed its approach with the arrival of Mr Richard, a lecturer in South Africa and President of the International Auditing Association. The new approach adopted at the material time was geared towards a “risk based approach” whereby auditing was based on risk reviews. He asserted that the

inspection team of the Bank of Mauritius had access to the internal auditing manual of the bank.

He claimed that the said internal auditing system at the bank existed prior to his appointment namely the year 1992. The procedure adopted in the internal audit department was based upon the best practices as stipulated in the General Instructions Book, Computer Branch Manual, Branch Security Manual and Internal Auditing Manual. The Internal Auditing Manual was issued in 2000 by the MCB and in 2002 each of the eleven officers employed in the audit department were in possession of a hard copy of the said manual. He pointed out that the said manual was an unsigned one and was used as a “bible” in the execution of the auditing duties.

In the year 2015, the auditing manual became accessible in the electronic format. He further stated that the updated version of Anti-Money Laundering Manual was to be found on the intranet and as per the guidelines suspected transactions were detected. The Internal Audit Manual (Doc DM) was produced to the Court. He indicated that in 1992 the first version of the said document was typed on a computer and stored in a floppy drive and subsequently the version was updated through the successive years. In 2004, upon his transfer from the audit department he sent the said Audit Manual to the Archive Section of the MCB at Pailles.

At no point in time during the enquiry conducted by the ICAC, he was requested to produce a copy of the said Manual. It was only following the evidence given by Mr Ramtohul, that he became aware of the dispute about the Manual.

He stated that as a result one of his officers went to the Archive Section and retrieved the said document which he produced. It was further explained that for a proper auditing exercise to be carried out, the right methodology ought to be adopted so as to evaluate the effectiveness of the control methods. The “learning and growth” perspective was also embraced whereby the internal auditor would learn from the auditees pertaining to the controls which were implemented and as a result a greater understanding of the activities of bank would be developed. The said concepts were adopted in different sections such as the administrative, accountancy, credit facilities, trade finance, banking products and brokers.

He added that in the year 2000, the external auditing was carried out by the firm “De Chazal Du Mee” and the purpose of such control was essential in order to give shareholders of the bank a fair view of the company’s affairs. In the same vein, the internal auditing was carried out by the Internal Audit Department in view to evaluate the controls and systems which had been adopted and the Report was submitted to the Board of Management of the bank.

It was highlighted that an effective control mechanism was important so as to prevent different types of risks namely credit risk, market risk, liquidity risk, interest rate risk, currency risk and operational risk. In order to identify these risks in the Internal Audit Department, a “work through” exercise was effected involving interviews with auditees, management and key members of staff. The guidelines in the General Instructions Book and the Computer Branch Manual were also implemented. For every “process” a “flow charting” was made which would set out for instance by whom a particular cheque had been signed and the controls involved in the said transaction. It was conveyed that such an exercise was essential in light of the dual control mechanism.

Furthermore, to evaluate a particular “process” a sampling exercise was performed and all the documentation were registered in a “working papers file”. A “follow up” was also made in line with the guidelines stipulated in the General Instructions Book. As per the established guidelines, Reports from several departments were independently generated by the information systems and subsequently the Reports were transferred to a staff in charge to ascertain as whether the loan file was being handled properly. He explained that the “front office” department was concerned with the interaction with customers whereas the “back office” involved in the reconciliation of transactions and both departments were separated in light of the nature of their duties, hence adhering to the concept of “segregation of duties”. He stated that as part of the auditing process, “issue sheets” were distributed in order to categorize the level of risks that existed in each branch of the MCB.

Such an exercise was done during exit meetings that were held. He further highlighted that the component of “concealment” was also taken into consideration as such an element related to the issue of fraud and as such the concepts of dual control and segregation of duties were implemented. An Audit Plan was prepared by the Chief Internal Auditor based on the previous Audit Reports and risks elements gathered. The said Plan was thereafter presented before the Audit Committee which had the duty to approve or amend same.

Concerning the payment in arrears an independent Report was generated which was subsequently transferred to an officer in charge and an amicable solution was usually preferred in that type of situation. If the delay was prolonged, another report was made after 3 months and submitted to another department to a “*supérieur hiérarchique*”. The file of the client was transferred to the “litigation” department in case no amicable solution was reached and if the amount remained unpaid, the sum was written off as bad debts.

As to the deposit department, he pointed out that there were several steps which had to be complied with upon a request made by a client for the withdrawal of his money. First and foremost the deposit certificate had to be in possession of the client and the said document

was endorsed and returned by the client when the money was given to him. No money was given without the submission of the deposit certificate. Pertaining to the transfers made by Mr Lesage, the said witness contended that such transfers were never categorized as loans but rather amounted to transfers from one account to another. The flowchart vide Document AD was referred to the witness concerning the deposit of Rs 200 million made by cheque.

The said deposit was effected by the NPF and the said transaction was generated independently by the EDP. The EDP's office is located at "Pailles" whereas the fixed deposit department is located at the 5th Floor of the MCB. After the cheque was generated, same was transferred to the fixed deposit for verification and signature purposes. He explained that the sum of Rs 11, 594 520.55 was generated by the Rs 200 million deposit. He then made use of the flowchart to explain that the cheque of Rs 11, 594 520.55 was signed by two persons in the fixed deposit department and then deposited in an office cheque account which was operated by the current account department.

Out of the deposit of that particular cheque, another 5 cheques were issued namely a first cheque numbered "13816479" amounting to Rs 5,200,000 to the order of HSBC, second cheque numbered "13816480" amounting to Rs 1,500,000 to the order of Handsome Investment, third cheque numbered "13816481" representing Rs 1,500,000 to the order of Sea Rock Paradise, fourth cheque numbered "13816482" amounting to Rs 2,825,000 to the order of HSBC and a fifth cheque for Rs 569,520.55. The said five cheques were issued under the instructions of Mr Lesage. He claimed that the principle of dual control was respected pertaining to the issue of the 1st cheque numbered "13816479" and a reconciliation was made to that effect. In relation to the 2nd cheque numbered "13816480", he stated that same was signed by Mr Ah Yen and Mrs Nozaic.

A credit voucher was filled by Mr Lesage and signed by him for Handsome Investment. The same procedure was done for the 3rd cheque to the order of Sea Rock Paradise. As for the 4th cheque, it was signed by Mrs Nozaic and Ah Yen as well. The amount of Rs 569,520.55 relating to the 5th cheque was transferred to an office cheque account at the MCB. The sum deposited from the 5th cheque was then split. The witness used the flow chart vide Document AD to explain that four further cheques were generated and followed by a myriad of transfers to other bank accounts before using the money to effect payments. He also explained the transfers using the flow chart. He stated that all the cheques were issued under the instructions of Mr Lesage.

He denied that the office cheques remained for long as alleged by Mr Ramtohum in his testimony. The 2nd part of the flow chart labelled as "1480" was also referred whereby it was stated that four cheques were issued to the order of Venus Voyages Vacances, Tamby

Appasamy, Mr Ramalingum and Sofitel Imperial Hotel. It was claimed that the dual control principle was respected as all the cheques were signed by two officers of the bank. He stated that the cheques used to perpetrate the fraud were recovered during investigation and thereafter used to make the flowchart.

Copies of the deposit certificates (Docs DJ & DK) relating to the sum of Rs 200 million were produced in the Court. The witness stated that Rs 100 million was reinvested at the MCB and Rs 100 million transferred to the Bank of Mauritius. As to the Rs 100 million reinvested at the MCB, a cheque amounting to Rs 222, 602.74 representing the interest for 13 days, was issued to the NPF and signed by two officers of the bank. Only Rs 75 million was transferred to the Bank of Mauritius and the said cheque labelled 1522, as per Document BE, was signed by Mrs Walter and Mrs and was then sent to the current account department. It was written at the back "credit the account of NPF as per the instructions at Bank of Mauritius" and same was signed by Mr Lesage. He explained how the cheque number 1524, was credited to a "multiple posting intermediary account" and that the said procedure was a normal practice whereby a transaction was processed through a "swift system" which was a more secure system.

The remaining sum of Rs 25 million was credited to the "multiple posting intermediary account" and then 3 cheques were issued. The first one amounting to Rs 5 million whereby it was written at the back "Robert Lesage for Teeren Appasamy" and Mr Allet was of the opinion that the handwriting was from someone based at the HSBC.

The second cheque related to another sum of Rs 5 million to the order of HSBC signed by Mr Ah Yen and Mrs Decotter. The third cheque amounted to Rs 4.028 million to the order of HSBC. He explained that all the 3 cheques amounting to £ 300, 000 were consolidated and transferred to UK to the order of "Belle Beach Ltd "a company belonging to Mr Teeren Appasamy. The remaining sum of Rs 10,972,000 which was credited to the "multiple posting intermediary account", was then credited to the office cheque account whereby several cheques were issued under the instructions of Mr Lesage namely to the Government of Mauritius, Sea Rock Paradise Limited, Handsome Co. Ltd, Syndic de Copropriétaire Résidence Thalassa and Mr Ivon Coret as per the flow chart. Cheque number 1593 amounting to Rs 473, 790 was to the order of the SBM whereby it was written "Ok account T. Appasamy pour la somme de Rs 473,790". Document "1596" was explained as being a telegraphic transfer was made to the beneficiary, "Belle Beach Limited" paid at Barclays Bank in UK and the said transfer was instructed by Mr Lesage.

Under cross examination, he stated that the instructions or guidelines as stipulated in the GIB, AML and Computer Branch Manual were important and had to be complied with in

relation to the banking operations. He claimed that Mr Lesage started committing devious transactions from the year 1989 till 2002 whilst being an employee of the MCB. It was pointed out that in the year 1989, Mr Lesage was the General Manager of MCB Finance division and was granting unauthorized loans to certain individuals. In support the Accused Company was referred to his own statement vide Document W. He stated that Mr Lesage was verbally authorized by the top management of the bank to stay after his retirement and work up to January 2003. He agreed that though an internal control system existed at the bank, the fraud committed by Mr Lesage had not been detected. He described the type of fraud perpetrated by Mr Lesage as an occupational fraud because the latter used his position in the bank to commit the frauds.

Between 1992 and 2003, around 16 to 17 cases of occupational fraud had been detected at the MCB which were not reported to the Bank of Mauritius. He alleged that he was not aware of any letter sent to the Bank of Mauritius to report the cases of occupational fraud mainly in the fixed deposit department at the MCB.

An investigation was conducted in the year 2002 relating to the fraud committed by Mr Azor and it revealed that the latter forged the signatures of several clients for money held in the Fixed Deposit Department. Transfers of funds were also made to the personal account of Mr Azor. He explained that upon the detection of the fraud, the bank consequently grouped all the former deposits into one pool and the abandoned funds were transferred to the Bank of Mauritius. He admitted that though Mr Azor was reporting to superior officers, no one supervised his work. He explained that the fraud committed by Mr Azor and Mr Lesage could not be detected as the employee who validated the said transactions was not in a position to detect fraudulent operations.

As to the fraud perpetrated by Mr Lesage, he highlighted that the latter abused the trust of his subordinate staffs in view of his long standing years and established career at the MCB. He admitted that though the guidelines for the internal control system existed, some employees did not follow the dual control principle relating to various operations. He explained that Mr Lesage was officially meant to retire on or about June 2001 and an email was circulated to inform the staff accordingly.

Document V2 was referred to the witness whereby he agreed that Mr Lesage requested additional time to stay at the bank until October 2001 he stated that same was subsequently extended till the year 2003. He agreed that whilst being at the bank after his retirement, Mr Lesage was not employed but nevertheless was paid monthly. It was admitted that Mr Lesage overstepped his mandate without the knowledge of the bank. Upon being referred to Document AA, whereby Mr Pierre Guy Noel stated in relation to Mr Lesage *“that he*

continued to occupy his office at the bank without any remuneration and was acting merely as facilitator", Mr Allet agreed to same. He explained that Mr Lesage was the zone manager of the fixed deposit department and would report to the Deputy General Manager or General Manager. Pertaining to the communication via letters established between Mr Lesage and the NPF, he stated that the said letters were sent to the NPF without the knowledge of the bank. He claimed that the compliance leave that were taken by Mr Lesage was registered in a book and from the year 2004 the said book has not been used. All the employees that followed the instructions of Mr Lesage were reprimanded after the incident. He insisted on the fact that the guidelines that existed at the bank should have been followed by the staff.

He denied that Mr Lesage was the file manager the NPF file but rather stated that he was the contact person relating to the said file. Upon being referred to Document V2, he admitted that Mr Lesage "acted" as the file manager of various clients including the NPF. He admitted that Mr Lesage was considered to be the file manager of the NPF in light of his contacts that were established over the years. He agreed to the correspondence made between Mr Lesage and Mrs Rojoa over the years and letters (Docs DU11 to DU 115) were produced as proof thereof.

Reference was made to a document dated the 15th of September 1999 (Doc R) whereby he stated that the employees did accede to the request of Mr Lesage relating to the preparation of office cheques but not concerning the transfer of funds. He stated that there were around 15 employees altogether working in the fixed deposit department, current account department and visa department and they were all authorized signatories of the bank. Pertaining to the cheques signed by Mrs Decotter, he stated that such acts were done under the instructions of Mr Lesage but conceded that no instructions were given by the NPF to execute any transfer. Though it was stated that Mrs Decotter acted under the instructions of Mr Lesage, he nevertheless agreed that Mrs Decotter ought to have sought the instructions of the NPF beforehand. Instruction F 50 more precisely under paragraph 10 of the General Instruction Book was referred whereby Mr Allet conceded that it was stipulated therein that "the signature must be checked with that on the application form". He agreed that Mrs Decotter did not follow the appropriate procedure for the said process. He pointed out that any element of conspiracy between Mrs Decotter and Mr Lesage was not to his personal knowledge but maintained the fact that Mrs Rojoa did conspire with the latter in the said matter. He admitted that Mrs Nosaic and Mrs Amurat, the signatories of the bank did not follow the required procedure whilst signing the cheques as instructed by Mr Lesage. He claimed not to have any knowledge as whether the bank did take any sanctions relating to these malpractices.

He stated that Mr Lesage started to defraud clients' deposits since August 1996 but the bank became aware of such occurrence in 2003 as the said fraud involved the element of concealment. Cheque number 1532, which was signed by Mrs Nozaic and Mr Percy AhYen was referred to and the witness stated that there was no need for the two signatories to verify as whether the client did give any instructions to effect payment. He claimed that verification was done when a deposit would come to maturity. The said deposit was redeemed and a cheque was issued thereafter. However, once an office cheque was issued, there was no need to do any verification. He insisted on the fact that the instruction of the superior was enough in those cases and the instructions of the clients were not important to be sought at this stage.

Document X1537 was also referred and he stated the signature at the back of the said cheque was in fact that of Mr Lesage and he agreed that Mrs Nozaic did not receive any instructions from the client regarding the said transaction. He claimed that it was sufficient for Mrs Mosaic to have relied upon the instructions of Mr Lesage. Documents X1516 and X1517 were referred whereby the amount of Rs 75 million was requested by Mr Lesage to be transferred to the Bank of Mauritius. He admitted that there was no endorsement therein or instructions from the NPF so that Mrs Walter and Mrs Decotter ought to have made the required verification prior the said transfer rather than following the instructions of Mr Lesage. The instructions of Mr Lesage were also followed by Mrs Walter and Decotter pertaining to the cheque of Rs 25 million. He admitted that the guidelines were not followed in those particular circumstances, in as much as there was no instruction from the NPF relating to the transactions effected. He stated that Mr Bestel was supervising the tasks being undertaken by Mr Lesage but no one at the bank was aware of the malpractices of the latter. He stated that the review practice regarding the office cheque account was not carried out every day but rather done monthly. Paragraph 3 of Instruction F50 of the GIB was referred to and Mr Allet agreed that there was no instruction emanating from the NPF. As per the said guideline, an application form was necessary but he could not say in Court if an application form had been used for said transactions or transfers. He also admitted that Paragraph 13.1.1 of Instruction F50 of the GIB was not adhered to in view of the fact that the fixed deposit receipt was not endorsed.

He agreed that if the dual control exercise was properly followed or the signature of NPF verified, Mr Lesage would not have been in a position to effect those transactions. Document X1528 was put to the witness whereby he agreed that no instruction emanated from the NPF. He further admitted that the bank does not give any instructions to its employees at the stage whereby cheques were issued at the current account department. He claimed not to be aware how many audit reports were made from the year 1992 till 2000 whilst he was

based at the audit department. A meeting held in March 2004 was referred to the witness whereby he agreed that vice chairman conveyed the fact that there was a lack of proper culture at the MCB.

Document X 1481 was referred to relating to the cheque automatically generated on the 30th of November 2002 to the order of the NPF. He agreed that there was no instruction from the NPF pertaining to such a transaction and the said cheque was not conveyed to the NPF. He claimed that the cheque was sent to the current account department and other cheques were wrongfully issued.

Document X1483 was also put to the witness whereby the latter agreed that there was no instructions from the NPF to carry out such transaction. Documents X1488 were also referred to in the same vein to which Mr Allet agreed that no instructions emanated from the clients.

Paragraph HR 09 in Document EF, concerning the “controls over intermediary account” was also put to Mr Allet to which he agreed no entries were made to the said account and reconciliation of office cheques were not carried out since the year January 2000. He further stated that failure to do the reconciliation exercise could result into risks of fraud. He agreed that Mr Lesage was not mandated to authorize preferential rates of interest to Mrs Rojoa since he was not employed at the MCB since June 2001 and was not the zone manager forming part of the top management of the MCB.

With regard to the stay of Mr Lesage after his retirement, he stated that it was approved by the top management of the bank but conceded not to have personal knowledge of the said decision. A letter (Doc AA) addressed to Mr Forget by Mr Lesage was also put to Mr Allet. He admitted that Mr Lesage had an office with a secretary and he complied with the clocking timings. He denied that Mr Lesage was one of the bank’s authorized signatory after his retirement and in practice the needful was done to remove the employee from the list of employees after his retirement. He eventually claimed not to be aware whether that procedure had been followed in the case of Mr Lesage. He denied that it would have been more convenient for the bank to have one zone manager in each department the moreso each of the department had a manager already.

In relation to the deposit of Rs 200 million, the fixed deposit receipt (Doc DX) and application form (Doc DY) were produced by Mr Allet in Court. He admitted that the application form did not bear any signature from the NPF contrary to what the procedure required. He agreed that as a result there was no efficient control but claimed that there was no evidence that the element of dual control has not been complied therein.

In relation to the Rs 100 million reinvested over two years, he admitted that there was no signature of the NPF as well. The said document was prepared by Mrs Walter under the instructions of Mr Lesage. Upon being confronted with Document EA, he admitted that it was signed on behalf of the NPF. Document EE was also put to the said witness and he agreed that the said deposit receipt ought to have endorsed. Pertaining to the sum of Rs 25 million, he stated that correct procedure was not adopted and an application form and a new fixed deposit receipt were meant to be issued. Paragraph 1.1 of Instruction F50 of the GIB was referred to which Mr Allet agreed that there was no adherence to the directives issued by the bank.

The IAD Report (Doc EF) was produced in Court and several flaws were identified as per the Report. He agreed that several forms did not bear customers' signatures, specific documents were not filled at the fixed deposit level and no dual control was exercised over the fixed deposit amendments. He also agreed that interest cheques were not securely kept during working hours. It was also admitted that as per the Report, there was a lack of proper general control in relation to setting up of deposits and the refund thereof. He stated that Mr Lesage had the prime responsibility to implement the said recommend and that no committee was set up to check as whether the audit recommendations were implemented.

Letter dated 25th of June 2009 (Doc DT) was referred to the witness whereby he agreed that the ICAC called upon the MCB to answer the charge as per the said letter. He admitted that the MCB never attended to answer any charge but instead documents were submitted to the ICAC. He could not reply to the Court as to whether the MCB remitted to the ICAC certain "certified copies of files maintained at the bank". The files requested included that of Handsome Investment, Sea Rock Paradise, Direct Properties Ltd and Angel Beach Resort Ltd. He was unaware if the ICAC did request for the internal auditors' report of the MCB from the years 1996 till 2003 though he stated that he was the one in charge of the enquiry. In relation to the investigation done by the ICAC, he claimed that it was in the year 2007 that the MCB tendered a "prepared statement" for the first time. Document CN was referred to the witness whereby he claimed that the bank decided not to call at the ICAC and answer any charge in light of all the documents submitted. He agreed that the Maintenance Report containing the details and amendments regarding fixed deposit was not produced to the ICAC.

In relation to the Kroll Report, it was claimed that same was brought to the attention of the management only and he did not have access to the said document as he was based in the internal audit department. He however admitted that the said document was important for his perusal. He maintained his version that he has never seen the Kroll report prepared by

Kroll Associates. He explained that the Kroll Associates was an international risk consultancy firm which made independent verifications of the recommendations made by the MCB.

In relation to the internal auditing team at the MCB, he admitted that the Chief Internal Auditor did not possess any diploma in Accounting or Auditing. Mr Roussel who was a Computer Auditor and was the holder of a Banking Certificate and he was previously employed as a senior clerk at the MCB. Mr Sooben who was in the said department from the 26th of April 1996 only had a Certificate in Banking Foundation and a Diploma in Internal Auditing. He stipulated that “collective knowledge” was most important in order to work in the audit department. The Report dated the 14th of June 2000 emanating from the Bank of Mauritius was referred to the witness to which he agreed that employees working the internal auditing department ought to be professionally qualified in the accounting field and possess the relevant experience. He admitted the Internal Audit Department Report (Doc EF) laid stress upon the ‘high risk issue’. He denied that the ‘high risk issue’ was related to ‘serious controlled weakness’ but rather conveyed to the Court that immediate action was required in such circumstances. The issue of “signatures and initials on contract forms” was also invoked whereby he admitted that the particular employee at the bank did not sign on the relevant document prepared and further a second employee did not effect the proper control by signing anew on the said document.

In the year 2003, a new structure was set up at the MCB whereby position of zone manager was abolished and there was no longer a fixed deposit department. He could not reply to the Court as to why the fraud committed by Mr Azor was not reported to the Police or to ICAC. Document X1584 was put to Mr Allet whereby the latter agreed that Mr Lesage gave several instructions in view to process the said transactions. In light of the changes at the bank, he stated that customers’ accounts were directly credited rather than issuing office cheques to process a particular transaction.

In the year 2003, he agreed that the MCB did employ a compliance officer but he was unaware if the Bank of Mauritius recommended the MCB to do so. He also claimed not to be aware as whether Mr Lesage was the authorized signatory of the bank after his retirement. He further agreed that as per Report dated the 14th of June 2000 issued by the Bank of Mauritius, it was found, after an inspection carried out at the Internal Audit Department, that there was no coordination between the Chief Internal Auditor of the MCB and the external auditors. He denied that there a lack of segregation of duties and an inefficient dual control exercise at the MCB. It was also denied that there was a lack of proper culture as per the Document DC dated the 26th of March 2004.

Under re-examination, Document EG was referred to and the witness claimed that it was the responsibility of the NPF to sign the relevant document relating to the Rs 100 million invested which would have reached maturity on the 30th of November 2002. The Internal Audit Department had the duty to verify as whether all the procedures were being complied with as specified in the guidelines.

The Internal Audit Department existed since the year 1983 and was named the Inspection Department. A Risk Management Committee existed since the year 1983 and had the responsibility to manage credit risks, liquidity risks and price risks on the market. He claimed that not all documents were produced by the ICAC in the said matter as the deposit applications at the time were submitted by Mr Raisin.

III. Part C: Analysis

We have duly considered the evidence on record, the version and demeanour of the witnesses for the prosecution and the sworn version of the representative of the Accused Company.

The Accused Company stands charged with the offence of "Money Laundering" in breach of Sections 3(2) & 8 of The FIAMLA coupled with Section 44(2) of the Interpretation and General Clauses Act. The Accused Company is alleged to have wilfully, unlawfully and criminally failed to take such measures as are reasonably necessary: implementation of internal control systems and procedures, to ensure that services offered by it namely in relation to the Fixed Deposit Accounts held on behalf of the National Pensions Fund, were not capable of being used by a person to facilitate the commission of a money laundering offence.

We wish at the outset to set out Section 3(2) of the FIAMLA 2002 which reads as follows:

"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."

As such, the following elements have to be established by the prosecution

- a) Failure to take such measures as are reasonably necessary,
- b) Services offered by the bank were capable of being used by a person and
- c) To commit or facilitate the commission of a money laundering offence.

We propose to deal with the second element of the offence first before dealing with the two other elements which are more complex ones.

SECTION A: THE SECOND ELEMENT OF THE OFFENCE -SERVICES OFFERED BY THE BANK WERE CAPABLE OF BEING USED BY A PERSON

The services offered by the MCB would be taking deposits from clients, safekeeping these and paying an interest on them, amongst others. NPF was a client of the bank.

It is undisputed that Mr Robert Lesage was the person who perpetrated the fraud. It is also clear that the term 'person' does not apply solely to clients/ customers of the bank, but also encompasses any person which includes employees of the bank (insiders and outsiders), hence Mr Lesage.

The modus operandi used by Mr Robert Lesage can be discerned through the different transactions as borne out on the flowchart (Documents AD, BH, X1479 and X1511).

We shall now address the third element of the offence namely to commit or facilitate the commission of a money laundering offence.

SECTION B: THE THIRD ELEMENT OF THE OFFENCE - TO COMMIT OR FACILITATE THE COMMISSION OF A MONEY LAUNDERING OFFENCE

The first issue to be considered is whether there was a duty on the prosecution to prove the actual commission of a money laundering offence.

Learned counsel for the prosecution submitted that Section 3 of the FIAMLA should be read as a whole. According to him, Section 3 of the FIAMLA criminalised many forms of acts considered as money laundering offence. Section 3(1) would require the prosecution to prove the full commission of a money laundering offence. Under section 3 (1)(b) of the FIAMLA the mere fact of being in possession of criminal property would constitute an offence of money laundering. However, the provision is different under section 3 (2) which refers to measures. Learned counsel for the prosecution propounded that there is no need for the prosecution to prove the various stages of money laundering which are placement, layering and integration.

On the other hand, learned counsel for the defence submitted that there was no money laundering offence committed by the Bank. According to him for a money laundering offence to have been committed there must first be "*property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime*" as provided for under the FIAMLA. According to him, Mr Lesage used his position to fraudulently misappropriate funds of the bank.

He made a series of false and forged entries in banking documents in order to conceal the fact that funds were being fraudulently misappropriated from the MCB so that there was no money laundering but only a larceny. In the present case, money was being stolen by moving same into different intermediate accounts as evidenced by the flowcharts.

We wish to point out at this stage that learned counsel for the prosecution has referred extensively to the following documents namely:

1. the Guidance Notes on anti-money laundering from the Bank of Mauritius published in June 2005 and updated in March 2014.
2. an extract from Butterworths on Money laundering.
3. Regulation 20 of the UK Money Laundering Regulations 2007.
4. The UK Proceeds of Crime Act 2002, which makes allowance for the UK Money Laundering Regulations 2003, was also enacted in the same year as our FIAMLA 2002. Subsequently, the UK Money Laundering Regulations 2007 repealed the UK Money Laundering Regulations 2003.
5. An extract of the Butterworths Money Laundering Law issue 36

We wish to observe that this court cannot entertain any submission based on materials which were published or came into force subsequent to the commission of the offence in as much as they were not available for guidance at that time the offence was committed.

Having said that, we will now consider the intention of the Parliament at the time the FIAMLA was enacted.

The intention of the legislator can be derived from the Parliamentary Debates which took place prior to the enactment of section 3 (2) of the FIAMLA and which provides as follows: - *'Part II of the Bill sets out the acts or activities which constitute money laundering offences. Clause 3 is couched in terms wide enough to cover cases where a person engages in transactions that involve property acquired from proceeds of a crime as defined under our Criminal Code. The clause also imposes on banks, financial institutions, cash dealers and professionals such as accountants and lawyers to take appropriate measures to prevent their services being used as a channel for money laundering.'* (the underlining is ours)

It is to be noted that the legislator enacted Section 3 of the FIAMLA to criminalize the various acts and doings which would constitute an offence of money laundering and also to impose an obligation on the banks among other authorities and institutions to take reasonable measures to prevent activities relating to money laundering. The legislator thus wanted to

impose a distinct duty on the bank to take measures to combat money laundering.

At this juncture, it is apposite to consider the actual provision of Section 3 of the FIAMLA as it was enacted and was in force at the time of the offence and this reads as follows: -

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 shall commit an offence.*

Section 3(1) of the FIAMLA provides for those who engages themselves in the actual commission of money laundering and also for those who handles proceeds of a crime which are subject to laundering that is those criminals who are actively indulged in disguising the origin of the tainted property. On the other hand, subsection (2) provides a duty on certain authorities and institutions (in the present case the bank) to take reasonable measures to prevent their services from being used by those actually committing the money laundering offences. The law therefore does not impose a duty on the prosecution to prove actual money laundering.

It is imperative, at this juncture, to look at the averments of the information to determine what the prosecution has to establish under the third element of the present offence. It has been averred that on or about the year 2002, the accused failed to implement proper internal control systems and procedures to ensure that services offered by it, to wit: in relation to the fixed deposit accounts held on behalf of the National Pensions Fund, were not capable of being used by a person '*to facilitate the commission of a money laundering offence*'.

The prosecution must therefore prove that the measures taken by the MCB was not reasonably adequate to prevent its floor from being used to commit a money laundering

offence. It is not incumbent upon the prosecution to prove the actual commission of a money laundering offence. However, it does not prohibit the prosecution from going one step beyond and prove an actual money laundering offence.

We shall now delve into the facts of the present case which tends to establish the actual commission of the money laundering offence.

A. THE COMMISSION OF TWO LARCENIES BY MR LESAGE

I. THE LARCENY OF RS 25 MILLION – THE FIRST LARCENY

Mrs Rojoa explained that the Ministry of Social Security had an account at the MCB and that Mr Lesage was the file manager of the said account up to January 2003. She stated that among other transactions, there was a fixed deposit of Rs 200 million which reached maturity. The Investment Committee, of which she was a member, decided to have another fixed deposit of Rs 100 million at an agreed rate of interest and to transfer the remaining Rs 100 million to the Bank of Mauritius for the purchase of treasury bills. She agreed that she was the one responsible to implement the decision taken by the Committee.

She explained in Court that in fact, on her own volition, she decided to transfer only Rs 75 million to the Bank of Mauritius and left the remaining Rs 25 million at the MCB for a fixed deposit as the interest would fetch the same rate of return as the treasury bills and also because of the representations of Mr Robert Lesage who alleged that the MCB was encountering some liquidity problem. Subsequently, on the 27 of January 2003 she made a phone call to the MCB in relation to the deposit which was meant to come to maturity on the 31 of January 2003 and was thereby informed by the receptionist that Mr Lesage had retired. A meeting was held on the 28 of January 2003 at the MCB with Miss Decotter an employee of the bank and the only entry that could be traced was the sum of Rs 100 million that was renewed in November 2002.

It is clear from the evidence borne out on the record that from the Rs 200 million which reached maturity, the first Rs 100 million was placed into a Fixed Deposit as instructed by Mrs Rojoa. From the remaining Rs 100 million, the amount of Rs 75 million was transferred to the Bank of Mauritius as instructed by Mrs Rojoa. The remaining Rs 25 million was not placed into the Fixed Deposit Account contrary to the instructions of Mrs Rojoa which as such amounted to an abstraction of the remaining Rs 25 million.

Mr Allet explained the said larceny in his statement at paragraph 2.111 of Document W. He admitted that there was a theft of Rs 25 million committed on the 13 of December 2002 by Mr Lesage. A chart mentioning the said theft was included.

We wish at this stage to cite the case of **Ibrahim v R (1914) PC**, where it was held by Lord Summer as follows: *“An adverse admission relevant to the issue of guilt may be admissible in criminal cases as a confession. In order to be admissible the prosecution has to show that the confession had been made voluntary...”*.

In the present case, Mr Naiken has explained that the statement contained in Document W was prepared and submitted by the MCB. At any rate, learned counsel for the defence in all fairness has also acknowledged the theft of Rs 25 million as mentioned in the defence statement of the Accused Company. We are of the view that we can fully entitled to rely on Document W.

Mr Allet in his testimony explained the procedures at the bank to deal with fixed deposits. It is borne out from the evidence of Mr Allet that once money had been deposited in a Fixed Deposit Account, a Certificate was issued to the client and the money was then owned by the bank for other potential transactions. When the said deposit reached maturity, the bank no longer had authority on the money and should get further instructions from the client and comply with the instructions.

In the present case, there was the fixed deposit of Rs 200 million which had reached maturity and at that time the MCB no longer had authority on the money. As explained above, there was clear instructions from Mrs Rojoa on how to deal with the Rs 200 million namely Rs 175 million were dealt with as per the instruction given by Mrs Rojoa to the bank and the Rs 25 million was taken by Mr Robert Lesage which boiled down to an offence of larceny having been committed by him.

Mr Allet further expatiated that the remaining sum of Rs 25 million was credited to the “multiple posting intermediary account”. In acting contrary to the instruction of Mrs Rojoa and by removing the Rs 25 million before placing same into “multiple posting intermediary account”, Mr Lesage committed a larceny. Referring to the misdeeds of Mr Lesage, Mr Allet was adamant that, to cite his own words *“Il a vole, il a transfere, il a donne aux officiers de la banque* ‘

Mr Naiken also explained the flowchart as per Document V to confirm that there was a fixed deposit of Rs 200 million held at the MCB and Rs 100 million was reinvested in a fixed deposit account. The sum of Rs 75 million was transferred to the Bank of Mauritius and the

remaining Rs 25 million was taken and deposited into an intermediary account at the MCB. The Rs 25 million was thus abstracted.

We wish to cite the case of **Soobhane & Karrimbaccus v R (1960) MR 89**, the Appellate Court quoted the modern doctrine as explained in **Garçon** to explain the offence of larceny as follows : *“c’est la prise de possession à l’insu de et contre le gré du propriétaire ou précédent possesseur, c’est l’usurpation invito domino de la véritable possession dans ces deux éléments simultanés et concomitants du corpus et de l’animus”*. Furthermore, in the case of **Ghurburn v R (1990) MR 206** and **Soobratee v R (1991) SCJ 387**, it was held that to determine when a larceny is complete is to analyse when the abstraction is complete. It would depend on whether the owner had control or the accused who had total control of the property in issue.

We therefore hold that the larceny of Rs 25 million was complete.

II. THE LARCENY OF Rs 11, 594,520.55, THE SECOND LARCENY

In its defence statement vide Document W, at paragraph 2.110, Accused Company admitted that on the 2 of December 2002, there was the deposit of Rs 11,594, 520. 55 which was stolen Mr Lesage which was included in a chart. The principle laid down in the case of **Ibrahim v R (1914) PC**, (supra) is also applicable here so that we consider that we are fully entitled to rely on Document W.

Further, in his testimony, Mr Allet explained that an interest in the sum of Rs 11, 594, 520.55 was generated by the Rs 200 million deposit. A cheque of Rs 11, 594 520.55 was signed by two persons in the Fixed Deposit Department who acted under the instructions of Mr Robert Lesage and then deposited in an Office Cheque Account. Such an act amounted to a larceny of the Rs 11, 594 520.55 which was destined and owned by the Ministry of Social Security.

In light of the cases of **Soobhane & Karrimbaccus v R (supra)**, **Ghurburn v R (supra)** and **Soobratee v R (supra)**, we therefore hold that the larceny of Rs 11,594,520.55 was complete.

Furthermore, In the case of **R v Anwoir [2008] 2 Cr. App. R 36**, the court held that *“the prosecution had two ways of proving that the property was 'criminal property'. Firstly, by showing that it derived from a specific 'kind or kinds' of crime; e.g. fraud, drug-trafficking etc. Secondly, that from the circumstances the "irresistible inference" can be drawn by the jury*

that it can only be derived from crime”.

We find that there were two distinct offences of larceny which have been established. The predicate offences prior to money laundering are therefore established. We therefore hold that the two distinct sums of money which have been stolen were proceeds of crimes.

We shall now analyse how the unlawfully obtained property was handled.

B. THE CONCEPT AND PROCESS OF MONEY LAUNDERING

An adequate definition of money laundering can be derived in the first protocol drawn by the INTERPOL which was drafted following the United Nations Convention of 1992 and the Model Regulations concerning money laundering offences. The said instrument was in existence prior to the date of the alleged offence and the definition of money laundering was as follows:

"any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources".

Money laundering usually takes place in three stages which are often intertwined and overlaps with each other. Those stages are given a wide range of name with technical terms associated to them, but the most common description of the stages of money laundering can be found in the various law dictionaries. We wish to refer to the “**Public Law Dictionary**” available on the internet at “ [https://www.moneylaundering.ca/public/law/ 3 stages ML.php](https://www.moneylaundering.ca/public/law/3_stages_ML.php)” and which provides as follows:-

(i) The placement

The placement stage represents the initial entry of the proceeds of crime into the financial system. Generally, this stage serves two purposes: (a) it relieves the criminal of holding and guarding large amounts of bulky cash and (b) it places the money into the legitimate financial system.

(ii) The layering

After placement comes the layering stage which is the most complex and often entails the national and international movement of the funds. The primary purpose of this stage is to separate and distance the illicit money from its source. This is done by the sophisticated *layering* of financial transactions that obscure the audit trail and sever the link with the original crime. It is common for fraudsters to begin by moving funds electronically from one

account to another or from one country to another, then divide them into investments, payments or other complex financial transactions.

(iii) The integration

The final stage of the money laundering process is termed the integration stage. It is at the integration stage where the money is returned to circulation from what seem to be legitimate sources. Having been placed initially as cash and layered through a number of financial transactions, the criminal proceeds are now fully integrated into the financial system and can be used for any purpose.

There are many different ways in which the laundered money can be integrated back in the system. However, the major objective at this stage is to bring back the money in such a way that it appears to result from a legitimate source. Examples are the purchases of property, payments etc.

C. THE APPLICATION OF THE CONCEPT OF MONEY LAUNDERING TO THE PRESENT CASE

I. FOLLOWING THE LARCENY OF Rs 25 MILLION

(i) The placement

In the present case, Mr Naiken used the flowchart to explain that the said Rs 25 million was subsequently credited to an Office Cheque Account in the Current Account Department. At this stage money launderers are usually the most vulnerable to being caught in as much as the placing large amounts of money into the legitimate financial system may raise suspicions of officials. However, the whole transaction was not identified as a suspicious transaction by the Accused Company.

(ii) The layering

Mr Naiken explained the transactions which took place at the layering stage of the Rs 25 million, such as Rs 10,972,000 was credited to an MCB account bearing number 019005083, Rs 5 million by virtue of an office cheque paid to HSBC, a further transfer of Rs 4,028,000 to the HSBC. The flowchart, vide Document AB, shows that Rs 5 million and Rs 4,028,000 were transited through HSBC to Barclays Bank Croydon.

The process was more clearly explained by Mr Allet who admitted that the Rs 25 million was converted into three cheques; a first one amounting to Rs 5 million to the order of HSBC; a

second cheque related to another sum of Rs 5 million to the order of HSBC and a third cheque amounted to Rs 4,028,000 to the order of HSBC. He explained that all the 3 cheques amounting to £ 300, 000 were consolidated and transferred to UK to the order of “Belle Beach Ltd” a company belonging to Mr Teeren Appasamy. The remaining sum of Rs 10,972,000 which was credited to the “multiple posting intermediary account”, was then credited to another account namely the Office Cheque Account.

(iii) The Integration

Mr Naiken has also explained that there were also a number of payments which were effected. Payment of Rs 1,911,395 to the order of the Government of Mauritius which was credited to the Accountant General section; Rs 3 million was paid to Sea Rock Paradise; Rs 2 million which was deposited in the account of Handsome Investment at the MCB; Rs 2,640, 000 and Rs 1,019,535 were paid to the account of Mr Appasamy at the SBM, payment of Rs 10, 000 to Mr Ramdewar, payment of Rs 56, 000 to Air Mauritius credited on an account at the MCB. Cheques were produced to the Court vide Documents AE to AZ, BA- BZ in support of the complex transactions. The impugned cheques were issued by employees of the MCB acting under the instructions of Mr Robert Lesage. The evidence on record revealed that despite the retirement of Mr Robert Lesage, his signature was still accepted at the level of the bank and was therefore acting as the bank’s authorized signatory.

Mr Allet also has explained the integration stage namely that all the 3 cheques sent to HSBC were consolidated, exchanged to £ 300, 000 and transferred to UK to the order of “Belle Beach Ltd” a company belonging to Mr Teeren Appasamy. He further explained the process supported by Document X1596 which was a telegraphic transfer to the beneficiary, “Belle Beach Limited” paid at Barclays Bank in UK and the said transfer was instructed by Mr Lesage. Furthermore, as instructed by Mr Robert Lesage, from the sum of Rs 10,972,000 which was credited into an Office Cheque Account, payments were effected to the Government of Mauritius, Sea Rock Paradise Limited, Handsome Co. Ltd, ‘Syndic de Copropriétaire Résidence Thalassa’ and Mr Ivon Coret. He made use of the flow chart to explain how the money was used to effect the payments.

II. FOLLOWING THE LARCENY OF Rs 11,594,520. 55

(i) The Placement

Mr Allet explained that under the instruction of Mr Lesage, the cheque of Rs 11, 594, 520.55 was deposited in an Office Cheque Account which was operated by the Current Account Department.

(ii)The Layering

Mr Allet explained that from the deposit of the cheque of Rs 11, 594, 520.55, 5 other cheques were issued namely a first cheque numbered “13816479” amounting to Rs 5,200,000 to the order of HSBC, second cheque numbered “13816480” amounting to Rs 1,500, 000 to the order of Handsome Investment, third cheque numbered “13816481” representing Rs 1,500,000 to the order of Sea Rock Paradise, fourth cheque numbered “13816482” amounting to Rs 2,825,000 to the order of HSBC and a fifth cheque for Rs 569,520.55 to an Office Cheque Account at the MCB. The sum deposited from the fifth cheque was splitted. The witness used the flow chart vide Document labelled as X1480 to explain that four further cheques were generated and followed by a myriad of transfers to other bank accounts before using the money to effect payments. He stated that all the cheques were issued under the instructions of Mr Lesage.

(iii)The Integration

Mr Allet explained the two payments indicated above namely a cheque numbered “13816480” amounting to Rs 1,500, 000 to the order of Handsome Investment and a cheque numbered “13816481” representing Rs 1,500,000 to the order of Sea Rock Paradise,

After the complex transfers, the amount of Rs 569,520.55 was used to effect payments to several persons and organizations including “Venus Voyages Vacances”, Tamby Appassamy, Mr Ramalingum, and Sofitel Imperial Hotel.

For the reasons set out above, we therefore hold that the prosecution has proved the third element beyond reasonable doubt.

SECTION C: THE FIRST ELEMENT OF THE OFFENCE - FAILURE TO TAKE SUCH MEASURES AS ARE “REASONABLY NECESSARY”

Section 3(2) of the FIAMLA sets out as follows:

“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”. (emphasis ours)

Oxford dictionary, twelfth edition, defines ‘measure’ as “means of achieving a purpose”.

Learned counsel for the defence observed that Section 3(2) of FIAMLA creates a criminal offence which is founded on measures that are reasonably necessary. He highlighted that a reasonable standard relating to banking practice differed from country to country. Even within the Mauritian banking sector different persons may have different views on what is a reasonable standard. Each bank in Mauritius, the Financial Services Commission, the Financial Intelligence Unit, the Board of Investment, the Stock Exchange of Mauritius, the Investors themselves and more importantly the Bank of Mauritius may have their own view on the matter.

He laid stress upon the fact that the criminal law does not allow for such uncertainty. It is a fundamental requirement that a criminal offence be clearly defined. The House of Lords in the case of **R v Rimmington [2005] UKHL 63** at page 17 paragraph 35 stated the following: *“An offence must be clearly defined in law (SW and CR v United Kingdom), and a norm cannot be regarded as a law unless it is formulated with sufficient precision to enable the citizen to foresee, if need be with appropriate advice, the consequence which a given course of conduct may entail.”*

He further opined that Section 3(2) of FIAMLA is incomplete and cannot create an offence at all unless it is supported by a clear text which defines what would constitute *“measures”* in the sentence *“measures as are reasonably necessary”*.

We have duly considered the submissions of learned counsel for the defence and we find that it is for the Court to assess the evidence on record and to determine whether the Bank has taken reasonable measures to ensure that neither it nor any service offered by it, was capable of being used by a person to commit or to facilitate the commission of a money laundering offence. That discretion is vested on the Judiciary and is not a flaw in the law.

We shall now deal with the facts and circumstances of the present case to assess if the MCB did fail 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.

We propose to deal with this issue under three limbs namely:

- (1) An analysis of the procedures adopted at the MCB and whether they were appropriate ones
- (2) The ambit of the powers and authority vested upon Mr Lesage by the Bank
- (3) The purview of the “Communiqués”

A. AN ANALYSIS OF THE PROCEDURES ADOPTED AT THE MCB AND WHETHER THEY WERE APPROPRIATE ONES

I. THE IMPORTANCE OF ESTABLISHED BANKING PROCEDURES AND THE ADHERENCE TO THOSE PROCEDURES

Learned counsel for the defence submitted that proper banking procedures have been established and are found in the books which were available at the time of the alleged offence. According to him the MCB had implemented proper internal control systems and procedures in relation to all its services. Mr Allet produced a number of documents and submitted that these documents show that there was adequate internal control and procedures which existed at all material times at the MCB. He relied mainly on The General Instruction Book (Document DG), The Internal Audit Manual (Document DM) and The Anti-Money Laundering Book (Document DL). These books under reference provide as follows:-

(i) The General Instruction Book

Learned counsel for the defence submitted that Document F 50 in the GIB explains the procedures to be adopted in respect of fixed deposits. It contains 15 paragraphs that set out in detail the instructions, procedures and control systems concerning fixed deposits. It provides for the duties and responsibilities of the bank officers and also the procedures for the customer who wishes to open a fixed deposit account. The document also provides for procedures and control systems in case of Renewal Advices, Refund of Deposits and Renewal of Deposits respectively. These documents make it abundantly clear that the MCB had a detailed system of internal control and procedures with respect to Fixed Deposits in particular.

Learned counsel for the defence submitted that there was proper dual control and segregation of duties. Each deposit has a certificate and a serial number in order to ensure identity and control. Each certificate must be signed by two authorized signatories of the MCB and the original of the said certificate is kept with the client. The EDP generates automatically the interest cheques for the payment of interests over fixed deposits. The said department is completely separate and independent from the deposit department. He submitted that all the cheques and vouchers involved in the present case filed before the Court bear two signatures which uphold the principle of dual control. The GIB also provides for the procedure to retrieve the deposit by the client who must first present to the MCB the said original certificate and sign at the back thereof.

He submitted that the GIB existed at the time of the alleged offence. He laid stress upon the fact that at first, Mr Ramtohul did not recall whether or not he had asked the MCB for its General Instruction Book, then on further cross examination, he stated that there was a GIB which provided for the procedures for Fixed Deposits. However, Mr Ramtohul said that the procedures were not being followed.

(ii) The Internal Audit Manual and its application

Over and above the GIB, the Internal Audit department of the bank also carried out specific internal audits to reinforce security at the MCB and 40 internal audits assignments were carried out between the years 2000 to 2002. Audits are conducted following the procedures set out in the Internal Auditing Manual vide document DL. Evidence of the control is found in the audit report which was filed vide document EF. The audit report pointed out the flaws that existed within the fixed deposit department and recommendations were made to rectify them at the earliest. In addition the MCB also provided for training by Mr R. Cascarino (the former president of the International Auditing Association), an expert on internal audit who delivered lectures at the MCB over a period of a year in order to review and improve its Internal Audit.

It was submitted that at no point in time, the prosecution adduce evidence to show that the system of internal controls and procedures put in place by the MCB were not reasonably sufficient.

(iii) The Anti-Money Laundering Handbook

Counsel submitted that the first legislation in Mauritius which has provided the framework to combat money laundering was the Economic Crime and Anti-Money Laundering Act 2000 (ECAMLA). The ECAMLA was repealed in April 2002 and thereafter replaced by the FIAMLA which came into force on the 10th of June 2002. On the 19th of June 2003 regulations in application of FIAMLA were enacted and those regulations came into force on the 21st of June 2003. In that spirit, Anti-Money Laundering safeguards, controls, instructions and procedures were prepared at the bank found in the GIB at Form E 151. A money laundering reporting committee was set up at the MCB and was headed by Mr Edwin Marion. Thereafter, with the coming into force of the FIAMLA in 2002, the MCB replaced the instructions contained in Form E 151 by an Anti-Money Laundering handbook (Document DM) and Mr Edwin Marion was then appointed as the money laundering reporting officer. The Anti-Money Laundering Handbook is detailed and sets out the obligations of the MCB and of its Staff as well as the procedures to follow in order to minimise the risk of the bank's services being abused to launder funds.

On the other hand, the prosecution contended that the orders as enunciated in the books listed above were not being put into practice.

We have duly considered the submissions of counsel for both parties and we shall now address the issue as to whether these instructions were in fact implemented in practice. We wish to highlight firstly, Mr Ramtohol categorically said that the procedures could have existed in books but were not being followed. Secondly, at Par 10 of the GIB (Document DG), it is stipulated that *'on refund, the depositor must endorse the fixed deposit receipt and the signature must be checked with that on the application form'*. In the present matter, when Mr Lesage perpetrated the fraud, the deposits were being manipulated without the instructions of NPF. Thirdly, Mr Allet himself, confirmed that there were indeed no instructions from NPF and did not dispute the fact that there was no signature of the NPF on the forms namely Documents DX, DY, EA & EC when the fixed deposits reached maturity and finally, Mr Allet admitted that for the stolen sum of Rs 25 million, the correct procedure was not adopted in as much as an application form and a new fixed deposit receipt were meant to be issued. He added that Par 1.1 of F50 of the GIB was not adhered to and the written directives of the bank was not followed.

We therefore find that there is ample evidence in the present case to demonstrate that the procedures existed but were not complied to. These obviously created an opportunity for the perpetration of fraud. After a scrutiny of the transactions effected by Mr Lesage in relation to the fixed deposit and the interest generated we hold that in fact, the procedures laid out in the books and manuals were not applied in practice resulting in no check and balances while the system ran loose and exposed to fraudulent practices.

II. THE IMPORTANCE OF INTERNAL CONTROL SYSTEMS AND PROCEDURES

One of the reasonable measures which a financial institution is bound to put in place is the implementation of a proper system of internal control and procedures. MCB was described by Mr Chinniah as the largest bank in the financial sector in Mauritius in terms of assets and market share. Moreover, in the Annual Report 2001 (Doc K) the MCB has been described as *'one of the highest rated banks in the region.'* The MCB had 40 branches which carry out a minimum of 175,000 transactions per day as per the testimony of Mr Allet.

Appropriate guidance on internal control can be obtained from the **Turnbull Report** entitled **Internal Control: Guidance for Directors on the Combined Code (1999)** which was drawn by the London Stock Exchange and the Committee was chaired by Nigel Turnbull. The Report informed directors of their obligations under the Combined Code with regard to keeping

good "internal controls" in their companies, or having good audits and checks to ensure the quality of financial reporting and catch any fraud before it becomes a problem. The said Report defines Internal Control as *"a system that encompasses the policies, processes, tasks, behaviours and other aspects of a company that, taken together facilitate its effective and efficient operation by enabling it to respond appropriately to significant business, operational, financial, compliance and other risks to achieving the company's objectives. This includes the safeguarding of assets from inappropriate use or from loss and fraud and ensuring that liabilities are identified and managed..."*

In relation to the definition of an internal control system, the **Basel Committee on Banking Supervision, Framework for Internal Control in Banking Organisations 1998** further added the following:- *"In sum, internal control may be regarded as an internal form of gatekeeping to prevent businesses from succumbing to wrongdoing, and to ensure that business objectives and accountability requirements are met."*

The Bank of Mauritius has to regulate, supervise and monitor activities of banks within Mauritius. The statutory function of the Bank of Mauritius is to ensure the stability of the financial sector and safeguarding depositor's money. Section 20 of the Bank of Mauritius Act 1966 stipulates as follows:

'20. Relations with banks and credit institutions

The Bank may whenever necessary require the co-operation of, and co-operate with, authorised banks and other credit institutions –

- a) *to promote and maintain adequate and reasonable banking services for the public;*
- b) *to ensure high standards of conduct and management throughout the banking and credit system;*
- c) *to regulate the banking and credit system so as to ensure a proper distribution of credit and a sound financial structure;*
- d) *to further such policies as may be in the national interest and not inconsistent with this Act"*

Mr Ramtohul from the Bank of Mauritius, explained that Internal Control is defined as: *"the whole set of rules and regulations, policies and procedures laid down by an institution to ensure that the business is conducted in an effective and efficient manner, that the assets are safeguarded ... and that people do not use the system for their own benefit . For the sake of a good, sound corporate governance, internal control is the central, the crucial the most fundamental thing that is required in an institution"*.

Guidance for banking institutions is extensively laid out by the Bank of Mauritius about the purpose of an internal control system as per Document CX i.e. **Guidance Notes on General Principles for Maintenance of Accounting and Other Records and Internal Control System.**

The recommendation in the Report from the Bank of Mauritius (Document DD) was to have an efficient and effective internal audit department worthy of a financial group operating internationally. Due to the important nature of this function, internal audit department should be adequately equipped with staff having requisite knowledge, skills in accounting, banking auditing and data processing.

Additionally, the following extract from the book **Regulating (From) the Inside by Iris H-Y Chiu**, who relied extensively of the Report of the Basel Committee of 1998 at p.129, stipulates: *"The Basel Committee recommends that the internal audit function be adequate staffed with persons of sufficient qualifications and skills, and that resources be provided to ensure continuous training and development of internal auditors' expertise."*

Useful guidance may be obtained from the **IIA Inc (Institute of Internal Auditors)**. On 26 June 1999, the IIA Inc Board of Directors approved the following new definition of internal auditing (**Krogstad et al 1999:27**): *"Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations"*.

At chapter 2 of the instrument entitled **Internal Auditing as a consulting activity that evaluates and improves the control process** prepared by the Institute of Internal Auditors it is said that: -

*"Although the internal auditing profession is not new to the business environment, large changes have occurred in this profession during the last few years. Internal auditors are not only seen as the right hand of management in assuring that policies, plans and procedures are adhered to, they now also fulfil a consulting role, investigating and reporting on crucial issues such as business risks threatening the organisation (**Krogstad, Ridley & Rittenberg 1999:27**). Internal auditors are still seen as control experts and must continuously monitor and report on areas in the control environment that are, or could become, a potential weakness (**Root 1998:120**). Therefore internal auditors have the responsibility of being aware of business risks, as well as the effect these risks may have on the various aspects of a business, such as the control environment'.*

We therefore observe that the Internal Auditing and its functions are of fundamental importance in as much as they provide for a systematic and disciplined evaluation of the

effectiveness of the work culture, the risk management, control, and governance processes in an organisation. They thus come up with a Report in which they explain the identified strength and weaknesses of the organisation and they make recommendation to the management on how to improve the business activity.

Having set out the meaning of the 'Internal Control' and its paramount importance and the role of the Bank of Mauritius as regulatory body, we shall address the level of implementation of internal control at the MCB.

III. THE FAILURE TO CARRY OUT INTERNAL AUDITS AS A MEASURE TO PREVENT THE OFFENCE OF MONEY LAUNDERING.

Learned counsel for the defence submitted that the Internal Audit department of the bank also carried out specific internal audits to reinforce security at the MCB and 40 internal audits assignments were carried out between the years 2000 to 2002. Evidence of the control is found in the audit report which was filed vide Document EF. The audit report pointed out the flaws that existed within the fixed deposit department and recommendations were made to rectify them at the earliest. In addition the MCB also provided for training by Mr R. Cascarino (the former President of the International Auditing Association), an expert on internal audit who delivered lectures at the MCB over a period of a year in order to review and improve its Internal Audit.

On the other hand, learned counsel for the prosecution submitted that though 40 audit reports were issued during January 2000 to December 2002, the said reports could not be qualified as proper audit reports where internal controls were reviewed, analysed and internal weaknesses identified.

We have duly considered the submissions of learned counsel appearing on both sides. We wish to point out that in 2001, the Bank of Mauritius issued guidelines on the way banks should conduct their business. Document CX mentions internal audit as "*an integral part of a system of internal control established and maintained by management and may provide independent assurance over the integrity and effectiveness of these systems.*"

The testimony of Mr Ramtohum sheds light on the role and function of the IAD. He deposed that the duty of the IAD is to "*constantly monitor, is to constantly review the system of Internal control in place, constantly to that and report to the management that the internal control system is working or not working. This is the fundamental function of an internal control division.*" However, during his inspection at the MCB, Mr Ramtohum found that the internal audit performed at the bank was merely on an ad-hoc basis and concerned mainly

with investigating into some frauds prior to 2000 and was therefore lacking the characteristic of constant reviewing.

Further, in his testimony, Mr Allet admitted that there was only one IAD report that he was aware of for all the years he had been at the Bank. This Internal Audit was carried out in October - November 2000 at the FDD and a Report was made (Document EF). Prior to the internal audit of 2000, no internal audit report concerning the Fixed Deposit Department was available at the MCB and Mr Allet could not answer as to whether there were internal audits carried out at the Fixed Deposit Department prior to 2000, despite he himself being an officer of the Internal Audit Department since 1992.

We hold that the failure to carry out regular internal audits at the Fixed Deposit Department is one of the factors which contributed to the present offence not having been detected at the level of the bank. The IAD of the bank failed to detect the wrong manipulation of the Rs 200 million, particularly the stolen sums of Rs 25 million and Rs 11, 594, 520.55. The manipulation of the two sums of money also remained unnoticed.

At this stage we shall delve further on other failures of the Internal Audit Department (IAD).

IV. FAILURE OF THE IAD TO DETECT NON-ENDORSEMENT ON APPLICATION FORMS

Mr Allet stated that in the Internal Audit Report 2000, the issue of breaking fixed deposits without the instructions of the respective clients, was not identified as a weakness regarding the fixed deposit department, in spite of the fact that there were cases where fixed deposits had been broken and paid out without ascertaining the due endorsement of the fixed deposit receipts. He tried to explain this fact by stating that any internal audit is carried out on a sample basis.

As such it is clear that if the IAD could not detect these failures during the Internal audit exercise carried out in 2000, which shows that the quality of audit was not of the standard required. The IAD would have uncovered the transactions from the NPF if they had taken a more systematic and diligent approach to the internal audit of the FDD.

V. THE REQUIREMENTS FOR ADEQUATE STAFFING AND PROPERLY QUALIFIED INTERNAL AUDITORS AS A MEASURE TO PREVENT MONEY LAUNDERING AT THE MCB

The recommendation in the report from the Bank of Mauritius (Document DD) was to have an efficient and effective internal audit department worthy of a financial group operating internationally. Due to the important nature of this function, internal audit department should

be adequately equipped with staff having requisite knowledge, skills in accounting, banking auditing and data processing.

Further, Mr Ramtohul specified that for a proper exercise, that internal audit should be commensurate with the size and volume of transactions. He opined that for the IAD to carry out its functions effectively, it must have sufficient number and qualified staff.

Additionally, reference is made to the following extract from the book **Regulating (From) the Inside by Iris H-Y Chiu**, p.129:

"The Basel Committee recommends that the internal audit function be adequate staffed with persons of sufficient qualifications and skills, and that resources be provided to ensure continuous training and development of internal auditors' expertise."

(i) Number of employees

Mr Allet said that in 2002, the Audit Department at the MCB was properly staffed with 11 persons employed in the IAD (Document EM). The issue raised and which calls for concern is whether as Mr Allet stated for 150 000 transactions carried out per day, 11 employees would suffice at the IAD.

The staff of that important department consisted of only 11 employees to audit 40 branches of the MCB which carry out a minimum of 150,000 transactions per day. An Internal Audit department should have a sufficient number of employees in order to match the size and volume of transactions of the bank. Mr Ramtohul, during his investigation at the MCB, found that the number of staff in the IAD was '*small*' and that "*when the bank needed to have some additional manpower, they would take from the limited resources that were there*" which stand to reason would automatically drop the performance.

Furthermore, there is the evidence of Mr Chinniah, who conducted an on-site visit at the MCB in 1999, noted a serious flaw in the operation of the IAD in that the persons working in the internal audit department "*were being transferred from other departments and being put in the Internal Audit Department.*" This was further referred to in the BoM findings of report made on 14 June 2000 (Document DD).

We hold that the IAD of the MCB was not properly staffed to enable them to perform their duties adequately as the MCB has a huge market share with many branches.

(ii) Qualifications and Experience of the staff

Mr Ramtohul emphasised on the need to have skilled or qualified staff in the IAD and said:

"in the accounting profession, we are taught the whole function of auditing, how to carry out auditing, how an internal audit should be carried, what are the functions of an internal audit, what are all the details concerning how the audit is carried. The qualification is something that is very important for an internal auditor to carry out to discharge his function efficiently".

As quoted above from the book **Regulating (From) the Inside** by Iris H-Y Chiu (*supra*), p.129:

"The Basel Committee recommends that the internal audit function be adequate staffed with persons of sufficient qualifications and skills, and that resources be provided to ensure continuous training and development of internal auditors' expertise."

Mr Chinniah, witness no12, who conducted an on-site visit at the MCB in 1999, noted a serious flaw in the operation of the IAD in that the persons working in the IAD *"were being transferred from other departments and being put in the Internal Audit Department."* This was further referred to in the BOM findings in Report made on 14 June 2000 (Document DD)

A perusal of Document EM shows that out of all the 11 employees who were posted at the IAD, only 6 persons had either qualifications in banking or auditing. These qualifications ranged from certificate to a Bachelor Degree in Financial Services held by only one person. The IAD comprised of an employee held a Diploma in Information Technology, a bank clerk, a typist and two security officers.

We therefore hold that the requirement for adequate staffing and properly qualified internal auditors as a measure to prevent money laundering was not satisfied at the MCB.

VI. LACK OF SUFFICIENT INVOLVEMENT OF AN IMPROPERLY CONSTITUTED AUDIT COMMITTEE

Guidance note from the Bank of Mauritius (Document CY, p 11, para. 5.1) provides:

"In view of the critical role an Audit Committee can play in monitoring and strengthening the control environment, each bank must establish an Audit Committee. Functions: An Audit Committee should monitor management reporting on internal control. While it is management's responsibility to design and implement an effective system of internal control, it to be the responsibility of the Audit Committee to ensure that management has discharged its responsibility fully. The Audit Committee should be made out of outside directors for independence."

The prosecution submitted that at the MCB, the Audit Committee was not effective, both in terms of membership and function.

(i) Membership

Mr Ramtohol, witness no.13, testified to the effect that the Audit Committee was not properly constituted because an Audit Committee is a committee that should comprise of non-executive board directors. But at the MCB, the Audit Committee *'was not in the way that it should be operating and it was not in the way that it should be constituted because they were executive directors in the Audit Committee'*.

Mr Allet confirmed that an Audit Committee was set up in 2001 but admitted that Mr Pierre Guy Noel, the then General Manager, formed part of the said Audit Committee though he was not a non-executive director. This fact was also set out in the Annual Report 2001.

(ii) Function

In Document DD, at p. 13, par 6.5, it was found that the bank did not have an Audit Committee which can make valuable contribution to strengthen its Internal Control System and provide necessary support to the Board of Directors in dealing with financial matters. The Audit Committee needed also to act as liaison between the internal and external auditors, which led to the recommendations made.

In Document DD, p. 12, par 6.3, the Bank of Mauritius advised that the Internal Audit Department should report to the Audit Committee. Mr Allet conceded that he was not aware of any internal audit report having been sent to the Audit Committee.

In stark contrast to the way the Audit Committee was functioning at the time of the offence, at present the new structure at the MCB is that the Internal Audit Department reports to the Audit Committee which in turn reports to Board of Directors as borne out in Document EK.

We hold that the failure to have an adequate Audit committee with proficient members was a serious flaw in the mechanism of control at the MCB. The IAD would have reported to them and they would have ensured that all audit findings and recommendation were complied with and the Audit Committee would also have been the line of reporting to the Board of Directors. In the absence of the proper Audit Committee, the IAD was left without control and had no impetus to perform its job correctly. It was in marked contrast to international benchmark practices in the industry given that the MCB pride itself in 2001 Annual Report as a leading regional bank. There was no dearth of resources to put in place a proper manned IAD taking into consideration the size of the bank and the extent of its activities.

VII. ABSENCE OF A COMPLIANCE DEPARTMENT AT THE MCB INDEPENDENT FROM THE IAD

The MCB had no such compliance department or officer until 2003 as conceded by Mr Allet. As such, the recommendation by the Bank of Mauritius in its report dated 14th June 2000 was not abided by (Document DD, p. 10, para. 6.2). Mr Allet thus admitted that it took three years to pay heed to and implement this recommendation. However, Mr Allet also deposed to the effect that the internal audit department was also responsible for the compliance function. However, this is not good banking practice as highlighted in the book - **Regulating (From) the Inside by Iris H-Y Chiu**, p. 51 which reads:

"Depending on the scale, size and complexity of the financial institution's business, the compliance function can be exercised by a separate department or as part of risk management or legal, although fusion with internal audit is frowned upon by the Basel Committee."

To conclude on this issue we wish to emphasise that at the Board Meeting held on 26 March 2004 between the Bank of Mauritius and the MCB, the discussions on the internal control system of MCB led to the conclusion that *"a control culture did not exist and a casual attitude was prevalent. Such environment created a fertile ground to abuse and override controls"* (Document DC).

B. THE AMBIT OF THE POWER AND AUTHORITY VESTED UPON MR LESAGE BY THE BANK

I. Far reaching power and authority vested in Mr Lesage coupled with lack of real supervision over the exercise of those powers

The fact that the MCB entrusted Mr Lesage with excessive powers without any structured supervision has remained unrebutted throughout the proceedings before this Court. The evidence on this issue is overwhelming and we shall analyse how the acts and doings of Mr Lesage were not monitored by the Accused Company which in fact adopted a 'laissez faire' attitude towards Mr Lesage.

(i) Overstay of Mr Robert Lesage

Mr Lesage officially retired in May 2001 as per the Annual Report of the MCB dated 30th June 2001 (Document K). An email dated 17th April 2001 was sent to inform the staff of MCB that Mr Lesage will be retiring as from May 2001 (Document Y).

Mr Ramtohol for the Bank of Mauritius affirmed that: *"it is very important that when somebody retires that his powers are revoked. Nowadays he will be denied access to the building, he will be denied access to the information system, to the computer system ... If they (employees) come they see that person coming to work normally so they will not consider him as having retired, they will consider that he is still an employee of the bank and by this fact they will continue to take the instructions from him"*

In the present case, Mr Allet deposed to the effect that Mr Lesage made a first request to the MCB to stay at the bank after his retirement until June 2001. Further to the first request, Mr Lesage made a second request to stay at the bank until October 2001. The bank was unable to produce the contracts of extension, nor was the bank able to give details of the contracts.

It is abundantly clear that Mr Lesage stayed at the bank beyond this date i.e. until mid-January 2003, during which period he committed the fraud. Mr Allet himself conceded that the mandate of Mr Lesage at the MCB stopped in October 2001 and that after October 2001, Mr Lesage continued to stay at the bank until mid-January 2003. Mr Allet was unable to explain the presence of Mr Lesage at the bank from that date onwards.

Mr Allet produced a list of employees who benefitted of extension agreement vide Document EN and added that these agreements were subject to a written contract. The only exception was for Mrs Provencal whose contract was verbal. Mr Allet explained that the postretirement contracts made at the MCB were well-defined in writing which was the proper procedure except in the present case. As far as for Mr Lesage he explained that there was no such written contract. Furthermore, Mr Allet also agreed that in the case of the other retired employees, it was management / HR of the bank who offered them to stay for a longer period of time while in the case of Mr Lesage, it was Mr Lesage himself who asked management to allow him to stay at the bank post May 2001.

Mr Naiken, witness no. 4, deposed to the effect that Mr Lesage *"continued to occupy the same office"*, had *"a secretary working with him"*, and continued to have the *"same parking slot"*, *'au vu au su de tout le monde'*.

Furthermore, Mr Wong Tin Fook, witness no17, stated that notwithstanding the official document of Mr Lesage's retirement issued by the HR department, Mr Lesage continued to stay at the bank, kept his normal office, *"attended meetings as the secretary"* and *"purported to be still in office"*. He explained that he continued to consult Mr Lesage *"in all major flows of funds"* on various files of parastatal bodies, including the NPF up to 2003.

More importantly, the evidence on record from Mr Allet who revealed that Mr Lesage continued to give instructions to other staffs of the Fixed Deposit & Current Accounts Department and his instructions were obeyed. All the instructions in respect of the Rs 25 million and the Rs 11, 594 520.55 were complied with.

Mr Allet was unable to explain why Mr Lesage was still an authorised signatory of the bank. This was clearly evidenced by the signature at the verso of the cheques which Mr Allet recognized and himself confirmed are the signatures of Mr Lesage. There was no evidence that the bank had in fact removed him as an authorized signatory and he could also not produce the authorized signatory book, despite being the representative of the MCB.

Mr Allet did not dispute fact that there was no exit procedure at the MCB. Mr Allet conceded that there was a serious flaw in as much as there was no procedure in the form of a notice of retirement to inform the clients that somebody to wit Mr Lesage was to retire.

We agree with the submission of the prosecution that the bank was condoning the said practice and accepting such behaviour impliedly because it did nothing and that was borne out in the deposition of Mr Allet in court who agreed that Mr Lesage had overstepped his mandate.

We hold that good practice in management would have entailed that the overstay of Mr Lesage at the bank, should have been properly defined within an appropriate institutionalized framework like the MCB. On the contrary, no mechanism was put in place to define the parameters of operation of Mr Lesage. Instead, Mr Lesage was given '*carte blanche*' to deal with any files he wanted. Mr Lesage himself wrote to the bank asking for permission to deal with specific files by way of letter dated 9th January 2002 (Document AA). The said letter found no response from the bank. Nowhere in the said letter was mention made of NPF file. Yet, he was able to deal with the NPF file.

We hold that it was incumbent upon the MCB once the contract of Mr Lesage had been terminated to stop all facilities to him and prevent his access to the premises of the Bank. The bank should have notified all staff about extension of the contract of Mr Lesage, put down a post-retirement written contract between Mr Lesage and the bank and defined his scope and ambit of his duties i.e. a clear-cut mandate for him and same should have been circularised to the staff of the MCB.

II. Overconcentration of powers.

From the Annual Report of MCB (Document K), Mr Lesage was quoted as being the Chief Manager of 'Resource Management and Institutions'. He was also the Zone Manager for

Fixed Deposit Department, Current Account Department and Savings Account Department which was confirmed by Mr Allet.

Each respective department of the MCB including the Fixed Deposit Department had its own manager responsible for the day to day control of operations. At the material time, it was one Mr Azor who was the Manager of the said Fixed Deposit Department. However, during cross-examination, Mr Allet admitted that Mr Lesage was in fact intervening in the daily affairs of the Fixed Deposit Department to the extent that "*he could even deal with clients of the Fixed Deposit Department*". In fact, Mr Lesage was also a File Manager- that of NPF among other institutions.

We find that there was overwhelming evidence to support the fact that Mr Lesage was indeed the File Manager of the NPF. As per the Annual report 2001, it was stipulated that Mr Lesage was thus Chief Manager for 'Institutions' - NPF was such an institution and thus fell within his ambit. In the Defence Statement (Doc W), it was stipulated that "*Lesage also acted as file manager of various clients including the NPF.*" Moreover, Mr Allet, when cross-examined, agreed that Mr Forget could have stated that Mr Lesage was the file Manager of NPF. Additionally, Mrs Rojoa, witness no. 14, stated that NPF did not choose Mr Lesage, but same was appointed to them by the bank, namely Mr Robert Grant told her that Mr Lesage would be dealing with the NPF file. There was also on record a number of correspondences throughout sent officially or otherwise namely Documents DU to DU115, DV, DW, DZ, EE, Q to U6 which showed the link between a file manager and his client, the NPF.

The basis on which the bank allowed Mr Lesage to carry out the role of managing the NPF file was not clear. Similarly, it is also unclear on what basis the staff of MCB thought that Mr Lesage had any role in managing the said NPF file. There does not seem to be any explanation from Mr Allet as to why the bank accepted Mr Lesage's involvement in MCB's daily operations.

The prosecution submitted that there was a total absence of segregation of duties with regards to the organization structure of MCB, a principle which was vital to the proper functioning of an efficient system of internal control.

According to Mr Ramtohul, Mr Lesage was vested with too much authority which enabled him to perpetrate the fraud. He was allowed by the bank to shoulder too many responsibilities. The prosecution submitted that there was a total dearth of supervision i.e. lack of proper internal controls over the work of Mr Robert Lesage.

We fully agree with the submissions of learned counsel for the prosecution on this score. We find that the acts and doings of Mr Lesage vitiated the operation of a proper internal control system which rests on segregation of duties and check and balances to identify deviation from procedures as he was operating the system while at the same being the head of department with supervisory duties. And this went unchecked for long resulting in the commission of the offence by Mr Lesage.

III. Lack of oversight

For an internal control system and procedure to work optimally, oversight of an employee's work is extremely crucial. Otherwise, the employee would be left at his own volition which would be prejudicial to the efficient workings of a bank. A total lack of control over the work of Mr Lesage led to the almost absolute power exercised by him in the FDD. There was no proper oversight by the Management Team in respect of his operations. When questioned as to the person overseeing the work of Mr Lesage, Mr Allet replied that according to him, Mr Lesage, being Zone Manager, had to report to the General Manager of the MCB, but he had no personal knowledge of same.

Mr Allet further added that control reports were automatically generated by the system and these reports were considered by Mr Allet as one of the means available to oversee the work of Mr Lesage. However, Mr Allet could not explain how those control reports could have verified the work of Mr Lesage. These control reports were in fact verified by employees of Fixed Deposit Department. Employees of lower in the hierarchy would not be in a position to verify the works of Mr Lesage who was higher in status to them.

Further, Mr Allet admitted that the said control reports, if any, were not being verified independently as should have been the case. He expatiated that the manager should ensure that transaction initiated by the person checking the list of refunded deposits, accounts set up and deposit set up reports be verified. The said transactions had to be verified and counter-signed by an independent person. The dual control would have allowed to detect if the signature of the client was missing or the authorization of the client was missing. In fact, the Internal Audit Department Report of 2000 (Document EF) flagged that as a weakness at HR04

We find that there was blatant overconcentration of powers vested in Mr Lesage and that allowed him to defraud the NPF and all that without any oversight from top management. He gave instructions which were blindly obeyed by the staff and money had been defrauded as such from with the bank. If there had been adequate supervision, it would have been impossible for Mr Lesage to act accordingly.

IV. Absence of a proper Compliance Leave Program

In any banking organisation, compliance leave is mandatory for those people in sensitive positions. Taking leave from work and being out of the circuit was deemed indispensable as that requirement would automatically lead to the handing over of files which would be dealt by another employee of the bank. It should also require that an individual's daily work be processed by another employee during the employee's absence. Most frauds or embezzlement required the continued presence of the wrongdoer and his absence and replacement makes it difficult to perpetrate abuses. The prescribed period of absence should under all circumstances be sufficient in duration to allow all pending transactions to be cleared by another officer.

Mr Allet, admitted that the Code of Conduct for employees (Document EL) made no mention of compliance leave that need to be taken by officers of the bank. He added that such requirement is, instead, found in the HR policy of the bank and that a compliance leave is for a period of 10 consecutive days.

The prosecution submitted that MCB never practiced a proper Compliance Leave Program. Mr Ramtohl deposed to the effect that Mr Lesage took compliance leaves on two occasions: in 1999 for one week and in 2001 for 3 weeks which incidentally coincided with his retirement. He asserted that these did not meet the requirements of compliance leave as was general practice and that Mr Lesage had taken leave on 5 August 1999 to 12 August 1999 but not in the way provided by the directive of compliance leave.

We hold the view that if Mr Lesage would have taken compliance leave, he would have been replaced by another officer and the whole manipulation would have been uncovered. The fact that he was not taking compliance leave made him retain control at all times and he was thus able to commit the frauds.

We therefore hold that the overstay of Mr Lesage coupled with the vesting of excessive powers on him and the real lack of supervision over him amounts to "*failing to take such measures as are reasonably necessary*" in support of the first element.

C. THE PURVIEW OF THE "COMMUNIQUES"

It is of utmost importance at this stage to set out certain undisputed facts in a chronological order which led to important Communiqués issued by the MCB to the general public:-

- On 28th January 2003, after having been informed that Mr Lesage was on retirement, Mrs Rojoa went to the MCB to enquire about the new File Manager of the NPF / NSF funds. It was then that the employees of the MCB discovered that the sole entry they could find, relating to the funds, was that of Rs 100 million fixed deposit account of the NPF. At that time the whole sum of Rs 881 million actually deposited by the NPF at the MCB could not be accounted for. An internal enquiry was initiated at the MCB as indicated in the first Press Communique vide Document AC.
- On 6th February 2003, after several demarches by Mrs Rojoa who had been to the bank several times and after contacting Mr Lesage, she informed Mr Hosany, Permanent Secretary of Ministry of Social Security.
- On the 7th February 2003, Mr Hosany and Mrs Rojoa went to see the Minister of Social Security subsequent to Mrs Rojoa's meeting with the Prime Minister.
- On 14th February 2003, the MCB filed several Suspicious Transaction Reports to the FIU (Document CC) and on the same day the MCB issued a Communique published in Le Mauricien newspaper where it is explained that serious irregularities had taken place during the last years at the MCB to the prejudice of one of the bank's important clients (Documents L and AC). A letter was addressed to the Governor of the Bank of Mauritius by Mr Pierre Guy Noel, the then General Manager of MCB, in order to inform the Governor that the MCB had "uncovered a massive fraud" at the MCB and that an internal investigation was ongoing (Document CD1).
- On the 15th February 2003, the ICAC requested the MCB to attend to their office for an enquiry, a letter was addressed to the General Manager of MCB by the ICAC accordingly (Doc CE).
- On the 17th February 2003, a second letter was addressed to the General Manager of MCB by the ICAC requesting him to attend before ICAC for enquiry (Document CF).
- On the 20th February 2003, Mr Hosany wrote a letter to the General Manager of the MCB. He made reference to the press communique of the MCB dated 14th February 2003, and requested the MCB to confirm in writing that the bank will assume full responsibility regarding the NPF /NSF money deposited at the MCB (Document D).

- On 20th February 2003, the MCB issued a second Communique published in Le Mauricien newspaper informing the public, inter alia, that "*En effet, il est maintenant clairement établi que durant la période s'étalant d'Aout 1997 à Décembre 2002 des montants de l'ordre de Rs 600 millions ont été détournés des comptes de la National Pension Fund.....*". The communique went on further to say "*nos procédures de contrôle interne ont été abusées*" and that additional measures have been taken by the bank in order to strengthen same (Document AB).
- On 17th March 2003, the MCB sent a letter to the Permanent Secretary of the Ministry of Social Security regarding the repayment of amount due to the NPF (Document J).
- On 21st February 2003, a letter addressed to the Permanent Secretary of Ministry of Social Security by the MCB, asking the Ministry to communicate to the MCB the names of persons who could assist the MCB to verify or validate the amounts involved (Document E)
- On 27th March 2003, the MCB sent another letter to the Permanent Secretary of Ministry of Social Security and they agreed to repay the NPF amounts of Rs 668,171,829.77 and Rs 212,936,843.42 respectively (Document G).
- On 15th July 2003, a Communique was issued by the Bank of Mauritius where the BOM urged the MCB to pursue efforts towards "*strengthening its internal control system*"(Document DB)
- On the 26th March 2004, a meeting was held with the Board of Directors of MCB at the Bank of Mauritius which meeting was chaired by the Governor of the BOM. The issue in discussion was the internal control system of MCB and it was observed that "*a control culture did not exist and a casual attitude was prevalent. Such environment created a fertile ground to abuse and override controls,*" (Document DC).

In the light of the above, we view with much concern that the whole plot was not discovered by the bank itself but was revealed following the demarche of Mrs Rojoa. The letter, vide Document E shows the inefficiency of the records kept at the MCB, the bank asked for the names of persons who can assist the MCB to verify or validate the amounts involved. Further, Document J, went even to ask the Permanent Secretary of the Ministry of Social

Security regarding the repayment of amount due to the NPF. Additionally, in filing Suspicious Transaction Reports to the FIU, the MCB is clearly admitting that money laundering was suspected within the bank. In both Communiqués issued by the Accused Company, the MCB itself admitted in no uncertain terms that frauds were perpetrated over the past years at the bank and their system was abused of and that the method of internal control was inadequate and measures were taken to cure same. The meeting of the 26th March 2004 between the Board of Directors of MCB at the Bank of Mauritius which meeting clearly came out with the observation of a lack of control culture. The lack of control was therefore positively identified at the top hierarchy of the MCB and the Bank of Mauritius.

In the present case, the guilty intention of the Accused Company can be clearly inferred from the facts and circumstances of the case. The fact that the MCB has pertinently failed to take adequate internal control measures throughout years made the offences possible in as much as this culture thus created an environment conducive for frauds which have been perpetrated.

CONCLUSION

We have duly considered all the facts and circumstances of the case, the deposition of the witnesses for the prosecution and the defence, the documents produced during the trial and the submissions of learned counsel appearing on both sides.

We are satisfied from the evidence on record that the Accused Company has failed to implement proper internal control systems and procedures in relation to Fixed Deposit Accounts held on behalf of the National Pensions Fund. The prosecution has also proved that the failure of the Accused Company to take appropriate measures has rendered possible the commission of two distinct offences of larceny by Mr Lesage and that Mr Lesage also used the floors of the Accused Company in the process of laundering the proceeds of the crime.

For these reasons, we find that the prosecution has proved beyond reasonable doubt that the Accused Company has wilfully, unlawfully and criminally failed to take such measures that are reasonably necessary to ensure that the services offered by it were not capable of being used by a person to facilitate the commission of a money laundering offence in breach of sections 3(2) and 8 of "The Financial Intelligence and Anti Money Laundering Act". The Accused Company is therefore found guilty as charged.

Judgment delivered on:

Judgment delivered by

R. Dabee

V. Appadoo