

3rd National Anti-Money Laundering Conference

Prosecuting Money Laundering Crimes

9 November 2011

Holiday Inn, Suva

TOPIC: **Proceeds of Crime – Looking Beyond Conviction**

Speaker: **Justice Sithambarampillai
Thurairaja**

Position: **High Court Judge**

Organisation: **High Court of Fiji**

Proceeds of Crime – Looking Beyond Conviction



**S.THURAIRAJA
PUISNE JUDGE
HIGH COURT OF FIJI**

[Disposals](#)

Article 54 (1) C of UN Convention Against Corruption



- Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

LAW



- Proceeds of Crime Act 22 of 1997, amended by Act No. 7 of 2005.

What is Proceeds of Crime



- Section 3 of Proceeds of Crime Act 1997.
- Proceeds of a serious offence or
- 1(a) Wholly or partly derived or realized directly or indirectly by any person from the commission of a serious offence or a Foreign serious offence
- (b) Wholly or partly derived or realized from a disposed or other dealing with proceeds of a serious offence or a foreign serious offence or
- (C) Wholly or partly acquired proceeds of a serious offence or a foreign serious offence.
- Any property that is derived or realized, directly or indirectly, by any person from acts or omissions that occurred outside Fiji and would, if the acts or omissions that occurred in Fiji, have constituted a serious offence;

Serious offence



- “Serious offence” means an offence of which the maximum penalty prescribed by law is death, or an imprisonment for not less than 12 months.

Property



- Property – includes money or any other property, real or personal things in action or other intangible or incorporeal property.
- Personal residence and belongings of the Accused

JURISDICTION



- Section 6. The High Court of Fiji has jurisdiction to make a forfeiture orders irrespective of the value of the property.

Forfeiture



- Section 11. Forfeiture order on conviction.
- Order can be made on the tainted property.
- After the Conviction/ inquiry.
- Section 19 C – Non conviction based forfeiture orders.
- This can be made at any time beginning ,during or at the end

Confiscation



- Section 20. Confiscation orders on conviction

Application



- Section 27 (b). Proceeding on an application for a restraining order, forfeiture orders or Pecuniary orders are not criminal proceedings.
- Restraining Order :
- Court makes an order prohibiting any person from disposing of or dealing with the property.
- Pecuniary Order :
- After the conviction the court can make an order a person who benefited to pay the state an amount equal or more of the value that he had benefitted.
(Fine/ Punishment)

Standard of Proof



- Section 72. Save as otherwise provided in the Act, any questions of fact to be decided by the Court in proceedings under this act is to be decided on the balance of probabilities.

Onus of proof



- Section 27 C - Applicant bears the onus of proof
- Section 28 1 (a). If the circumstances are such that an application on oath is not reasonably practicable an application initially made
- Orally by telephone or
- By electronic transmission
- and followed within 48 hours by the application made on oath, is deemed to be an application under sub section 1.

Criminal and Non Conviction Based forfeiture



Criminal

- Against a person (in personam)
- Part of Sentence
- Criminal Conviction
- Beyond reasonable doubt
- Court – Criminal Jurisdiction

Non Conviction Based Forfeiture

- Against the property (in rem)
- Can be filed any time
- Not necessary
- Balance of probability
- Court - Civil

Criminal Conviction Based Forfeiture



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graph TD; A[Arrest/ Investigation] --> B[Trial]; B --> C[Conviction]; D[Details of Tainted Property] --> E[Proof - Beyond Reasonable Doubt ??]; E --> F[Forfeit];
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The diagram illustrates the process of Criminal Conviction Based Forfeiture. It is divided into two parallel vertical flows. The left flow starts with 'Arrest/ Investigation' (dark red box), followed by 'Trial' (light red box), and ends with 'Conviction' (light red box). The right flow starts with 'Details of Tainted Property' (dark red box), followed by 'Proof - Beyond Reasonable Doubt ??' (light red box), and ends with 'Forfeit' (light red box). Arrows indicate the downward progression in each column. A decorative circle is positioned between the two columns at the top, and a dashed horizontal line runs across the top of the diagram area.

Arrest/
Investigation



Trial



Conviction

Details of Tainted
Property



Proof - Beyond
Reasonable Doubt ??



Forfeit

Non Conviction Based Forfeiture

