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## PARTICIPANTS' PAPERS

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### CURRENT SITUATION AND COUNTERMEASURES AGAINST MONEY LAUNDERING

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#### I. INTRODUCTION/BACKGROUND

Crime has traditionally been considered a domestic matter, a part of the life of each sovereign state with which it must cope. Criminals were almost always nationals of the sovereign state and crimes have generally been committed within its borders. The ability to regulate crimes and punish those who transgress society's rules has been, until recently, a matter fiercely guarded by each sovereign state. Money laundering, although not a new phenomenon, has become the talk of academics, law enforcement agencies and politicians. The reason appears to be because this crime has become an Organized Transnational Crime (OTC) conducted on a massive scale by Organized Transnational Criminal Enterprises (OTCE) or syndicates (see *UN Report on the Fifth Session*, Economic and Social Council Official Records, 1996, Supp 10). In short, money laundering and those who engage in it, have gone global and Fiji is no exception to its influences.

#### A. South Pacific Regional Meetings on OTC

As an OTC, money laundering can only be combated by Fiji in cooperation with other sovereign states. However, it is in the sphere of regional bodies that a most coordinated approach in addressing OTCE and money laundering had been very effective. The Forum Secretariat and Commonwealth Secretariat had been instrumental in harnessing the cooperation and participation of South Pacific island

nations and enhancing an understanding and effective implementation of proceeds of crime, mutual assistance in criminal matters and extradition arrangements.

Fiji is very much indebted to the Japanese Government and her various donor agencies for the technical support, expertise, training and funding to facilitate the various mechanisms of combating crime in the Pacific. The Fiji Government also acknowledged the invaluable role of JICA and UNAFEI and the need for their support to continue.

#### B. Honiara Declaration

Although Fiji and her Pacific Island neighbors are not members of the Financial Action Task Force ("FATF") which was founded by the G-7 Summit in Paris in 1989, to examine ways to combat money laundering, the need for uniformity and a coordinated approach to tackle this transnational crime despite differing legal systems, language and culture was well realized regionally.

The Declaration by the South Pacific Forum on Law Enforcement Cooperation in Honiara, Solomon Islands on July 1992 ["Honiara Declaration"] echoed the concerns of Pacific Forum leaders that '*an adverse law enforcement environment could threaten the sovereignty, security and economic integrity of Forum members and jeopardize economic and social development.... and the potential impact of transnational crime was a matter of increasing concern to regional states and enforcement agencies.*' The Honiara Declaration recognized '*Mutual Assistance*

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*in Criminal Matters', 'Forfeiture of the Proceeds of Crime' and 'Extradition' as very vital in the region's concerted effort to combat money laundering and other OTC.*

Mutual assistance in criminal matters '*would enhance cooperation between their courts, prosecution authorities and law enforcement agencies.'*

Forfeiture of the proceeds of crime '*enables the proceeds and instrumentalities of crime to be traced, frozen and seized.* To attain this there is a '*need to regulate banking and other financial services to reduce the possible manipulation of these services to "launder" the proceeds of crime.*' A proper regulation of the banking system would ensure that bank secrecy laws cannot be used as a shield for the laundering of criminal profits nor to obstruct the operation of mutual assistance arrangements.

The Honiara Declaration also recognizes the need for Fiji and her neighbors to review extradition arrangements within the region and steps to be taken that extradition legislation be modified in line with the United Nation's Model Treaty on Extradition or on the current London Scheme for the Rendition of Fugitive Offenders within the commonwealth.

The Honiara Declaration was thus the platform for Fiji to legislate laws on Mutual Assistance in Criminal Matters and Forfeiture of the Proceeds of Crime and to modify her extradition legislation as pointed to above. Fiji fulfilled her desire to combat money laundering and other OTC by enacting the Proceeds of Crimes Act, 1997 (POC) and the Mutual Assistance in Criminal Matters Act, 1997 (MACM).

## **II. CRIMINALIZATION OF MONEY LAUNDERING IN FIJI**

### **A. Scheme of the POC Act**

It appears to be accepted that there are three phases or stages in the laundering process:

- (i) Placement: where cash enters the financial system;
- (ii) Layering: where the money is involved in a number of transactions; and
- (iii) Integration: where money is mixed with lawful funds or integrated back into the economy, with the appearance of legitimacy.

The POC Act endeavors to trace and monitor these phases of laundering culminating in a recovery process of the proceeds of crime. Thus the scheme of the Act is:

*"To provide for confiscation of the proceeds of crime to deprive persons of the proceeds, benefits and properties derived from the commission of serious offences and to assist law enforcement authorities in tracing the proceeds, benefits and properties and for related matters".*

### **B. Purpose of the POC Act**

Its purpose is threefold:

- (i) Permits a court in Fiji to grant orders for the forfeiture and confiscation of property used in connection with the commission of a serious offence;
- (ii) Read together with the MACM Act 1997 it will provide a mechanism for parallel orders issued in a foreign country to be given effect in Fiji; and
- (iii) Targets proceeds of a serious offence. 'Serious offence' is defined under section 3 of the Act as an offence of which the maximum penalty prescribed by law is death,

## 117TH INTERNATIONAL SEMINAR PARTICIPANTS' PAPERS

or imprisonment for not less than 12 months.

### **C. Money Laundering as an Offence**

Part V of the POC Act creates money laundering as an offence against a natural person and a body corporate by virtue of section 69 (2) (a) & (b) respectively. It is also the penalty provision. Section 69 (3) POC Act considered money laundering an offence where:

A person either

- engages directly or indirectly in a transaction that involves money, or other property, that is proceeds of crime
- Or
- receives, possesses, conceals, disposes of or brings into Fiji any money, or other property, that is proceeds of crime

And

- the person knows, or ought reasonably to know, that the money or other property is derived or realized, directly or indirectly, from some form of unlawful activity.
- Section 70 creates an offence of receiving, possessing, concealing, disposing of or bringing into Fiji of any money or property that is proceeds of crime.
- Section 71 imputes liability on a body corporate within the scope of the company's director, servant or agent's actual or apparent authority or of any other person at the direction, consent or agreement of a director, servant or agent's scope of actual or apparent authority.

### **III. SCOPE AND EXTENSION OF PREDICATE OFFENCES FOR MONEY LAUNDERING**

Fiji is yet to determine and fully gauge the scope and extension of predicate offences for money laundering due to its internalization and sophistication. Despite this the joint cooperation of foreign detection and investigating agencies resulted in the seizure of about 300 kilogrammes of heroin with a street value of about F\$25million in Suva recently. A Chinese national from Hong Kong and Fiji Chinese national were arrested and now awaiting trial. The joint operation involved about 20 agents from the Fiji Police Force, Australian Federal Police, Royal Canadian Mounted Police, the United States Drug Enforcement Administration and New Zealand Police.

Another factor to consider in this regard is the absence in Fiji of a Finance Intelligence Unit ("FIU") manned by appropriately trained people to analyze and monitor various commercial and banking transactions.

Thus the scope and extension of predicate offences for money laundering in Fiji can not be fully realized without the assistance of foreign aid in cooperation with our internal security agencies.

### **IV. FINANCIAL INTELLIGENCE UNITS (FIU)**

As noted above, Fiji is yet to establish Financial Intelligence Units. At this stage it is a proposal by a POC Implementation Committee comprising of the Attorney-General, Director of Public Prosecutions, Assistant Commissioner of Police and a representative of the Reserve Bank of Fiji. The committee's task is to look at regulations that can be put together to strengthen the Proceeds of Crime Act. The FIU is proposed to be manned by

appropriately trained officers of the police force and reserve bank.

The committee is also mooting the establishment of a regional FIU with the view that it be located in a more developed country such as New Zealand or Australia due to their established infrastructure and technological advance. The exchange of information between the national and regional FIU would assist recipient national statutory bodies such as the Fiji Trade and Investment Board about an individual person, organization or corporate entity.

It is envisaged that the expert and technical nature of a FIU requires assistance in the training of personnel in this area and the appropriate technology.

## V. COOPERATION BY BANKS AND NON-BANK FINANCIAL INSTITUTIONS

### A. Definitions

A "bank" under section 3 of the POC Act means:

- the Reserve Bank of Fiji; or
- a bank within the meaning of the Banking Act.

The Banking Act defines it as any financial institution whose operations include the acceptance of deposits of money withdrawable or transferable by cheque or other means of payment transfer.

Under section 63 of the POC Act 'financial institution' means:

- a bank
- a credit union; or
- a trust company, finance company or deposit taking company.

The Banking Act defines 'financial institution' as any company doing banking business. It further defines 'banking

business' as:

- the business of accepting deposits of money from the public or members thereof, withdrawable or payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sales or placement of bonds, certificates, notes or other securities, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business; and
- any other activity recognized by the Reserve Bank as customary banking practice which a licensed financial institution is authorized to do by the Reserve Bank.

It would be noted that the definition of a financial institution under section 63 POC Act is very limited. It does not cover lawyers who operate sole or in partnerships, accounting firms, foreign exchange agencies, travel agencies, second hand car-dealers, etc.

The POC Committee is proposing to amend the definition in line with the Financial Transactions Reporting Act No. 33 of 2000 of the Republic of Vanuatu. Under that Act the following falls within the meaning of a financial institution:

- Reserve Bank of Vanuatu;
- A licensee within the meaning of the Financial Institutions Act;
- A company licensed as an exempted bank or financial institution under the Banking Act;
- A company licensed under the Vanuatu Interactive Gaming Act;
- A person licensed under the Casino Control Act;
- A person carrying on business under the Betting Control Act;

**117TH INTERNATIONAL SEMINAR  
PARTICIPANTS' PAPERS**

- A person carrying on business under the Gaming Control Act;
  - A person carrying on a business:
    - Of administering or managing funds on behalf of an international company within the meaning of the International Companies Act
      - as a trustee in respect of funds of other persons
      - as a trustee or manager of a unit trust
    - A person carrying on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
    - A person carrying on a business of:
      - exchanging money;
      - collecting, holding, exchanging or remitting funds or otherwise negotiating fund transfers on behalf of other persons;
      - preparing pay-rolls on behalf of other persons from funds collected
      - delivering funds;
    - A lawyer, but only to the extent that the lawyer receives funds in the course of his or her business for the purpose of deposit or investment or settling real estate transactions;
    - An accountant, but only to the extent that the accountant receives funds in the course of his or her business for the purposes of deposit or investment;
    - A person carrying on a business of:
      - Dealing in bullion;
      - Issuing, selling or redeeming traveler's cheques, money orders or similar instruments;
      - Collecting, holding and delivering cash as part of a business or providing payroll services;
  - A credit union under the Credit Unions Act or a cooperative society under the Cooperative Societies Act;
- A person carrying on electronic business under the E-Business Act.
- The limited meaning of a financial institution under the POC Act, unlike the Financial Transactions Reporting Act of Vanuatu, limits the scope of expectation for cooperation of non-bank financial institutions that do not fall within the meaning of a financial institution.
- B. Retention of Records by Financial Institutions**
- Section 59(1) stipulates that a financial institution is to retain the original of a document that relates to a financial transaction carried out by the institution, for the minimum of the retention period - i.e. 7 years (s 63). Such document pertains to:
- opening and closing of an account;
  - operation of an account;
  - opening or use of a deposit box;
  - telegraphic or electronic transfer of funds;
  - transmission of funds between Fiji and a foreign country or between foreign countries; and
  - application for a loan and grant of the loan.
- Section 59 (3) requires a financial institution to retain the original documents on microfilm or in another way to facilitate retrieval of them reasonably practicable.
- Section 59(4) imposes penalty of not exceeding \$30,000 for an institution that contravenes subsection (1) & (3).

### C. Register of Original Documents

Section 60 requires the institution to retain a copy of the original if the latter is required by law to release it before the end of the retention period and to maintain a register of record the release of the document.

### D. Communication of Information to Law Enforcement Authorities

Section 61 stipulates that where a financial institution is a party to a transaction and the financial institution has reasonable grounds to suspect that information that the financial institution has concerning the transaction:

- be relevant to an investigation of or the prosecution of a person for an offence

or

- may be of assistance in the enforcement of the Act

The institution may give the information to a police officer or the Director of Public Prosecutions.

Subsection (2) protects a financial institution, its officers, employees or agent against any civil liability in taking the action stipulated under subsection (1).

Subsection (3) restricts the financial institution, its officers, employees or agent from disclosing to anyone else of its suspicion or information given to the police or the Director of Public Prosecutions under subsection (1).

Subsection (4) penalizes any one who contravened subsection (3)

### E. Protection for Financial Institutions

Section 62 protects a financial institution, its officers, employees or agent

for the purposes of sections 69 (money laundering) and 70 (possession of property suspected of being proceeds of crime).

## VII. ASSET CONFISCATION

### A. Conviction Based

Asset confiscation under the POC Act is based upon the conviction of a person of a serious offence under the Act. A serious offence is an offence of which the maximum penalty prescribed by law is death, or imprisonment for not less than 12 months.

Under section 4 (2) of the Act a person is taken to be convicted of a serious offence if:

- the person is convicted, whether summarily or on indictment, of the offence;
- the person is charged with, and found guilty of, the offence but is discharged without conviction; or
- a court, with the consent of the person, takes the offence, of which the person has not been found guilty, into account in passing sentence on the person for another offence.

### B. Application by Director of Public Prosecutions (DPP) for Confiscation Order

Section 5 (1) (b) of POC Act stipulates that after a person is convicted of a serious offence the DPP may apply to the court for a confiscation order against the person convicted in respect of benefits derived by that person from the commission of the offence.

### C. Notice

Section 7 (2) provides that when the DPP applies for a confiscation order against a person he/she should give the person written notice of the application. The person upon receipt of the notice may appear and adduce evidence at the hearing

## 117TH INTERNATIONAL SEMINAR PARTICIPANTS' PAPERS

of the application.

### **D. Amendment of Application**

Section 8(1) of the Act allows the DPP to amend the application at any time before the final determination of the application, to include any other benefit upon being satisfied that the benefit was not reasonably capable of identification when the application was originally made; or necessary evidence became available only after the application was originally made.

The DPP is obliged to give written notice of the amendment because the effect of the amendment would be an additional benefit in the application for the confiscation order (subsection 4).

### **E. Procedure on Application**

The court may in determining an application for a confiscation order have regard to the transcript of any proceedings against the person for the offence (section 9(1)).

Where an application is made for a confiscation order to the court before which the person is convicted, and the court has not, when the application is made, passed sentence on the person for the offence, the court may if it thinks fit, defer passing sentence until it has determined the application for the order (section 9(2)).

### **F. Confiscation Order on Conviction**

Where a court, after hearing the DPP's application for a confiscation order, is satisfied that a person has benefited from that offence, order the person to pay into court an amount equal to the value of the person's benefits from the offence or the amount that might be realized at the time the confiscation order is made (section 20 (1)).

Section 20 (3) provides that the court can not make a confiscation order:

- until the period allowed by the rules of the court for the lodging of an appeal against conviction has expired;
- where an appeal against conviction has been lodged - until the appeal lapses or is finally determined.

### **G. Rules for Determining Benefit and Assessing Value**

A person's benefit is the value of the property so obtained (section 21(1)).

Where a person derives an advantage from the offence committed, the advantage is deemed to be a sum of money equal to the value of the advantage so derived (section 21(2)).

The court in determining whether a person has benefited from the commission of a serious offence and in assessing the value of the benefit, shall, unless the contrary is proved, deem:

(a) all property appearing to the court to be held by the person on the day on which the application is made; and all property appearing to the court to be held by the person at any time:

- within the period between the day the offence was committed and the day on which the application is made, or
- within the period of 5 years immediately before the day on which the application is made,

to be property that came into the possession or under the control of the person by reason of the commission of the offence;

(b) any expenditure by the person met out of payments received by the person as a result of the commission

- of that offence; or
- (c) any property received or deemed to have been received by the person as a result or in connection with the commission of the offence, to be property received by the person free of any interests therein (section 21(3)).

The court will leave out of account any benefits of a person that are shown to the court to have been taken into account when a confiscation order has previously been made against the person (subsection (4)).

If evidence is given that the value of a person's property after the commission of the offence exceeded the value of his or her property before the commission of the offence, the court will treat the value of the benefits derived from the commission of the offence as being not less than the amount of the excess (subsection (5)).

If the person satisfies the court that the whole or part of the excess was due to causes unrelated to the commission of the offence, subsection (5) will not apply to the excess (subsection (6)).

#### **H. Statements Relating to Benefits from Commission of Serious Offence**

Section 22 (1) & (2) requires the DPP to tender into court a statement which determines that a person has benefited from the offence and an assessment of the value of the person's benefit after a copy of the statement had been served on that person. The court will then require that person to indicate whether he accepts the allegations in the statement. If he or she does not accept any such allegation, to indicate what he or she proposes to rely on.

Where a person fails to comply with subsection (2) the court may, for the purpose of determination, treat the acceptance of the DPP as conclusive of the matters to which it relates (subsections (3) & (4)).

An acceptance by a person that he or she received any benefit from an offence committed is admissible in any proceedings for any offence.

#### **I. Amount to be Recovered Under Confiscation Order**

Section 23 provides that the amount to be recovered under a confiscation order shall be that which the court assesses to be the value of the person's benefit from the offence.

#### **J. Variation of Confiscation Orders**

The DPP may apply to the court for a variation of the confiscation order to increase the amount by the value of the property (section 24).

#### **K. Court May Lift Corporate Veil**

In assessing the value of benefits derived by a person from the commission of an offence the court may treat as property of the person any property that is subject to the effective control of the person whether or not the person has any legal or equitable interest in the property, or any right, power or privilege in connection with the property (section 25(1)).

The court may have regard to:

- shareholdings, debentures or directorships of a company that has an interest in the property and may order the investigation and inspection of the books of a named company;
- a trust that has a relationship to the property; and
- any relationship between persons

## 117TH INTERNATIONAL SEMINAR PARTICIPANTS' PAPERS

having an interest in the property (subsection(2)).

The court upon the application by the DPP may make an order declaring the property under subsection (1) as available to satisfy the order (subsection(3)). The order may be enforced against the property and a restraining order may be made in respect the same property (subsection(4)).

### **L. Enforcement of Confiscation Orders**

Section 26 provides that an amount under a confiscation order is a civil debt due to the state and enforced as in civil proceedings. A person who is a bankrupt is dealt with under the Bankruptcy Act.

### **M. Registered Foreign Confiscation Orders**

Where under the MACM Act a foreign confiscation order is registered in the court, any amount paid, in Fiji or elsewhere, to satisfy the foreign confiscation order shall be taken to have been paid in satisfaction of the debt that arises by the registration of the said order in court (section 27).

## **VIII. OTHER ANTI-MONEY LAUNDERING SYSTEMS/ STRATEGIES**

I had earlier draw attention to the Mutual Assistance in Criminal Matters Act (MACM) and the Extradition Act. Both legislation complement the POC Act in the extradition of suspected offenders to and from Fiji and in areas of mutual criminal assistance between Fiji and other countries.

### **A. Extradition Act**

The Fiji Extradition Act is broadly based on the *UK 1881 Fugitive Offenders Act*. The provisions of the Act have continued in force even after Fiji became a Republic in 1987. All treaties negotiated and signed

before 1987 continued to be operative after 1987, although New Zealand and Australia decided to negotiate new arrangements. Section 4 of the Extradition Act provides that:

*"Subject to the provisions of this Act, a person found in Fiji who is accused or convicted of an extradition offence in any treaty state or designated Commonwealth country or who is alleged to be unlawfully at large after conviction of such an offence in any such State or country, may be arrested and returned to that State or country as provided by this Act."*

Commonwealth countries are those listed in the schedule to the Act - actual membership of the Commonwealth was held to be irrelevant in *R v Brixton Prison Governor ex parte Kahan* (1989) 2 All ER.

An extradition offence is, in the case of a treaty State, it is provided for by the Treaty, in the case of a designated Commonwealth country, it falls within the Schedule and is punishable with imprisonment for twelve months or more; and if it satisfied the dual criminality test set out in section 5 of the Act.

The scope of the Extradition Act is restrictive and is due to the absence of Extradition Treaties between Fiji and non-Commonwealth or treaty countries. But this should change if money laundering is to be tackled squarely because its effect is global, international and wide ranging. The United Nation described OTC and money laundering as a "formidable problem for the International Community", a new form of "geopolitics" and "one of the most pernicious forms of criminality of which the dimensions have yet to be fully measured and the impact fully determined". (*Report of the Secretary-General*, 4 April 1996 at p.4; UN Press Release SOC/CP/179 20 May 1996; UNCPJ

Newsletter nos. 30/31, Dec 1995 at p 5.) Leading jurists have offered similar predictions of gloom and peril (see Money Laundering Control (Dublin) Sweet & Maxwell, 1996).

The need for Fiji to extend its extradition treaty borders is due to the fact that OTCE are not limited to operating within national borders, their international role has become increasingly important and powerful. Money laundering and the activities of OTCE are said to "pose a serious threat worldwide in terms of national and international security, as well as political, economic, financial and social disruptions". (Zvekic, International Cooperation and Transnational Organized Crime, (1996) ASIL 537.)

But even countries that have extradition arrangements with Fiji or Commonwealth countries, the incompatibility between different systems in law, attitude of countries to the extradition of their own nationals and conflicting claims of jurisdiction are issues which affect the outcome of a request for extradition, which has a direct bearing on the real issue of extradition - the ability of criminals to use national boundaries and complicated legislation to avoid the justice system. Fiji and New Zealand, for example, saw the need to strengthen their extradition treaties by signing an Agreement on Extradition on 21<sup>st</sup> March, 1992.

Further to this both countries exchanged diplomatic notes for the passage of Mutual Assistance in Criminal Matters allowing video link evidence of witnesses in their respective countries.

#### **B. Extradition Cases in Fiji**

Our experience with the extradition cases in the past decade or so has shown that it requires a level of expertise not only in the ability to compare offences in two

different countries but also in the ability to work with the Extradition Act and a bilateral treaty.

Recent years have seen a spate of requests. The request made by Fiji to the United Kingdom for the return of Kahan to answer charges of arms smuggling, the request by Fiji to Australia to extradite Michael Desmond Benefield for Fraudulent Conversion, the request by the United States to Fiji for the return of Kaspar Paul Rutten for importation of marijuana, the request by Australia to Fiji for the return of [redacted] for Rape, the request by New Zealand to Fiji for the return of Maivelan for serious fraud offences and the request of the Hong Kong Government for the return of Tammie Tam Sukh Chong for fraud offences.

The recent arrest of two people with about 300 kilograms of heroin could be our first money laundering case. Another accomplice was recently convicted in Kiribati and sentenced to 5 years in prison. It is likely that Fiji will seek his extradition after he has served his prison term to face criminal charges in Fiji. It is established that one of the accused persons has properties in New Zealand, Australia, Canada and the United States of America.

There is much to be said for prioritizing the enactment of extradition laws to ensure compatibility of principles and practicability of arrangements to assist in combating money laundering. There are at present too many accessible countries where there are no extradition arrangements. Such a vacuum exists to benefit money launderers who can cross national boundaries by whatever means with ease.

## 117TH INTERNATIONAL SEMINAR PARTICIPANTS' PAPERS

### **C. Mutual Assistance in Criminal Matters Act 1997 (MACM)**

Fiji enacted the MACM Act in 1997 together with the POC Act. We are yet to see some major developments in Mutual Assistance where the Act was practically implemented. We are on a learning curve and the only way of developing expertise is to run cases.

### **D. Procedures**

The Mutual Assistance system is based on reciprocity and a network of treaties and conventions. However, the process depends on each country having domestic legislation to allow it to provide assistance to other countries. The MACM Act is the domestic law in Fiji.

If a country wants assistance from Fiji which involves the exercise of compulsory powers, it has to make a formal request to the Attorney-General of Fiji. The Attorney-General will decide whether assistance should be provided. If the Minister decides that assistance should be provided, the request is forwarded to the Commissioner of Police, if it requires investigative action, to the DPP, if it requires court action in Fiji.

### **E. Investigation**

The provisions which apply at the investigation stage in criminal assets cases tap into the POC Act. They give the Courts in Fiji the same powers in respect of a foreign investigation that they have in relation to a financial investigation being conducted in Fiji. The Fijian courts can issue search warrants, make production orders and monitoring orders.

### **F. Cases**

As pointed earlier, the only cases so far that had invoked the MACM Act are various serious criminal cases in Fiji where either the complainants or witnesses have returned abroad or have migrated. The

assistance is by taking of evidence by the courts of the requested country via video link. However, mutual assistance in this regard applies only to witnesses who are in Australia and New Zealand.

### **IV. CONCLUSION**

Fiji has recognized the potential threat to her sovereignty, security and economic integrity by money laundering and other OTC. It is also recognized that through the work of the Financial Action Task Force (FATF) and other bodies, criminals are being progressively squeezed out of other regions by tighter laws. They are now finding Fiji and other South Pacific countries to be an attractive target. As a result money laundering and other OTC are becoming more prevalent in the region.

To counter these threats Fiji enacted the POC Act 1997 and MACM Act 1997. The POC Act criminalise money laundering and put in place a system of forfeiture of tainted property and confiscation of assets or proceeds of criminal activities after a person is convicted of the commission of a serious offence under the Act.

The MACM Act provide mutual assistance in criminal matters between Fiji and other countries. While the Mutual Assistance legislation facilitates obtaining material overseas, it does not of itself make that material legally admissible in the courts of the requesting jurisdiction.

Admissibility can be achieved by relatively simple amendments to the evidence laws of the requesting jurisdiction. For example, such amendments could provide that properly authenticated material obtained from overseas under a Mutual Assistance request could be *prima facie* admissible in evidence, subject to the discretion of the Court to exclude it in the interests of

RESOURCE MATERIAL SERIES No. 58

justice.

For effective extradition between Fiji and other countries, the basic laws should allow the executive of each nation to respond to requests for the surrender of fugitive criminals. While reserving its sovereign right to refuse extradition in certain exceptional cases, the nation's law should enable it to surrender fugitives to another country in cases where that action does not offend its public policy.