



Proceeds of Crime Workshop “Follow the Money”

Fiji Police Force and Fiji Financial Intelligence Unit

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Nadi



Day 1

- Money Laundering and Proceeds of Crime



What is Money Laundering?

- Hiding the illegal origin of money
- Al Capone
- Meyer Lansky
- Pablo Escobar
- BCCI
- Bank of New York



Connections

- Drugs
- Human Trafficking
- Receiving stolen property
- Fraud and forgery
- Financial Transaction frauds
- Corruption

Three stages of money laundering



- Placement – moving of funds into a financial institution
- Layering – concealing the true nature of money by for instance mixing it with legitimate funds
- Integration – accounting for the additional funds



Barriers to effective enforcement of laws?

- Inadequate training of police officers about money laundering and proceeds of crime in the Pacific
- Corruption in financial institutions and law enforcement agencies in any country



Fiji's laws

- Financial Transactions Reporting Act
- Proceeds of Crime Act
- Crimes Decree
- Criminal Procedure Decree



Financial Transaction Reporting Act 2004

- Interpretation of “account”
- Financial institution
- Terrorist acts
- The FIU and its structure and accountability
- Anti Money Laundering Council
- Section 13 offences – the Syed Mohammed Reza case
- Section 25(2) powers of gathering information
- Section 28 – powers of entering financial institution without a warrant



Proceeds of Crime Act

- Intended to take the profit out of crime
- Amended by the Proceeds of Crime Amendment Act 2004
- Section 3 – definition of tainted property
- Serious offence
- Proceeds of crime
- Property
- Property tracking document
- Realisable property
- Gift section 4(12)



Money Laundering Offences

- Section 69
- Knows or ought reasonably to know that the money is derived or realised directly or indirectly from unlawful activity
- Section 70
- May reasonably be suspected of being proceeds of crime
- Defence – no reasonable grounds for suspecting



Financing of terrorism s 70A

- Provides, collects or makes available
- By any means directly or indirectly
- Any property
- Intending knowing or having reasonable grounds to believe
- That the property will be used in full or in part
- To carry out a terrorist act



Section 70A (2)

- Directly or indirectly
- Provides or makes available
- Financial or other services
- Intending that they be used in part or in full
- For the purpose of or facilitating
- A terrorist act or for benefitting a person in or knowing it will benefit a terrorist group
- Section 71 – corporate liability



Examples

- **Timothy Aaron O'Keefe**
- **Salendra Sen Sinha**
- **Turtle Island**
- **Monica Arora**

- Why follow the proceeds of crime?



Tools for tracing, restraining and confiscating funds

- Criminal Procedure Decree powers of search and seizure
- Section 15(1)(b)
- **State v. Vinesh Babu Vere**
- Section 34 Proceeds of Crime Act (restraining orders)
- Production and inspection orders – section 50
- Search warrants section 55
- Monitoring orders section 57

Production and Inspection Orders



- Section 50
- Must have reasonable grounds for suspecting that a person has possession or control of a property-tracking document
- Definition section 3
- Ex parte application before a judge on chambers
- Presumption section 50(3) that a document is a property tracking document
- Orders - section 55 (5) (a) or (b)

Powers of police after section 50 Order



- Inspect
- Take extracts
- Make copies
- Under section 50(5)(a) Order, retain for as long as it is reasonably necessary
- If retaining police officer must follow section 50(2)(a) and (b)
- Section 52 limitation
- Section 53 variation
- Section 54 - offences



Search Warrants – section 55

- Where a conviction entered and reasonable grounds for suspecting that there is a property tracking document on the premises or
- Where a police officer has reasonable grounds for suspecting that a person has committed a serious offence and there is on the premises a property tracking document
- Police officer may apply for search warrant



What is a property tracking document?

- Section 3
- A document relevant to identifying, locating or quantifying the property of a person who committed the offence or
- A document relevant to identifying or locating another document necessary for the transfer of property of a person or who committed the offence or
- A document relevant to identifying locating or quantifying tainted property or terrorist property or
- Identifying or locating any document necessary for the transfer of tainted property or terrorist property in relation to the offence



What is tainted property?

- Property used in or in connection with the commission of the offence
- Property intended to be used in or in connection with the commission of the offence
- Proceeds of crime



What are proceeds of crime?

- Section 4 (1A)
- Property or benefit that is derived or realised by a person from the commission of a serious offence or
- Property derived or realised from a disposal of proceeds of a serious offence or
- Wholly or partly acquired proceeds of a serious offence
- And includes funds which are converted, transformed or intermingled and any income from the property



What is a serious offence?

- Section 3
- Any offence where the penalty is more than 6 months imprisonment or \$500 fine
- It means almost all offences!



What is a benefit?

- Section 4(1)(a)
- Any property service or advantage whether direct or indirect
- If the suspect gifts a diamond ring to his girlfriend using proceeds of drug income can you restrain or get a production order for its purchase?



Questions

- Can you restrain a bank account which contains legitimate income and tainted funds?
- When you need access to a bank to seize bank documents, do you need a CPD warrant or a POC warrant?



Questions

- You have seized \$60,000 worth of marijuana from a village. The owner of the farm has a nice house with a four wheeled drive. Options?
- The owner of a pawn shop has stolen goods. You seize the goods. Can you seize his accounts records? His bank statements? Section for seizure?



Preparing for Pecuniary Penalty Orders section 20

- Caution interviews
- How much do you earn from legitimate business?
- How much did you get from the robberies?
- What did you do with the money?
- How much do you have in your bank account?
- In whose name is the house you live in?
- What assets do you have?



Pecuniary Penalty Orders

- Section 20
- Section 21 – rules for working out how much a criminal benefitted from criminal activity
- Section 25 – lifting the corporate veil
- Rule for investigators – find out information about pecuniary benefit before accused is charged and before he realises the purpose of your questions



Role of the Office of Director of Public Prosecutions

- Ms Seini Puamau



Case Studies

- Group Work and Report Back



Day 2

- Restraining Order Applications



Civil Forfeiture Orders

- Section 19A
- Non-conviction based forfeiture
- Turtle Island
- Evidence by affidavit setting out description of property, location of property, and grounds for belief that the property is tainted



What is tainted property?

- Section 3 definition



What is a serious offence?

- Section 3 definition



Who applies?

- The DPP
- But affidavit must be sworn by a police officer
- Are there reasonable grounds for believing that the property is tainted?
- Note – it does not matter whether you have charged anyone or not
- Standard of proof? Satisfied on a balance of probabilities that the property is tainted
- If yes, then the property may be forfeited to the State section 19E



Restraining Orders

- Section 34 – reasonable grounds to suspect that any property is property which can be forfeited under sections 11 or 19
- Section 11 – is it tainted property?
- Is it a foreign forfeiture order?



Drafting your affidavit

- Where is the property?
- Have you described it adequately?
- Who has control?
- Why do you think it is tainted property?
- What are your reasonable grounds for belief that it is tainted?
- Is the suspected offence a serious offence?
- Do you have grounds to make a forfeiture order under section 11?



Case Studies

- Draft your affidavits for restraining orders
- If you were making a civil forfeiture order application, what difference would it make to your affidavit?



The Role of the FIU

- Mr. Avaneesh Raman



Recent Cases

- Inspector Aiyaz Ali



Summary of Workshop

- Nazhat Shameem, SP Puran Lal, Ip Aiyaz Ali

