

## ENFORCEMENT OUTCOME

### Disqualification and imposition of Administrative Penalty – Mr Arvinsingh Canaye Ref: ENF/30L2020/E5

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#### 1. Background

1.1. Since his appointment in August 2016, Arvinsingh Canaye (“Mr Canaye”), has been holding the position of General Manager at Beaufort Management Services Ltd (the “Company”) which holds a Management Licence issued by the Financial Services Commission (the “FSC”) since 07 December 2010.

1.2. He was also appointed as Alternate Money Laundering Reporting Officer of the Company and since September 2017, he assumed the position of Money Laundering Reporting Officer (“MLRO”).

#### 2. Breaches committed by the Company

2.1. During his tenure in office as General Manager of the Company, he has:

2.1.1. Facilitated the setting up of six (6) companies on behalf of an undercover agent posing as an associate of a Belizean confidential source while intentionally concealing the beneficial ownership of these entities; and

2.1.2. Breached the Financial Services Act (the “FSA”), the Financial Intelligence and Anti-Money Laundering Act (the “FIAMLA”) and the FSC Code on the Prevention of Money Laundering and Terrorist Financing (the “Code”).

#### **Financial Services Commission**

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2.2. *Intentionally concealing the beneficial ownership of six (6) companies*

- 2.2.1. Following his appointment of as General Manager of the Company, all operational decisions were centralised at his level including the decision to on-board clients.
- 2.2.2. He has abused this position by concealing the identity of the beneficial owner in relation to the six (6) companies, namely **[Names of companies edited for Confidentiality]** both during the incorporation process and while submitting applications to the FSC.
- 2.2.3. These six (6) companies were set up for the purpose of helping others to commit a financial crime.
- 2.2.4. In his capacity as MLRO, he failed to file suspicious transaction report with the Financial Intelligence Unit in relation to these six (6) companies, thereby breaching section 14 of the FIAMLA and paragraph 6.4 of the Code.
- 2.2.5. This has been duly confirmed in the Transcript of Criminal Cause for Pleading dated 26 July 2018 wherein he stated that: *"...in mid to late 2017, I agreed with others to create a fraud company in Mauritius. My purpose in agreeing to create the offshore companies was to help others conceal their ownership interest in certain stock and to help them conceal the sources of money that I understood was going to be paid to United States-based stockbrokers to manipulate the value of certain securities. In connection with this agreement, I created documentation for six offshore corporations in December 2017. I made this agreement knowingly and intentionally."*

2.3. *Certification of fake passport*

- 2.3.1. In addition, in relation to an inquiry conducted by the FSC on Company J, one of the Company's clients, he certified a fake Albanian passport as a true copy of the original document.

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#### 2.4. *Hill Circle Consulting Ltd*

2.4.1. Moreover, through Hill Circle Consulting, he has perceived the sum of MUR 1,535,725 (USD 40,000) from Company LS, the same entity that transferred funds to the Company for the creation of the six (6) abovementioned entities. He has acquiesced this as evidenced by the transcript of Criminal Cause for Sentencing dated 02 April 2019.

### 3. Charge of Money Laundering Conspiracy and Guilty Plea

He has pleaded guilty to the charge of Money Laundering Conspiracy before the United States District Court Eastern District of New York and has consequently been sentenced to imprisonment for 397 days, USD 100 mandatory special assessment and a USD 105,000 forfeiture money judgment.

### 4. Action taken by the FSC

4.1. In this regard, by letter dated 16 July 2020, he has been given written notice, by the FSC, of its intention to refer the matter to the EC pursuant to section 53(1) of the FSA.

4.2. He has duly responded to the FSC by letter dated 26 July 2020. Following an in-depth assessment of his submissions, the FSC has referred this matter to the EC, for such action, as it deems appropriate.

### 5. Proceedings before the EC

#### 5.1. *Sanctions contemplated by the EC*

5.1.1. The EC has given due consideration to the seriousness of the beaches and unsound business conduct in which he, during his tenure in office as General Manager and MLRO of the Company, has been involved including the

negative incidence thereof on the repute of Mauritius in the financial services sector.

5.1.2. In this respect, the EC formed the opinion that he no longer meet the fit and proper person requirements to hold position as officer in any licensee of the FSC.

5.1.3. Consequently, the EC contemplated the following sanctions against him:

5.1.3.1. an administrative penalty (“AP”) not exceeding MUR 4,922,568 in accordance with sections 7(1)(c)(v) and 52(3) of the FSA; and

5.1.3.2. a disqualification from holding position as officer in any licensee of the FSC for a period not exceeding ten (10) years pursuant to sections 7(1) (c) (iv) and 52(3) of the FSA.

## 5.2. *Calculation of the AP*

5.2.1. The FSC’s policy for imposing an AP is set out in the Administrative Penalties Regulatory Framework. In this respect, the EC has taken a five (5) - steps approach, as detailed below, to determine the appropriate level of AP to be imposed on him.

### 5.2.1.1. *Step 1: Disgorgement*

At Step 1, the EC seeks to deprive an individual of the financial benefit derived directly from the breaches committed where it is practicable to quantify this. Based on the referral material and as confirmed in the Transcript of Criminal Cause for Sentencing dated 02 April 2019, in relation to the setting up of the six (6) companies, his personal gain amounted to USD 40,000 or MUR 1,535,725. Step 1 is therefore MUR 1,535,725.

### 5.2.1.2. *Step 2: Seriousness of the breaches*

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### Relevant income

At Step 2, the EC determines a figure, which, in its opinion, reflects the seriousness of the breaches. This figure is based on a percentage of the individual's relevant income for the duration of the breaches. The individual's relevant income is the gross amount of all benefits received by the individual from the employment in connection with which the breaches occurred and for the period during which they took place.

The EC has noted that the abovementioned breaches including the conspiracy to commit money laundering occurred from July 2017 to January 2018. Based on his monthly income of **[Edited for Confidentiality]**, within this period, his relevant income amounted to **[Edited for Confidentiality]**.

In deciding on the percentage of the relevant income forming the basis of the Step 2 figure, the EC has considered the seriousness of the breaches and unsound business conduct, as well as, the impact thereof in view of selecting a percentage between 1% and 15%.

This range is divided into three (3) fixed levels which represent, on a sliding scale, the seriousness of the breaches; the more serious the breaches, the higher the level:

Minor: 1- 5%

Moderate: 6 - 10%

Major: 11 -15%

### Impact of the breaches

Following his appointment of as General Manager of the Company, all operational decisions were centralised at his level including the decision to on-board clients. He has deliberately abused this position to incorporate six (6) companies and apply for licences with the FSC while intentionally dissimulating these companies' beneficial ownership. This was a scheme to help others to commit a financial crime.

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In assessing the level of seriousness of the breaches, the EC has taken into consideration the factors reflecting their nature and impact, including the fact that he deliberately committed these breaches including the conspiracy to commit money laundering. In this regard, he has failed to act with honesty.

*Incidence on the good repute of Mauritius in the financial services sector*

His arrest, incarceration and conviction regarding this matter has had substantial adverse effect on the good repute of Mauritius in the financial services sector. After considering all relevant circumstances of the matter, the EC has formed the opinion that the level of seriousness of these breaches is Major. The figure under Step 2 is 13% of his relevant income. Step 2 is therefore 13% of his relevant income.

5.2.1.3. *Step 3: Mitigating and aggravating factors*

At Step 3, the EC may increase or decrease the amount of the AP arrived at after Step 2, but not including any amount disgorged at Step 1, to take into account factors that aggravate or mitigate the breaches committed. Having regard to the circumstances of this matter, the EC treated as an aggravating factor the fact that the breaches and his conduct led to the commission of a financial crime.

Consequently, the EC has increased the level to 15% of his relevant income amounting to **[Edited for Confidentiality]**. When added to the disgorged amount at Step 1, the AP amounts to MUR 1,640,856. Steps 1 to 3 thus amount to MUR 1,640,856.

5.2.1.4. *Step 4: Adjustment for deterrence*

If the EC considers that the figure arrived at after Steps 1 to 3 is insufficient to deter the individual having committed the breaches, or others, from committing further or similar breaches, then the EC may increase the quantum of the AP.

The EC has considered that the figure at Steps 1 to 3 is insufficient to act as an effective deterrent to himself and others. As such, the EC has thus

increased the AP at Step 3 by 300%. The figure at Step 4 is therefore MUR 4,922,568.

5.2.1.5. Step 5: Adjustment effected if the amount of the AP would cause serious financial hardship

The EC recognises that the imposition of an AP may cause significant financial hardship to an individual. In these circumstances, it may consider a reduction in the AP. However, the onus will be on the individual to satisfy the EC, based on cogent and verifiable evidence, that the proposed AP may give rise to serious financial hardship.

At this stage, the EC did not consider such an adjustment to be applicable.

The figure at Step 5 is therefore MUR 4,922,568.

**6. Warning Notice under section 53(2) of the FSA and his written representations**

6.1. The EC issued a notice dated 11 November 2020 to him pursuant to section 53(2) of the FSA. The purpose of the notice was to inform him that:

6.1.1. The EC was contemplating to disqualify him from holding position as officer in any licensee of the FSC for a period not exceeding ten (10) years pursuant to sections 7(1) (c) (iv) and 52(3) of the FSA and to impose an AP not exceeding MUR 4,922,568 on him in accordance with sections 7(1)(c)(v) and 52(3) of the FSA; and

6.1.2. He is entitled, as of right, to make written representations to the EC within a period of 21 days from the notice as to why he should not be subject to the abovementioned sanctions.

6.2. All the referral material provided by the FSC were communicated to him along with the notice dated 11 November 2020. He has also been provided with detailed explanation on the computation of the AP.

6.3. He exercised his right to make written representations to the EC by way of letter dated 24 November 2020.

## 7. Findings of the EC

7.1. Following an in-depth consideration of his written representations, the EC has observed as follows:

### *Role as General Manager of the Company*

7.1.1. He has, in his submissions to the EC, downplayed his role as General Manager of the Company to the supervision of the daily administration, human resource, marketing, business development, sales and weekly reporting to the management team. In this respect, he has claimed that client administration and the Company's compliance function did not fall under his remit.

7.1.2. Based on the findings of the investigation conducted by the FSC into the business of the Company, the EC has noted that he was responsible for all Company's operational decisions and he was the sole person to decide on the on-boarding of clients.

### *Intentionally concealing the beneficial ownership of six (6) companies*

7.1.3. Regarding the incorporation of six (6) companies and the subsequent applications for licences with the FSC while intentionally dissimulating these companies' beneficial ownership, he has, in his written representations, claimed entrapment by the undercover agent.

7.1.4. The EC has noted that:

7.1.4.1. *he has deliberately abused his position as General Manager to set-up these six (6) companies and apply for licences with the FSC while dissimulating these companies' beneficial ownership;*



7.1.4.2. *based on his statement given under oath during the investigation, he confirmed being aware that these six (6) companies were intended to be used in the commission of a financial crime and yet he purposively proceeded with their incorporation; and*

7.1.4.3. *in his capacity as MLRO of the Company, he failed to file suspicious transaction reports with the Financial Intelligence Unit in relation to these six (6) companies, thereby breaching section 14 of the FIAMLA and paragraph 6.4 of the Code.*

7.1.5. In this regard, in proceeding with these arrangements knowingly and deliberately, the EC has formed the opinion that he has failed to act with honesty.

#### *Certification of fake passport*

7.1.6. Regarding the fact that he has certified a fake Albanian passport as a true copy of the original document, the EC has considered his submission that he has relied on the prior verifications undertaken by the Company's then compliance officer and MLRO.

7.1.7. Nonetheless, in certifying the fake passport, the EC has formed the opinion that he has failed to perform his functions properly and efficiently.

#### *Hill Circle Consulting Ltd*

7.1.8. Pertaining to the payment of MUR 1,535,725 (USD 40,000) which he have perceived through Hill Circle Consulting Ltd, the EC has taken due note of his submissions wherein he has claimed that this amounts to a further entrapment by the undercover agent and that the purpose of this payment was for a property development scheme.

7.1.9. The EC was not satisfied with his explanations pertaining to this matter.

*Charge of Money Laundering Conspiracy and Guilty Plea*

7.1.10. With regard to the fact that he has pleaded guilty to the charge of Money Laundering Conspiracy before the United States District Court Eastern District of New York, the EC has taken note of his submissions that this was motivated by emotional, moral and financial duress.

7.1.11. The EC has also observed that he has been incarcerated for 397 days and that he is subject to a USD 105,000 forfeiture money judgment.

*Financial Hardship*

7.1.12. In his written representations, he has alluded to his existing debts. He has however failed to submit cogent and verifiable evidence to satisfy the EC that the proposed AP will give rise to serious financial hardship.

**8. Decision of the EC**

- 8.1. In light of the above and based on his written representations, the EC has concluded that he no longer meet the fit and proper person requirements to hold position as officer in any licensee of the FSC inasmuch as he has been unable to perform his relevant functions as General Manager and MLRO of the Company properly and efficiently.
- 8.2. In addition, for the purpose of obtaining a financial benefit, he has intentionally abused this position as General Manager to set-up these six (6) companies while dissimulating their companies' beneficial ownership for their intended use in the commission of a financial crime. In having made these arrangements knowingly and deliberately, the EC has formed the opinion that he has failed to act with honesty.
- 8.3. Furthermore, he misused his position as MLRO and did not file suspicious transaction reports with the Financial Intelligence Unit regarding these six (6) companies.

8.4. The EC has consequently decided to:

8.4.1. Impose an AP of MUR 4,922,568 on him in accordance with sections 7(1)(c)(v) and 52(3) of the FSA; and

8.4.2. Disqualify him from holding position as officer in any licensee of the FSC for a period of ten (10) years pursuant to sections 7(1) (c) (iv) and 52(3) of the FSA.

8.5. This decision shall take effect immediately after a period of 21 days from the date of this decision notice.

## 9. Payment of the AP

9.1. Payment of the AP to the FSC may be effected as follows:

- MUR payment – through cheque or wire transfer; and
- USD payment – through wire transfer.

9.2. Banking details of the FSC are provided in the table below:

**[Edited for Confidentiality]**

## 10. Discount for early payment of the AP

The attention of Mr Canaye is drawn to the Administrative Penalties Regulatory Framework, which provides for a discount on the amount of the AP to be paid by a licensee, where payment is made promptly from the date of the notice **[Edited]**.

## 11. Application to the Financial Services Review Panel (the “FSRP”)

Mr Canaye may make an application to the FSRP for a review of the above decision of the EC, within 21 days from the issue of the notice. Such an application must be made by registered post, specifying the reasons for the review, in accordance with

section 53(4) of the FSA. A copy of the application must be sent, by registered post, to the FSC.

**30 December 2020**

This published version of the Decision Notice has been edited for formatting purposes and to remove certain confidential, sensitive or personal information.

The person to whom the decision in this Notice relates may exercise the right to seek a review by the FSRP. Any amendment, cancellation or further update pertaining to the exercise of the aforementioned right in relation to the decision in this Notice will be communicated at the appropriate time.