



THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

“DETECTING MONEY LAUNDERING”

An Address by the Director of Public Prosecutions, Mr Christopher Pryde, at the National Anti-Money Laundering Conference held at the Holiday Inn on the 20th November 2013

The Beatles in the 1960's said that love makes the world go round. In the more cynical years of the 21st century however we know that it is not love but money.

Money is the prime reason for engaging in almost any type of criminal activity. Money-laundering is the method by which criminals disguise their ill-gotten gains in order to avoid the suspicion of law enforcement agencies and to prevent leaving a trail of incriminating evidence.

Terrorists and terrorist organizations likewise rely on money to sustain themselves and to carry out terrorist acts. Money for terrorists is derived from a wide variety of sources. While terrorists are not greatly concerned with disguising the origin of money, they are concerned with concealing its destination and the purpose for which it has been collected. Terrorists and terrorist organizations therefore employ techniques similar to those used by money launderers to hide their money.

Money-laundering fuels corruption and organized crime. Corrupt public officials need to be able to launder bribes, kick-backs, public funds and, on occasion, even development loans from international financial institutions or even governments. Organized criminal groups need to be able to launder the proceeds of drug trafficking and commodity smuggling. Terrorist groups use money-laundering channels to get cash to buy arms. The social consequences of allowing these groups to launder money can be disastrous. Taking the proceeds of crime from corrupt public officials, from traffickers and from organized crime groups is one of the best ways to stop criminals in their tracks and it has proved very effective.

The IMF have estimated that the aggregate amount of funds being laundered in a year amounts to between 2% and 5% of world GDP; in other words, US\$1.6 trillion or, in the US measurement, one point six thousand billion dollars; a number truly difficult to comprehend.

This is why the international community has made fighting money laundering a priority. Money laundering has an impact on the integrity and stability of the financial sector and the broader economy. Money laundering can undermine the integrity and stability of financial institutions and systems and also has negative consequences for a country's financial stability. This is also the reason the Fijian Government over the last few years has worked to continually reform and update Fiji's laws on money laundering and proceeds of crime. Today, Fiji has one of the most sophisticated anti-money-laundering legal frameworks in the Pacific.

But the laws are only part of the solution. Detection is everything and that is why there is an increasing pressure on banks, accountants, lawyers, foreign exchange dealers, and large and small private sector companies to be ever more vigilant in reporting suspicious transactions.

As the Director of the FIU has said, since 2006 there have been a total of 4,054 suspicious transactions reported by various financial institutions in Fiji. But it is not only the lawyers and the accountants that need to be vigilant; it is also the public who are often unwittingly used by money launderers and are duped into assisting the concealing of illicit or stolen proceeds. I am sure you are all familiar with the regular anonymous emails asking us to assist a poor dying widow in Burkino Faso.

The importance of early detection is highlighted in three recent cases brought before the courts.

Robin Shyam was an employee of FRCA and succeeded in laundering \$350,000 through an elaborate scam that involved fraudulent FRCA tax returns. This money was then siphoned off through 19 bank accounts belonging to 9 individuals that were family members or friends of Mr Shyam. The monies were then withdrawn by the individuals from their own bank accounts and forwarded to Mr Shyam. The laundering continued for 2 years without detection either by FRCA or the banks. The case only came to light when these 9 individuals whose bank accounts were receiving the illicit funds became suspicious and a couple of them decided to report the matter to the police. By this time however the \$350,000 was long gone and untraceable to a large extent. Mr Shyam was however sentenced to 12 years imprisonment. Interestingly, in this case, it was the family and friends who reported their suspicions to the authorities which shows that the public need also to be involved in helping to detect money laundering. It is uncertain how long the offending might have continued were it not for these people coming forward.

On the other hand **Sanjay Sharma** through the use of fraudulent cheques managed to obtain over \$619,000.00 from his employers. In this case it was

the bank that raised the alarm after detecting the large sum of money in the clerk's account. The monies were then restrained.

These irregularities in personal bank accounts can be difficult to detect and money launderers are becoming ever more adept at hiding their activities. In fact, an increasing trend appears to be the use of a number of different people with different bank accounts laundering small amounts of money in order to escape detection.

A final recent case was the **Fiji Electricity Authority fraud** (State v Doreen Singh) which involved just over \$157,000.00. This case only came to light after the bank queried a payment from the FEA made to one of its tellers. The FEA carried out an internal audit, discovered the laundering and reported the matter to the Police. In this case the money laundering was made easier with the assistance of an employee of the bank itself. In fact, it was a conspiracy between the FEA employee and the bank employee. There was no recovery of the money and, regrettably, by the time it was detected, the main culprits had fled Fiji.

Current Trends

A clear trend in money laundering cases is the increased reliance on banks and their internet banking platform to obtain and launder funds from customers of the banks and by using other customers (sometimes unwittingly) to launder the money. This shows the importance of bankers in the anti-money laundering regimes. Early detection means that the authorities can quickly move to restrain the money and then move to have it forfeited to the State.

Another popular scam is the hacking of customers' internet banking platforms and transferring the funds to a third party customer of the same

bank and having them remit the funds overseas. Often these people are family or friends of the hacker, and sometimes, quite innocently believe the story of the hackers (as in the Robyn Shyam case). The money is remitted in smaller amounts to avoid detection and also the need for Reserve Bank permission. In these cases the banks only become aware once customers whose accounts have been hacked report the matter to the bank by which time the money is long gone and out of reach.

We are also seeing an increase in visa frauds where funds are being remitted internationally through the bank accounts of the victims who unwittingly send their international access credit cards overseas and the funds are then withdrawn and used overseas. This bypasses the Reserve Bank and shows that money launderers are ever adaptable to changes in laws and devising means to bypass these laws which makes early detection so much more critical.

The Proceeds of Crime Act and Unexplained Wealth Provisions

As mentioned, Fiji's laws have been strengthened to keep up with emerging trends in money laundering with the use of tools such as civil and conviction based forfeiture applications in the courts.

The latest tool in the armoury has been a further amendment to the Proceeds of Crimes Act to allow for the forfeiture of unexplained wealth. This, as yet untested device allows the DPP to make an application in court for the forfeiture of assets that are "unexplained" to the satisfaction of the court. In other words, the burden of proving that wealth is lawfully obtained is on the respondent or the person against whom the order is sought.

For example, an application might be made against the million dollar house and the Rolls Royce car of a middle ranking civil servant on a yearly salary of \$30,000. In court, it would be for him or her to explain that the house and car were obtained from legitimate sources, for example, through an inheritance or from funds remitted from family overseas. If his or her explanation is not satisfactory, the court can then make an order declaring that the house and car are unexplained wealth and therefore forfeited to the State.

This is particularly helpful since most current laundering trends demonstrate that money launderers commit their crimes overseas and then remit the funds to another country and then integrate them into the financial system by purchasing assets. Removing the benefit of the crime has a powerful deterrent effect on any potential money launderers.

I look forward to using this useful tool soon, although I am not sure how many of you drive a Rolls Royce, although perhaps some of the more successful commercial lawyers here do.

While Banks and wire transfer facilities are utilised to launder money, it is not unusual to see that shell companies are also being formed solely to launder money. Shell companies are used by money launderers to clean their money as “proceeds from legitimate business”.

On the other hand, some money launderers use legitimate businesses to launder funds as in the well-documented Turtle Island Resort case.

The intermingling of dirty money with clean money successfully integrates the money into the financial system and this is where the role of accountants and auditors especially is integral in maintaining financial sector integrity. The accountants and auditors are often the only people in a

position to be able to detect the money laundering. The Financial Transactions Reporting Act makes it clear that accountants are considered financial institutions if they are carrying out the business of managing trusts, creating legal entities and managing clients monies and bank, savings and securities accounts. As such, they are bound in many instances by the same reporting conditions as banks, wire transfer operators and foreign exchange dealers.

Way Forward

Detection is a vital and integral part of any successful anti-money laundering regime. Detection can take place in any stage of the money laundering activity. It may be when funds are placed into the financial system by banking them or by purchasing assets, or in the layering of the money by trying to hide the origins by wire transfers, or the selling of the assets bought during placement. Once this stage has been reached the detection and the ability to trace the funds diminishes progressively. Detection can also take place at the final stage when the money is “cleaned” and passed off as legitimate.

In Fiji as the cases demonstrate, once the money has reached the final stage of integration into the system, there is little chance of recovering the proceeds of crime as they become virtually untraceable.

With advances in technology we now are seeing a movement away from the use of fraudulent cheques as the main means of laundering money to the use of internet hacking frauds. While the earlier form of money laundering had a visible paper trail, now with the advent of the internet age money moves swiftly across banks and through wire transfers. This means that by the time the fraud is detected the money is often long gone.

What this means for bankers, wire transfer dealers, foreign exchange dealers, and accountants is a need for a clear understanding of your obligations under the Financial Transactions Reporting Act and exercise due diligence because ultimately early detection is vital to the recovery of money and preventing the perpetrator from leaving the jurisdiction.

For companies and directors, you need to be aware of the law and appreciate that your company without proper supervision can also fall victim to money launderers. This can be combatted through implementing proper controls to maintain the integrity of the business and carefully and continuously scrutinising transactions with a watchful eye.

For all of us in general as members of the public we need to be aware of the many and increasingly sophisticated scams that trick people into acting as money mules to transfer the funds overseas. These chain emails and visa scams are only successful if we ignore the old adage, "If it looks too good to be true, it probably is".

I thank you for listening to me and I wish you all the very best for the remainder of the Conference.

Thank you.

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