



**PACIFIC ISLANDS LAW OFFICERS' NETWORK
(PILON)**



**Asia/Pacific Group
on Money Laundering**

PILON/APG Typologies Report - Recovering the Proceeds of Corruption in the Pacific

Project Co-Leads: Papua New Guinea & Vanuatu

September 2016

Acknowledgements

This report has been prepared by the Department of Justice and Attorney-General and the Office of the Public Prosecutor in the Government of Papua New Guinea with assistance from the Anti-Money Laundering Assistance Team of the Australian Attorney-General's Department.

The Pacific Islands Law Officer's Network (PILON) and Asia/Pacific Group on Money Laundering (APG) Pacific Corruption Project was launched in March 2013 at the APG Pacific FATF Standards and Typologies Workshop which took place in Brisbane, Australia. Australia's AUSTRAC convened the event and were very generous in providing financial support to allow Pacific delegates to attend and participate in the Workshop.

The workshop was attended by more than 60 delegates from the 14 Pacific APG member and observer jurisdictions, as well as delegates from Australia, Indonesia, New Zealand, the United States of America and the United Kingdom. PILON, the Pacific Islands Forum Secretariat (PIFS) and the Association of Pacific FIU's (APFIU) also actively contributed.

The report has had substantial and invaluable input from a range of jurisdictions in the Pacific Islands Law Officers' Network Corruption and Proceeds of Crime Working Group. This included providing and discussing case studies in response to a questionnaire, providing panel members and actively discussing the content of the report at the Working Group meeting in October 2015, and working together to finalise the report and its recommendations.

Contents

Acknowledgements.....	2
1. Executive Summary.....	4
Recommendation 1.....	4
Recommendation 2.....	5
Recommendation 3.....	5
Recommendation 4.....	5
2. Background	6
3. Methodology.....	6
4. Literature review.....	7
Introduction	7
The types, dynamics and scale of corruption in the Pacific.....	7
Vulnerable sectors	8
Cultural dynamics.....	9
Using anti-money laundering and criminal asset recovery frameworks to combat corruption	9
Key elements of effective anti-money laundering and criminal asset recovery laws	10
Experiences and lessons learnt from around the globe	11
4. Case studies	14
Overview	14
Analysis of cases.....	14
5. Conclusions and Recommendations.....	21
Recommendation 1.....	22
Recommendation 2.....	22
Recommendation 3.....	23
Recommendation 4.....	23
ANNEX A.....	24

1. Executive Summary

The impacts of corruption are well-documented, ranging from hindering economic development, eroding public confidence in state authorities, and hampering the capacity of the government to provide equitable and responsive public services. The Stolen Asset Recovery (StAR) Initiative and the G20 Anti-Corruption Working Group have identified corruption as a major obstacle to achieving development goals.¹

This report compiles relevant regional case studies on corruption and related money laundering and highlights key challenges and successes. It draws on regional and global experiences to provide recommendations for Pacific countries to improve responses to corruption through effective money laundering and proceeds of crime frameworks. Countries in the Pacific report corruption as the most common predicate offence for money laundering in the region. Countries around the world have sought to implement anti-money laundering and proceeds of crime regimes in their fight against corruption. However, these regimes are under-utilised across the Pacific. Several of the key lessons that can be drawn from the literature include:

- the skilled technical analysis of financial information, is essential in enabling the tracing and identification of corrupt proceeds
- money laundering should be a separate criminal offence
- strong domestic and international cooperation is essential
- establishing informal regional networks among law enforcement and justice officials (such as the Asset Recovery Interagency Network Asia Pacific - ARIN-AP) facilitates asset tracing; and
- investigators and prosecutors should have the ability to freeze, seize and confiscate proceeds of corruption.

This report includes 12 case studies of corruption and/or money laundering cases derived from questionnaires answered by investigators and prosecutors in ten PILON member countries. The case studies highlight the key ingredients for successfully combating these types of cases as well as the impediments to successful investigation and prosecution that need to be overcome.

On the basis of the literature reviewed and case studies analysed in the report, the following recommendations are made:

Recommendation 1

Strengthen legal frameworks on anti-money laundering and proceeds of crime in compliance with international standards

- Criminalise money laundering in compliance with international standards and include corruption and bribery as predicate offences

¹ Jason Sharman, 'Chasing kleptocrats' loot: Narrowing the effectiveness gap', *U4 Anti-Corruption Resource Centre*, August 2012, p. 2, <http://www.u4.no/publications/chasing-kleptocrats-loot-narrowing-the-effectiveness-gap/>.

- Consider whether additional investigative powers could be included in legal frameworks to enable identification and tracing of assets. For example, powers to obtain production orders, customer information orders, monitoring orders and search warrants
- Ensure law and justice officials have various legal avenues for freezing, seizing and forfeiting proceeds of corruption. This should include non-conviction based forfeiture mechanisms
- Adopt effective mutual legal assistance and extradition laws to obtain evidence and offenders located overseas

Recommendation 2

Invest in the training and resourcing of specialist anti-money laundering and proceeds of crime units, associated officials and judicial officers

- Ensure that financial intelligence units are adequately staffed, resourced and trained to enable them to carry out analysis of financial information and production of financial intelligence, to assist investigators and prosecutors
- Ensure that financial crime investigators, prosecutors, specialist proceeds of crime litigation units, and the judiciary are adequately staffed, resourced and trained
- Utilise the expertise of forensic accountants in financial investigations

Recommendation 3

Ensure that financial systems are effectively regulated to increase transparency and deter persons from using those systems to store and access proceeds of corruption

- Obligations on financial institutions and designated non-financial businesses and professions to identify and verify their customers, report suspicious matters, keep records, undertake anti-money laundering risk assessments and maintain appropriate anti-money laundering programs should be enforced

Recommendation 4

Foster strong inter-agency, public/private and international cooperation on anti-money laundering, proceeds of crime and anti-corruption

- Consider establishing joint national taskforces focused on asset recovery or anti-corruption
- Foster effective cooperation between government agencies and the private sector, in particular the banking sector
- Foster effective international cooperation in prosecuting money laundering and recovering the proceeds of corruption located abroad through
 - effective mutual legal assistance and extradition mechanisms
 - joining and utilising informal asset recovery inter-agency networks, such as ARIN-AP to facilitate asset tracing and recovery in support of formal mechanisms such as mutual legal assistance
 - joining and actively engaging in the APG, where resources permit

2. Background

Typologies produced by the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG) continue to highlight risks from money laundering associated with corruption across APG's Pacific members. Countries in the Pacific also report corruption as the most common predicate offence for money laundering in the Pacific region. Despite the recognised potential for anti-money laundering and criminal asset confiscation (proceeds of crime) frameworks to be used to counter corruption, these systems are currently under-utilised. APG Pacific members, PILON and other stakeholders have noted that there remains a lack of typologies from the Pacific on the topic of money laundering associated with corruption. It was identified that there was a need to examine the types, dynamics and scale of corruption in the Pacific and to review key lessons learnt in existing global research on corruption and related money laundering with experiences from the Pacific.

This project was launched in 2013 as a joint initiative of PILON and APG. The results aim to guide Pacific investigative and other public sector agencies and statutory bodies on the risks and vulnerabilities of corruption to promote effective anti-corruption measures, particularly anti-money laundering and criminal asset confiscation. The results also assist to improve regional responses to corruption and related money laundering.

3. Methodology

The report contributes to understanding corruption in the Pacific by compiling relevant regional case studies on corruption and related money laundering and highlighting key challenges and successes. It draws on regional and global experiences to provide recommendations for Pacific Island countries to improve responses to corruption through effective money laundering and proceeds of crime frameworks. This report is not intended to be an exhaustive collection of data on this topic.

The methodology adopted for this report has the following main elements:

- a desktop **literature review** on the types, dynamics and scale of corruption in the Pacific, how anti-money laundering and criminal asset confiscation laws can be used to combat corruption, an overview of the key elements of effective money laundering and criminal asset recovery frameworks and a review of experiences from other regions to draw on lessons learnt
- development of a questionnaire (see **Annex A**) asking Pacific jurisdictions to identify cases involving corruption and related money laundering and to critically reflect on key stages in the identification, referral, assessment, investigation and litigation stages. In-person and telephone interviews were also conducted with the nominated contact officers for each case by project officers using the questionnaire. The **case studies** were then compiled and analysed along key themes with challenges and successes being identified
- draft **recommendations** were developed to assist jurisdictions to improve responses to corruption through effective money laundering and proceeds of crime frameworks, and
- the **PILON Corruption and Proceeds of Crime Working Group** met and considered the report in detail in October 2015, including through expert presentations, panel discussions on key themes and small group exercises. The Working Group reviewed the draft recommendations in light of the discussions and finalised the report to present to PILON in December 2015.

4. Literature review

Introduction

Corruption may be defined as the “the misuse of public office for private gain”.² This definition covers a range of corrupt activities, including offering or receiving a bribe, providing minor favours or corruption of the functions of government.

The impacts of corruption are well-documented, ranging from hindering economic development, eroding public confidence in state authorities, and hampering the capacity of the government to provide equitable and responsive public services. The Stolen Asset Recovery (StAR) Initiative and the G20 Anti-Corruption Working Group have identified corruption as a major obstacle to achieving development goals.³ Scholarly research strongly reinforces this message, with a number of scholars arguing that illicit flows, primarily from corruption, are one of the most important factors behind negative development outcomes.⁴

It is difficult to ascertain the exact magnitude of the proceeds of corruption circulating in the global economy. In 2007 the World Bank estimated that US\$20 billion to US\$40 billion were being stolen annually from developing countries, yet only US\$5 billion has been returned over the past 15 years.⁵ It appears that only a fraction of criminal money is actually intercepted.⁶

The types, dynamics and scale of corruption in the Pacific

The Pacific region consists of a diverse range of countries from New Zealand and Papua New Guinea to Kiribati and Tuvalu. There is both ecological and cultural diversity. Despite this diversity, there are also common characteristics shared by many Pacific Island countries. These include geographic isolation and vulnerability to natural and environmental disasters.

A 2010 study conducted by the United Nations Development Programme (UNDP) confirmed that corruption is an ongoing problem in the region.⁷ This has also been confirmed by other reports.⁸ The

² World Bank, ‘Helping Countries Combat Corruption: The Role of the World Bank’, *The World Bank Group*, September 1997, p 8, <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/coridx.htm>; see also Transparency International, ‘What is Corruption?’, *Transparency International: the global coalition against corruption*, 2015, <http://www.transparency.org/what-is-corruption/?gclid=CKyb156fh8gCFQR9vQodNEQPCg#define>.

³ Sharman, above n. 1, p. 2.

⁴ Quentin Reed and Alessandra Fontana, ‘Corruption and illicit financial flows: The limits and possibilities of current approaches’, January 2011, p. 11, <http://www.u4.no/publications/corruption-and-illicit-financial-flows-the-limits-and-possibilities-of-current-approaches-2/>; see also Charles Goredma, ‘Combatting Illicit Financial Flows and Related Corruption in Africa’, October 2011, <http://www.u4.no/publications/combating-illicit-financial-flows-and-related-corruption-in-africa-towards-a-more-integrated-and-effective-approach/>.

⁵ Stolen Asset Recovery (StAR) Initiative, ‘Management of Returned Assets: Policy Considerations’, 2009, p. vii; United States Department of State, ‘International Narcotics Control Strategy Report Volume II: Money Laundering and Financial Crimes’, March 2011, <http://www.state.gov/j/inl/rls/nrcrpt/2011/vol2/index.htm>, describes corruption as a ‘major predicate offence’ in 98 out of 200 jurisdictions analysed.

⁶ StAR Initiative, above n. 5.

⁷ Manuhua Barcham, *Corruption in Pacific Island Countries*, UNDP Pacific Centre, Suva, 2007, p. 13.

⁸ Marie Chêne, ‘Expert Answer: Corruption challenges in small island developing states in the Pacific region’, *U4 Anti-Corruption Resource Centre*, 9 September 2010, p 3, <http://www.u4.no/publications/corruption-challenges-in-small-island-developing-states-in-the-pacific-region/>; see also Manuhua Barcham, *Corruption in Pacific Island Countries*, UNDP Pacific Centre, Suva, 2007, p. 1.

literature indicates that political corruption, bureaucratic and administrative corruption, and nepotism can be found across the Pacific.⁹ For example, gifts of food or money to voters (political corruption), misappropriation, embezzlement, abuse of power, manipulations of budget processes (bureaucratic and administrative corruption), and favouring kin, tribal group members or political allies for appointment of contracts or scholarships (nepotism) have been found.¹⁰ The extent and pattern of corruption varies across the region. On the 2011 Transparency International Corruption Perception Index, Pacific Island countries range from 2.2 to 9.5 (on a 0 to 10 scale with 10 being 'very clean').¹¹

Vulnerable sectors

The literature suggests that the sectors in the Pacific most vulnerable to corruption are natural resources, public administration and services, overseas development aid, and offshore banking.¹² The 2010 UNDP Study on corruption in Pacific Island countries notes that corruption in the region is prevalent in a number of sectors such as: police, customs, land and titles administration, mineral and petroleum extraction, forestry, fisheries, ports, health, education, retirement funds, tendering, trade in the tokens of sovereignty (passports, internet domain names) and offshore banking.¹³ A 2011 report by the U4 Anti-Corruption Resource Centre (U4) identifies that natural resource management is considered to be especially vulnerable, with the large-scale mineral and petroleum extraction industries in Melanesia generating significant corruption in comparison with the resource-poor countries of Micronesia and Polynesia.¹⁴ Other reports come to a similar conclusion, noting that the forestry sector is affected by corruption in PNG, the Solomon Islands and Fiji in comparison to the smaller islands with little forest resources.¹⁵ Fisheries are becoming a developing area of corruption, impacting upon smaller countries of Polynesia and Micronesia.¹⁶

Corruption in both law enforcement and the public service has been identified as a particular problem across the Pacific.¹⁷ Government agencies that are responsible for delivering services face the risk of having funds embezzled or misappropriated through improper procurement practices. Additionally funds may be fraudulently obtained through unsubstantiated compensation claims or inflated invoicing for services including legal and professional services or non-delivery on government awarded contracts for construction or infrastructure repairs.

⁹Chêne, above n. 8, p. 3.

¹⁰See generally Peter Larmour, 'Culture and Corruption in Pacific Islands: Some Conceptual Issues and Findings from Studies of National Integrity Systems', *Australian National University Digital Collections Library*, 2006, <http://hdl.handle.net/10440/1148>; see also Manuhua Barcham and Peter Larmour, 'National Integrity Systems in Small Pacific Island States', *Australian National University Digital Collections Library*, 2005, <http://hdl.handle.net/10440/1175>.

¹¹Transparency International, 'Corruption Perceptions Index 2011', *Transparency International: the global coalition against corruption*, 2015, <http://www.transparency.org/cpi2011/>.

¹²Chêne, above n. 8, pp. 3–4.

¹³Barcham, above n. 7, pp. 13–14.

¹⁴Chêne, above n. 8, p 3; see also Barcham, above n. 1.

¹⁵ Peter Larmour, 'Corruption and Accountability in the Pacific Islands', *Australian National University Digital Collections Library*, 2005, p 5, <http://hdl.handle.net/10440/1159>.

¹⁶ Quentin Hanich and Ben Tsamenyi, 'Addressing Corruption in Pacific Islands Fisheries: A Report Prepared for IUCN PROFISH Law Enforcement, Corruption and Fisheries Project', *University of Wollongong: Research Online*, 2008, <http://ro.uow.edu.au/lhapapers/225/>.

¹⁷Barcham and Larmour, above n 10, p. 3.

Cultural dynamics

A key issue identified in the literature is the distinctive role of traditional institutions and values in the Pacific.¹⁸ Findlay states that, “neat distinctions between corrupt and legitimate political or commercial arrangements in small Pacific Island states is rarely possible.”¹⁹ Barcham, Hindess and Larmour refer to national integrity surveys in saying that, “the official roles of public servants are interwoven with and often compromised by their traditional obligations”.²⁰ In addition, elected officials may be expected to use their allowances to support village power bases. Findlay further explains that small island states are often only several generations into cash economics, and therefore remain heavily reliant upon subsistence enterprise and property where “clan or tribal loyalties underpin commercial enterprise”.²¹ Findlay focuses upon the culture of the “big man” as leader, using the example of newly elected politicians employing their parliamentary allowances directly to “curry favour” with their village power base. As Findlay notes, “to the outside observer this might appear corrupt but within its cultural context it is an expected behaviour and is good political ‘business’.”²² In addition, Croncombe argued that few will publicly denounce or prosecute those who are corrupt, since exposing others is seen as inappropriate, and potentially dangerous, in close-knit societies.²³

The cultural dynamics that interact and underpin corruption in the Pacific require targeted anti-corruption strategies. Alatas makes the important distinction that “cultural practices are used for the purposes of corruption rather than being the cause of corruption”.²⁴ Barcham states that the results of the National Integrity System Survey necessitate greater understanding of traditional integrity systems and their potential to fight corruption in the region, as these systems have their own accountability structures and deterrence mechanisms that may be effective in supporting anti-corruption efforts.²⁵

Using anti-money laundering and criminal asset recovery frameworks to combat corruption

Corruption is driven by many factors including greed, power, and influence; however, the underlying motivation is generally to profit the individual. The G20 member countries, the United Nations Office on Drugs and Crime (UNODC), International Monetary Fund (IMF), World Bank, StAR and FATF, along with FATF style regional bodies such as the APG, all recognise that the fight against corruption is essentially an effort to combat the generation, transfer, concealment and laundering of the proceeds of corruption and corruption related offences. Efforts to strengthen anti-money laundering systems cover the breadth of actors, both state and non-state, in a typical corruption

¹⁸ The 2004 National Integrity Systems Survey was run out of the Australian National University, funded by AusAID and Transparency International Australia. The NISPAC study included 12 Pacific Island countries: the Cook Islands, the Federated States of Micronesia (FSM), Kiribati, the Marshall Islands, Nauru, Niue, Palau, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu.

¹⁹ Mark Findlay, ‘Misunderstanding Corruption and Community: Comparative Cultural Politics of Corruption Regulation in the Pacific’, *Asian Journal of Criminology*, vol.2 issue 1, 2007, pp. 47–56.

²⁰ Manuhua Barcham, Barry Hindess and Peter Larmour, ‘Corruption: Expanding the Focus’, *Australian National University ANU Press*, 2012, p. 159, <http://press.anu.edu.au?p=191341>.

²¹ Findlay, above n. 19, p. 48.

²² Findlay, above n. 19, p. 51.

²³ Ron Crocombe, *The South Pacific*, University of the South Pacific, Suva, 2001, p. 516.

²⁴ Syed Alatas, *The sociology of corruption: the nature, function, causes and prevention of corruption*, D. Moore Press, Singapore, 1968, pp. 96-7.

²⁵ Barcham, above n 7.

case. By virtue of the strong international rhetoric and ‘FATF big stick’, anti-money laundering efforts can unite a range of institutions under the shared umbrella of ‘avoiding FATF blacklisting’.

A robust anti-money laundering and criminal asset recovery framework is a very effective anti-corruption tool.

Key elements of effective anti-money laundering and criminal asset recovery laws

Anti-money laundering and proceeds of crime laws should comply with the international standards and obligations contained in the following instruments:

- the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention)
- the United Nations Convention Against Transnational Organized Crime 2000 (UNTOC or Palermo Convention)
- the United Nations Convention against Corruption 2003 (UNCAC)
- the Financial Action Task Force (FATF) Recommendations.

Money laundering is the process by which funds obtained illegally through crimes such as corruption (dirty money) are made to look like they have been legitimately obtained (clean money). Money laundering allows people to profit from their crimes. It can also fuel criminal activity by allowing people to reinvest profits in further illegal activity. By targeting money laundering, law enforcement agencies can disrupt, and provide a significant deterrent to, criminal activity. An effective anti-money laundering approach also assists countries to establish a good reputation for financial stability and transparency, which can in turn encourage investment and increase growth. Particularly in the context of corruption, anti-money laundering strategies support economic growth and investment in communities.

Money laundering often takes place across national borders as criminals try to make it more difficult for law enforcement agencies to trace or follow their money. The international community has recognised the importance of cooperation among countries to tackle money laundering. This is why a number of international conventions and the FATF Recommendations oblige member countries to have strong anti-money laundering regimes that include measures to assist with combating both domestic and transnational money laundering.

There are four core features that are essential for an effective anti-money laundering system:

1. Money laundering offences and an effective criminal asset confiscation/proceeds of crime regime.
2. Enforceable obligations on financial institutions to identify and verify their customers, report suspicious matters, keep records, undertake anti-money laundering risk assessments and maintain appropriate anti-money laundering programs.
3. Authorities with powers to gather and analyse financial data, investigate and prosecute money laundering.
4. Effective international crime cooperation mechanisms (including extradition and mutual legal assistance).

Article 2 of UNTOC, defines proceeds of crime as any property derived from or obtained, directly or indirectly, through the commission of an offence. A comprehensive proceeds of crime regime is a key law enforcement tool to deprive criminals of the proceeds and benefits gained from criminal conduct. In addition to disrupting criminal activity, it prevents the reinvestment of those proceeds into further criminal activity and provides a mechanism for the confiscated funds to be reinvested into the community.

Comprehensive asset recovery regimes that comply with international obligations include five main features:

1. **Investigative powers** to enable identification and tracing of assets. For example, powers to obtain production orders, customer information orders, monitoring orders and search warrants.
2. Measures to **preserve assets** prior to forfeiture to ensure that assets are not dissipated during investigation or prosecution. For example, freezing, seizure or restraint orders.
3. **Asset confiscation** measures to enable permanent confiscation of assets. Key measures include non-conviction based forfeiture orders, conviction based forfeiture orders, benefit recover orders and forfeiture by consent/agreement/statutory forfeiture (uncontested).
4. Mechanisms for **innocent third-parties** to challenge the temporary restraints or forfeiture of their property through exclusion orders, compensation orders or hardship orders.
5. **Accountable measures** for the preservation, management and disposal of seized and forfeited property, for example, through custody and control orders.

Experiences and lessons learnt from around the globe

Countries around the world have sought to implement anti-money laundering and proceeds of crime regimes in their fight against corruption. Important lessons have been learned from these experiences that may be relevant for Pacific countries. In 2013 FATF published a best practice paper on using the FATF Recommendations, which includes anti-money laundering and proceeds of crime measures, to combat corruption.²⁶ The paper analysed a series of case studies in making its recommendations. Several of the key lessons that can be drawn from the paper are as follows:

- **Countries should ensure financial institutions are adequately regulated.**²⁷ Regulating financial systems with the purpose of making them more transparent inhibits the ability of corrupt proceeds to enter those systems. Greater transparency can be supported by requiring financial institutions to keep a reliable 'paper trail' that can be used by regulators to track business relationships, transactions and the true ownership and movement of assets.²⁸

²⁶ Financial Action Task Force (FATF), 'Best Practices Paper: The Use of the FATF Recommendations to Combat Corruption, FATF, October 2013, [http://www.fatf-gafi.org/publications/corruption/documents/bpp-fatfrecs-corruption.html#bpp-fatfrecs-corruption.html?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/corruption/documents/bpp-fatfrecs-corruption.html#bpp-fatfrecs-corruption.html?hf=10&b=0&s=desc(fatf_releasedate)).

²⁷ FATF, above n. 26, p. 7.

²⁸ FATF, above n. 26, p. 7.

- **The skilled technical analysis of financial information is essential in enabling the tracing and identification of corrupt proceeds.**²⁹The agencies responsible for this analysis, financial intelligence units, must be appropriately staffed and resourced, and must have sufficient powers to perform their functions.
- **Money laundering should be a separate criminal offence.** Corruption and bribery should be included as predicate offences.³⁰ Money laundering offences enable law and justice officials to target persons who deal in assets derived from corruption.³¹
- **Strong domestic and international cooperation is essential.**³² Domestic cooperation ensures financial intelligence can be used effectively in corruption and money laundering cases.³³ International cooperation is key as, in practice, assets derived from corruption are often moved abroad.³⁴ Jurisdictions must cooperate to ensure that assets that cross borders can be traced, identified and linked back to corrupt activity.
- **Countries should consider multi-agency responses to corruption, such as joint asset recovery taskforces.**³⁵ Taskforces have proven effective in identifying, investigating and prosecuting corruption.³⁶ These approaches are successful because they bring together financial, police and legal experts and provide an effective mechanism to capture lessons learned in pursuing corruption cases.
- **Investigators and prosecutors should have the ability to freeze, seize and confiscate proceeds of corruption.**³⁷ Non-conviction based forfeiture actions are a useful addition to the anti-corruption toolkit, as they can be used when securing a criminal conviction for corruption (or money laundering) is unlikely or impossible.

The analysis in the FATF best practices paper is supported by other research. A 2012 U4 issues paper highlighted the utility of anti-money laundering regimes in targeting corruption.³⁸ Some of the key obstacles highlighted in the issues paper are low levels of interagency coordination, a lack of skilled human resources and technical capacity, weak regulatory and supervisory institutions, and a lack of

²⁹ Egmont Group, 'The Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets', *The Egmont Group of Financial Intelligence Units*, 3 October 2012, p. 10, <http://www.egmontgroup.org/news-and-events/news/2012/10/3/the-role-of-fius-in-fighting-corruption-and-recovering>.

³⁰ FATF, above n. 26, p. 12.

³¹ FATF, above n. 26, p. 12.

³² FATF, above n. 26, p. 12.

³³ FATF, above n. 26, p. 12.

³⁴ FATF, above n. 26, p. 12.

³⁵ FATF, above n. 26, p. 20.

³⁶ A joint Organisation for Economic Co-operation and Development (OECD)-StAR report noted that several OECD countries had created specialist asset recovery units and that this approach had allowed for "more strategic intelligence gathering" and access to stronger tools to fight corruption and recover assets: OECD and StAR, 'Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action', *Stolen Asset Recovery Initiative*, 24 August 2011, p. 41, <https://star.worldbank.org/star/publication/tracking-anti-corruption-and-asset-recovery-commitments>.

³⁷ FATF, above n. 26, pp. 23–24.

³⁸ Alessandro Fontana and Pedro Gomes Pereira, 'Using Money Laundering Investigations to Fight Corruption in Developing Countries: Domestic Obstacles and Strategies to Overcome Them', *U4 Anti-Corruption Resource Centre*, November 2012, <http://www.u4.no/publications/using-money-laundering-investigations-to-fight-corruption-in-developing-countries-domestic-obstacles-and-strategies-to-overcome-them/>.

knowledge about anti-money laundering laws and regulations.³⁹ The paper explains that a lack of coordination creates a high risk that there will be gaps in information and intelligence, resulting in crimes going undetected.⁴⁰ The paper also notes that money laundering and proceeds of crime are complex areas where specialist knowledge and effective resources are required.

As noted above, corruption often takes on an international dimension and corrupt proceeds are frequently moved across borders.⁴¹ This makes international cooperation an essential component of anti-corruption frameworks. Cooperation between countries in the area of asset recovery can take place through formal processes, such as mutual legal assistance, or through informal channels.

Another lesson learnt from other regions is the importance of establishing informal networks among law enforcement officials to facilitate asset tracing. The Camden Asset Recovery Interagency Network (CARIN), established in 2004, is a network of asset recovery practitioners focused on the European region. CARIN's primary function is to facilitate information sharing between member countries. It also supports existing formal legal processes. CARIN comprises practitioners from 63 countries and has a permanent secretariat based in Europol. It has been successful in assisting jurisdictions to locate, freeze and confiscate assets situated in foreign countries. The network can be used to facilitate specific inquiries regarding asset tracing and confiscation laws. All information provided through the CARIN network is subject to domestic legal constraints.

CARIN-style bodies have been established in other regions. Networks were established in South America and Southern Africa in 2009, East Africa in 2013 and West Africa in 2014. In the Asia-Pacific, ARIN-AP was conceived in 2012 at the annual meeting of the APG and the inaugural meeting of ARIN-AP was held in Seoul, Korea in November 2013.

The establishment of an informal Asia-Pacific network of asset recovery experts was aimed at enabling the provision of information and assistance to increase the effectiveness of transnational asset recovery in the region. ARIN-AP currently has 13 members. At present, there are no Pacific members. Greater involvement in ARIN-AP would benefit the Pacific by facilitating the timely exchange of asset recovery information.

³⁹ Fontana and Pereira, above n. 38, pp. 7–16.

⁴⁰ Fontana and Pereira, above n. 38, p. 9.

⁴¹ FATF, above n. 26, p. 12.

4. Case studies

Overview

In 2013, questionnaires were sent to ten PILON member countries. Participant countries were asked to identify a corruption and/or money laundering case and then answer a series of questions set out in the questionnaire. The questions were broken up into phases of an investigation and prosecution, namely:

- case identification and referral
- case assessment by investigators
- case assessment by prosecutors
- investigation, and
- litigation.

The questions were directed at both investigators and prosecutors.

Having completed the questionnaire, investigators and prosecutors from each country participated in an interview (either in person or over the telephone) where the answers were discussed in more detail and notes were taken of the answers.

Analysis of cases

Each responding country determined the cases to be included in its questionnaire response. In practice, a variety of cases of corruption, fraud and other offences were reported and often a mix of a number of offences. The definitions of 'corruption' applied by each responding country varied, so there is some variety reflected in the case studies below. A number of analysed case studies present elements related to aspects of corruption or illustrate the functioning of AMLCTF systems which were used to 'follow- the-money' associated with these profit driven crimes.

Some key issues arising from the case studies include the fact that most countries in the region have convictions based asset confiscation. In jurisdictions which had non-conviction based asset confiscation, the cases showed that criminal prosecution and non-conviction based confiscation litigation occurred successfully in tandem. Some jurisdictions had legal impediments (later removed) which prohibited money laundering charges being pursued alongside charges for the predicate offence. Regardless of legal impediments, many case studies showed a preference towards pursuing the predicate offence and not a money laundering offence. This was due in some measure to difficulties in obtaining evidence for money laundering offences and a sentiment that money laundering offences were difficult to investigate and prosecute. Inter-agency coordination was highlighted in many cases; some cases identified a lack of cooperation as a key impediment to the success of the case, others noted that inter-agency cooperation was a key to the success of the case. Resource limitations to support money laundering and asset confiscation proceedings were often cited. The case studies also indicate that additional training for these specialist areas and assistance to guide case selection would be useful.

Case study 1

Facts

An employee of a government department was responsible for administering a grant fund. The employee used his position to facilitate 54 fraudulent payments, totalling in excess of US\$11 million. As the bulk of the grant payments were below a threshold amount, they were not automatically detected by the department's internal review system. The fraud was only detected when an extraordinary transaction of almost US\$7 million was paid from the grant fund for one invoice. The employee was charged with various fraud offences. He was convicted and sentenced to a maximum period of 12 years imprisonment. A proceeds assessment order was made for approximately US\$14 million. Approximately US\$8.4 million has been recovered.

Discussion

In this case there was a dedicated agency, which was responsible for investigating major criminal activity including corruption. This agency was also responsible for the recovery of proceeds of crime. An investigative accountant, two financial investigators and forensic computer support officers were attached to the investigation team. A range of agencies worked together in a coordinated manner, holding regular meetings during the course of the investigation to discuss issues such as resources and strategies. Property restrained included real property, chattels, bank accounts and personal property. Funds and assets were traced to determine whether the property was tainted or could be used to satisfy a pecuniary penalty order.

Money laundering charges were considered but not progressed. This was because the requirement to gain approval to prosecute for money laundering had the potential to delay the investigation. The decision not to proceed with money laundering charges was taken despite the penalty for money laundering being a maximum of 20 years imprisonment in the jurisdiction, compared with a maximum penalty of 12 years imprisonment for a fraud offence.

Case Study 2

Facts

A dedicated anti-major crime and corruption agency received an anonymous complaint about the conduct of a government Minister in relation to a waste management contract for a proposed hospital. Subsequent investigations revealed that official procurement processes had not been followed and that the Minister had influenced the assignment of contracts totalling US\$1.5 million.

An examination of the Minister's bank statements revealed that he had received a funds transfer from a company. When asked about this during an investigative hearing, the Minister gave evidence that later proved to be untrue. Further investigation revealed that he had received an additional financial benefit of almost US\$360,000 by virtue of his position and that he failed to declare this to Parliament as required. The Minister was charged with offences arising out of two separate police investigations and was charged with receiving secret commissions. The Minister was subsequently found guilty and sentenced to a maximum 7 years imprisonment with a non-parole period of 2½ years. A proceeds assessment order was also made. The Minister was also found guilty of official corruption and perjury. He was sentenced to 5 years imprisonment for the official corruption offence and 2 years imprisonment for the perjury offence.

Discussion

The investigation took place over four years and included 26 staff including police, financial investigators, intelligence analysts, legal officers and administrative support. The civil confiscation scheme was conducted in conjunction with the criminal investigation. The jurisdiction's civil

confiscation scheme is considered more effective than the conviction based scheme and it was considered in the public interest that both civil and criminal proceedings be conducted in this matter. This jurisdiction had specialist proceeds of crime investigative resources and powers.

The financial affairs of the Minister were extensively examined, however, it was unable to be shown that there was a link between the corrupt activity and the property restrained. The Minister's property was restrained for the purpose of satisfying a proceeds assessment order as opposed to being restrained as tainted property. The evidence did not support money-laundering offences in this case.

Case Study 3

Facts

A staff member employed by the central bank deposited the value of soiled bank notes that were marked for destruction (US\$22,957) into a personal bank account. He had previously conducted transactions in similar amounts some three months earlier.

These transactions involved swapping the old notes for new notes in structured amounts. On the second occasion, the bank became suspicious and filed a suspicious matter report. The bank stopped the transaction and the financial intelligence unit seized the bank notes. The staff member was charged with theft and dealing with the proceeds of crime. This case is currently with prosecutors. Investigations into the proceeds from the first transaction failed to identify any assets, as the staff member spent the money mainly on living expenses.

Discussion

This jurisdiction has conviction based asset confiscation laws that are largely untested. Assets need to be tainted before they can be restrained. In this case, co-ordination between the bank and the financial intelligence unit was successful. The investigation was conducted quickly once the suspicious matter report had been filed. The financial intelligence unit executed search warrants on the bank and obtained the evidence within several days. The case is currently ongoing, and there is also a further investigation into the failure of the first bank to file a suspicious matter report.

Case Study 4

Facts

Three persons in country 1 were involved in an enterprise to import alcohol from another country (country 2) without paying customs duty. The first accused (A) was the speaker of the Parliament. The second accused (B) was a law practitioner and the third accused (C) was a former customs officer. The consignment consisted of 600 cases of rum on which US\$140,000 in customs duty was payable. The offending was detected by customs officers in country 2 when they discovered that the bill of lading did not match the contents of the consignment. The matter was referred to customs officers in country 1, who in turn referred the matter to the police for investigation.

The three accused were charged with offences under customs legislation for attempting to evade customs duty. There was full cooperation between customs and police. Both A and B were convicted of attempting to evade customs duty, while C was acquitted.

Discussion

This case was conducted under customs legislation. While money laundering offences did exist at the time, those offences were not pursued as there was no monetary benefit gained. Further, money laundering offences were considered a lower priority and were not considered by the police

at the early stages of the investigation. The confiscation regime in country 1 is conviction based. The proceeds of crime legislation was not used in this case because the only asset connecting with the offending was the consignment of rum, however this was forfeited under customs legislation.

Overall there were no impediments to the conduct of the investigation. The police would, however, benefit from increasing their awareness of money laundering offences and proceeds of crime legislation.

Case Study 5

Facts

A former bank teller created a fictitious account. The teller arranged his friend to be the signatory of the account. Once the account was created, the teller debited approximately US\$11,000 into the fictitious account from a business account. The teller's friend withdrew the money from this account and provided it to the teller. The teller used the money to purchase a car and other personal property. The police charged the teller with false pretences, and the prosecutor subsequently laid additional charges of money laundering. The teller was convicted of money laundering.

Discussion

The bank detected the offending and reported the matter to the police. The investigation of the offences involved the entire six members of the fraud squad. Evidence from the bank was obtained under a production order. The teller pleaded guilty to both false pretences and money laundering. However, the teller appealed on the grounds of double jeopardy. The teller was acquitted of money laundering by the initial appeal court, however a subsequent appeal reinstated the conviction. In 2010, amendments were made to the jurisdiction's money laundering legislation. These amendments enabled the prosecution to charge predicate offences concurrently with money laundering offences, without the risk of double jeopardy.

This jurisdiction has a conviction based confiscation regime. Under this regime, police are responsible for applying for freezing orders and prosecutors are responsible for seeking forfeiture orders. In this case, the teller spent the funds on a motor vehicle and personal items. The police seized the motor vehicle under warrant. The confiscation proceedings are currently still before court, although the teller is not challenging these proceedings.

Case Study 6

Facts

A lawyer worked as a senior executive officer for a government development corporation, which received foreign aid funds. The lawyer falsified documents to give the appearance that aid funds had been used to finance property purchases. The lawyer created fictitious loans that included false identities in order to secure funds. The offence was detected when an affected landholder made a complaint. This led to a full audit of the aid funds, which revealed the fraud. The matter was referred to the police and the lawyer was charged with four misappropriation offences, totalling US\$145,200. The lawyer pleaded guilty to the charges and voluntarily repaid the stolen funds prior to sentencing.

Discussion

Investigators and prosecutors worked closely together to compile evidence and prepare the prosecution brief. This involved obtaining evidence under a mutual assistance request, as evidence and witnesses were located in two other jurisdictions. In the jurisdiction of this case, the audit office undertakes the initial investigation into complex fraud matters. This office has staff with specialist

technical skills. Despite the investigation focusing on the money trail, there was no evidence of concealment from the banks. Government agencies and banks cooperated effectively, however, the delay in identifying the offending made pursuing the case difficult.

There was no evidence of money having been transferred or concealed, and therefore no evidence to support money laundering. Further, the proceeds from the offences could not be located. Influence was exerted on the auditors to withdraw the complaint when the funds were repaid, however, this was not accepted and the prosecution proceeded. Proceeds of crime legislation was not used as the funds were repaid by the lawyer prior to sentencing.

This jurisdiction has a conviction based confiscation regime. Until recently, the term 'tainted property' was interpreted narrowly so as to only apply to proceeds of crime. The definition has now been amended to include instruments of crime. Since the lawyer was convicted, new fraud and corruption offences have been introduced that carry greater penalties.

Case Study 7

Facts

A person deposited over US\$700,000 into a personal bank account. The person later withdrew this money and deposited it into an account operated by a third person, a prominent expatriate businessman with business interests in that jurisdiction. The person is suspected of committing the offence of tax evasion. The bank reported the transaction as suspicious to the financial intelligence unit. While the investigation continues, the bank has frozen the funds in response to a written request by the financial intelligence unit.

Discussion

The case is still under investigation. Two officers from the financial intelligence unit have been assigned to the matter, and if they conclude there are reasonable grounds to suspect an offence has been committed, the matter will be transferred to a criminal investigation division. In gathering evidence, consideration is being given to money laundering offences. Proving money laundering requires evidence that the money is proceeds of crime or derived from some form of unlawful activity. It remains unclear whether the prosecution is required to prove the predicate offence in order to show money laundering has occurred. The prosecution is working with the tax office, which can also take action. The jurisdiction has a conviction based confiscation regime. The prosecution are still considering commencing proceeds of crime action.

Case Study 8

Facts

Between 2009 and 2010, a tax authority employee, received payments for processing fraudulent tax returns. The fraud was detected when a cash carrier used by the employee complained to police. A number of people were initially charged with corruption, forgery and money laundering. The prosecution later consolidated the offending into a single charge of money laundering. The prosecution relied on documentary evidence and statements from indemnified accomplices. The value of the fraud was US\$180,000. The employee was convicted and sentenced to 12 years imprisonment. The money could not be traced and therefore no recovery action was taken.

Discussion

The police notified the tax authorities and each agency conducted separate investigations. All agencies cooperated, with the tax authority voluntarily providing tax records to assist the prosecution. Search warrants were executed on entities such as the banks. Resources of the entire

anti-money laundering unit of the police, which comprised about 20 officers, were utilised in the investigation. This unit includes specialist members trained in intensive data analysis. Their work greatly assisted the prosecution in gaining the necessary evidence to support the offences and in tracing the proceeds. The financial intelligence unit arranged a temporary freeze on the employee's bank accounts. Normally the freezing order lasts a week but on this occasion it was extended to 6 months without challenge.

The jurisdiction of this case has a non-conviction based confiscation scheme that applies to tainted property. In this case, investigators were unable to locate or identify tainted property. An application can be made for a pecuniary penalty order but only after a conviction. Investigators have identified assets belonging to the suspects that could be used to satisfy a pecuniary penalty order, however there is no ability to restrain these assets prior to applying for a pecuniary penalty order. The court can only restrain tainted property.

Case Study 9

Facts

A husband and wife operated a restaurant business. They made a number of cash deposits into two separate bank accounts in sums under the jurisdiction's reporting threshold. The total amount deposited was approximately US\$55,000. The offending was detected by the bank, which filed suspicious matter reports with the financial intelligence unit. Further investigation revealed that the husband and wife had been evading tax. They both pleaded guilty to offences under financial transactions reporting legislation and were sentenced to pay a fine. The husband was ordered to pay a fine of approximately US\$5,736 and the wife was ordered to pay a fine of approximately US\$1,275.

Discussion

This was the first case of its type prosecuted under financial transaction reporting legislation in the jurisdiction. The investigation was conducted by the financial intelligence unit, which obtained assistance from a forensic accountant. The forensic analysis identified approximately US\$351,173 as having been received from unidentified sources. Money laundering charges were withdrawn because the prosecution could not establish that funds were derived directly or indirectly from a serious offence. Instead, criminal proceedings were resolved with the husband and wife pleading guilty to structuring offences. Following the criminal proceedings, the financial intelligence unit referred the matter to a revenue management agency, which conducted its own prosecution of the couple for failing to file tax returns. As a result of those proceedings, US\$43,565 was forfeited.

The jurisdiction of this case has a conviction based confiscation scheme. In this case, confiscation action was commenced simultaneously with the criminal charges. The couple's property was restrained to satisfy a pecuniary penalty order, as it could not be established that the funds were tainted.

Practitioners cited the lack of experience and depth of knowledge in litigating proceeds of crime cases as presenting a significant challenge. The lack of subordinate regulations to the financial transaction reporting legislation and the expiry of the restraining order also made the case more difficult to progress.

Case Study 10

Facts

Public funds were paid to a construction company owned by a person for maintenance work on a school. The person was the sole director and shareholder of the company at the time. 85% of the contract price (approximately US\$2.4 million) was paid up-front, which the public financial management legislation did not permit.

Instead of providing a certificate of completion from the project engineer, the person produced a letter purportedly written by a senior government official stating that the work had been completed. This official subsequently confirmed that the letter was a forgery. The school, which was not satisfied with the work, reported the matter to a dedicated fraud and anti-corruption agency. Investigations revealed that four properties were connected to the construction company. At the time of the case study, litigation was in progress – both for criminal charges (three counts of misappropriation of property) and non-conviction based asset confiscation.

Discussion

The investigation of the case consisted of police using search warrants to obtain bank statements. Mutual assistance requests were also made to a foreign country, where it was suspected that the person owned properties. Both jurisdictions cooperated effectively on formal and informal levels. This cooperation was key in drafting requests for mutual assistance. It also facilitated the eventual registration of restraining orders over the properties in the foreign jurisdiction.

A range of agencies worked on the case, including police, financial intelligence unit investigators and tax officials. This case encountered a number of difficulties. Firstly, the company's accounts were not restrained because police did not have the capacity to manage the business operations. Running the litigation has been challenging because dedicated asset recovery lawyers are not able to work on the case full-time. Lack of staff in other agencies (for example the financial intelligence unit) has also presented limitations. Finally, this case has revealed that investigators lack certain powers, for example compulsory examination orders, which would be of great assistance.

Problems in cooperating with the banking sector have been identified as a problem in this jurisdiction. In this case, one bank closed a restrained account held in the name of the person's construction company and gave the balance of the funds to the person. This was done without the knowledge of prosecutors.

Case Study 11

Facts

Public funds were paid to a construction company for the completion of a jetty. The person of interest was the sole director and shareholder of the construction company. The company was awarded the jetty-building contract allegedly in breach of proper tender processes. Upfront payments were made to the company, contrary to government procurement legislation. Further payments were subsequently made, even though works were not completed.

The offending was detected when a bank filed a suspicious matter report. The suspicious matter report related to the transfer of a substantial amount of money into and back out of an account purportedly owned by another construction company. The case was referred to the proceeds of crime unit within the country's public prosecution authority. Investigations revealed that funds had been transferred between two accounts to give the impression of genuine commercial activity. There was evidence that these accounts were both being controlled by the company director. Bank

statements also revealed that the director's relatives were withdrawing significant sums of money from the account of the construction company.

Criminal charges were not pursued against the director, and the matter was settled by the making of a consent order to the value of approximately US\$450,000.

Discussion

The interviewees for this case said that criminal offences were not laid due to a lack of police resources. Money laundering was alleged in an affidavit supporting a restraining order application, but was not charged.

It was noted that the availability of a non-conviction based forfeiture mechanism was greatly beneficial in this case. However, this case also revealed a lack of understanding by investigators (as well as the lawyers for the director) about how non-conviction based forfeiture operates.

Cooperation between police and prosecutors was effective in this case. However, not having dedicated staffing resources on asset confiscation cases was seen as a limitation. Poor coordination with the banking sector was also seen as a major problem in this case.

Case Study 12

Facts

A member of parliament allegedly improperly promoted the cases of several foreign nationals to receive immigration permits. These persons worked on residential properties owned by the parliamentarian for little to no salary. Media reporting about foreign workers led to a government inquiry. The parliamentarian misled this inquiry and arranged for others to also mislead the inquiry in order to conceal his actions. Following the inquiry, a formal investigation was launched. The parliamentarian was charged and convicted of bribery and attempting to pervert the course of justice. The parliamentarian was also ordered to pay a pecuniary penalty of approximately US\$17,600.

Discussion

Investigators obtained bank records as well as various business records from the foreign workers (invoice books, supplier documents). Investigators also uncovered an invoice book that was created following the commencement of the investigation. Money laundering charges were not seen as being applicable to the case.

The international aspect of the case meant that investigative work was carried out in a foreign country. Authorities in the foreign country cooperated with the investigation, however, no assets needed to be recovered in that jurisdiction. The foreign workers involved in the case were granted immunity against prosecution in order to secure their testimony at trial. Some of the foreign workers gave evidence which was not considered reliable. This jurisdiction has a conviction-based forfeiture mechanism. Although criminal convictions, and subsequently a pecuniary penalty order, were able to be obtained in this case, the interviewees noted that the jurisdiction's corruption laws are due for updating.

5. Conclusions and Recommendations

Corruption is a significant problem in the Pacific, and the region's ability to combat corruption through prosecuting money laundering and confiscating the proceeds of crime are mixed. In conclusion, four key themes emerge. Firstly, countries must adopt legal frameworks that comply with international standards to maximise the effectiveness of anti-money laundering and proceeds

of crime regimes as anti-corruption tools. Secondly, financial intelligence agencies, investigators and prosecutors/litigators need specialist training and need to be equipped with sufficient resources to carry out their responsibilities. Three, effective regulation to harden the financial system against money laundering is essential. Four, effective cooperation between agencies, between the public and private sectors, and with foreign governments is essential. Accordingly, the following recommendations are aimed at assisting Pacific countries to improve their ability to combat corruption by implementing effective anti-money laundering and proceeds of crime frameworks.

Recommendation 1

Strengthen legal frameworks on anti-money laundering and proceeds of crime in compliance with international standards

- Criminalise money laundering in compliance with international standards and include corruption and bribery as predicate offences
- Consider whether additional investigative powers could be included in legal frameworks to enable identification and tracing of assets. For example, powers to obtain production orders, customer information orders, monitoring orders and search warrants
- Ensure law and justice officials have various legal avenues for freezing, seizing and forfeiting proceeds of corruption. This should include non-conviction based forfeiture mechanisms
- Adopt effective mutual legal assistance and extradition laws to obtain evidence and offenders located overseas

Evidence highlighted in this report indicates that gaps in legal frameworks often cause an impediment to successful proceeds of crime and money laundering cases. In particular, countries that do not have effective proceeds of crime or money laundering legislation have trouble recovering proceeds of crime or successfully securing convictions in money laundering cases. Effective administrative procedures to implement legal frameworks are also critical. Most countries which participated in the case studies had only conviction based forfeiture provisions. The FATF Recommendations stress the importance of countries to consider non-conviction based asset forfeiture. Furthermore making use of additional investigative powers such as investigative hearings and notices to discover contributes to effective investigations and prosecutions.

Recommendation 2

Invest in the training and resourcing of specialist anti-money laundering and proceeds of crime units, associated officials and judicial officers

- Ensure that financial intelligence units are adequately staffed, resourced and trained to enable them to carry out analysis of financial information and production of financial intelligence, to assist investigators and prosecutors
- Ensure that financial crime investigators, prosecutors, specialist proceeds of crime litigation units, and the judiciary are adequately staffed, resourced and trained
- Utilise the expertise of forensic accountants in financial investigations

Evidence in this report indicates that anti-money laundering and proceeds of crime cases are investigated and prosecuted at a slower rate due to lack of financial support and human resources in Pacific countries. Accordingly, having a well-resourced investigation and prosecution team may increase success in dealing with proceeds of crime or money laundering matters.

Evidence in this report also indicates that a lack of anti-money laundering and proceeds of crime expertise has slowed down the investigation and prosecution process in Pacific countries. Further training by experts on money laundering and proceeds of crime to and among Pacific countries is necessary, including through electronic resources, mentoring and on the job training (including internationally provided resources). Specific areas of focus could include: money laundering trends and typologies, technological issues, domestic and international legal frameworks and international cooperation.

Recommendation 3

Ensure that financial systems are effectively regulated to increase transparency and deter persons from using those systems to store and access proceeds of corruption

- Obligations on financial institutions and designated non-financial businesses and professions to identify and verify their customers, report suspicious matters, keep records, undertake anti-money laundering risk assessments and maintain appropriate anti-money laundering programs should be enforced

Regulating financial systems with the purpose of making them more transparent inhibits the ability of corrupt proceeds to enter those systems. Greater transparency can be supported by requiring financial institutions to keep a reliable 'paper trail' that can be used by regulators to track business relationships, transactions and the true ownership and movement of assets.⁴²

Recommendation 4

Foster strong inter-agency, public/private and international cooperation on anti-money laundering, proceeds of crime and anti-corruption

- Consider establishing joint national taskforces focused on asset recovery or anti-corruption
- Foster effective cooperation between government agencies and the private sector, in particular the banking sector
- Foster effective international cooperation in prosecuting money laundering and recovering the proceeds of corruption located abroad through
 - effective mutual legal assistance and extradition mechanisms
 - joining and utilising informal asset recovery inter-agency networks, such as ARIN-AP to facilitate asset tracing and recovery in support of formal mechanisms such as mutual legal assistance
 - joining and actively engaging in the APG, where resources permit

Evidence in this report indicates that lack of coordination between investigators, financial intelligence units and prosecutors often causes an impediment to successful anti-money laundering and proceeds of crime cases. Countries that have seen success in this area are those that have an established effective relationship between criminal investigators, financial intelligence units and prosecutors in relation to information sharing. The case studies also show that good cooperation with banks greatly supported investigations. Effective cooperation strategies can include developing memorandums of understanding between agencies, joint-agency training, public and private sector working groups and awareness raising campaigns.

⁴² FATF, above n 29, p 7.

ANNEX A

CASE STUDY TEMPLATE

Country	(Note this will be removed for publication)
Participant Details Name, position, telephone number and email address.	LEGAL CONTACT INVESTIGATOR CONTACT
CASE IDENTIFICATION AND REFERRAL	
What was the primary offending?	<ul style="list-style-type: none"> • What was the crime alleged • Predicate crime – corruption • Additional crime of money laundering
How was the initial offending detected by authorities?	Was it discovered by the FIU Was it detected by a government agency, private complainant or a foreign country.
How was the case referred to investigators?	Referred suspicious transaction. Was it referred from a government agency, a private complainant or from a foreign country through a mutual assistance request or a police to police referral.
CASE ASSESSMENT BY INVESTIGATORS	
What further information was obtained to assess the case?	What investigation requirements were identified such as complex bank records, government payment records, business records etc. (in order to determine how much work would be involved)
What was the offence value of the case?	What was the value of benefit derived by the offender or loss to the victim/government agency?
What investigator resources were needed?	How many police or other investigators were involved? Did you assess there would be a need for speciality skills such as forensic accountants?
Have you had similar cases which have not proceeded?	What were the barriers or concerns which influenced you in deciding not to proceed on similar cases in the past?
CASE ASSESSMENT BY PROSECUTORS	
When was the case referred in the investigation process?	At what stage was the case referred to the prosecutors, before charges were laid or after, before assets were located or after?
Was there a	Was it decided that the case was to be run as a non-conviction

criminal prosecution? Why or why not? If so, for what offence?	based case (if this option exists) and if so what was the reason for that and not going after a conviction based outcome?
Was money laundering charged, why or why not?	Did the case referral include allegations and/or charges of money laundering?
What other factors were considered when the case was referred?	Were there concerns about the available evidence and witnesses, the value of the crime alleged and assets involved?
Have you had similar cases which have not proceeded?	What were the barriers or concerns which influenced you in deciding not to proceed on similar cases in the past?
INVESTIGATION	
What techniques were used to launder or 'hide' the money?	Describe the methods employed by the suspect to move, conceal or possess the proceeds of crime.
Was money laundering charged, why or why not?	What factors did you consider with respect to possible money laundering offences?
Location or tracing of assets.	<ul style="list-style-type: none"> • What was undertaken to locate or trace the assets targeted for asset confiscation? • Were you tracing tainted property or any property which might satisfy a pecuniary penalty order? • Did you look wider to all assets held by the suspect. (emphasis on this question)?
What was considered in terms of asset confiscation?	Were any other laws used to recover the money (eg: tax laws, Customs Act provisions etc?)
Did any action take place in another jurisdiction?	<ul style="list-style-type: none"> • Were you acting to recover assets from a foreign crime remitted to your country? • Did you pursue assets from offences in your country to a foreign country? • Can you comment on challenges or lessons learned in working across international jurisdictions? <p>(Note country names will be removed for publication)</p>
What legal tools were used in the	Search warrants, production orders, monitoring orders, notices to banks etc.

investigation?	
Were there any problems encountered in obtaining records?	Were there any legal barriers to using warrants, production orders etc.
What were the challenges or lessons learned in working with other agencies in your country?	<ul style="list-style-type: none"> • What occurred respect to domestic interagency coordination during the case? • What about coordination with the banking sector?
Are there any particular legislative provisions that your country found useful during the case?,	<ul style="list-style-type: none"> • What you would like to utilise for future cases? • Did you rely on non-conviction based process and did this make it easier or harder?
LITIGATION	
What were some of the challenges encountered by prosecutors during the case?	Evidence of the crime, witnesses, interagency cooperation, courts and court process, lack of awareness or understanding of POC cases including non-conviction based cases?
Did you receive any exclusion or revocation applications?	Did the respondents seek to exclude property from restraint or forfeiture and if so on what basis was this sought and was it successful? Did the respondent seek to have asset restraint, freezing or confiscation orders removed through revocation or similar process?
What were the timing issues encountered?	Did you commence restraint action before or after indictment or did you run this separately to or in the absence of the indictment?
What challenges or lessons learned can you share?	What challenges did you face including with respect to domestic interagency coordination during the case and <u>any other aspects?</u>
Are there any particular legislative provisions that your country found useful	<ul style="list-style-type: none"> • What you would like to utilise for future cases? • What legislative tools were particularly helpful? • What gaps in your legislative framework did you encounter?

during the case?	<ul style="list-style-type: none"> • What challenges did you face in managing assets?
If the case(s) is complete, what was the result?	<ul style="list-style-type: none"> • Criminal outcome result • Asset confiscation outcome result • Reasons for no forfeiture
Additional comments or lessons learned.	Anything else to add?