Investigation Task Force Sweep (ITFS)

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS FOLLOWING INVESTIGATIONS INTO PAYMENTS OF COURT JUDGEMENT DEBTS AND LEGAL FEES

1. Executive Summary

As directed by the Prime Minister Hon Peter O'Neill, OMD, through a Prime Ministerial Directive dated 13th May 2013, Investigation Task Force Sweep (ITFS) has conducted an investigation into the allegations of fraudulent payments of legal fees and court orders by Department of Finance (DoF). Terms 6 and 7 of the Prime Ministerial Directive was for the identification of inadequacies in the internal controls and external supervision of the Department of Justice and Attorney General and to take appropriate and swift action in response to these inadequacies.

The report summarises the findings and conclusions of the ITFS and sets forth its recommendations.

Gaps in the legislations, control weaknesses and lack of written contracts are the main causes of the inadequate legal services. Further restraints, increased legal costs, and duplicate and unauthorized payments being made by some parties to lawyers and firms in the provision of State Legal Services. The recommendations propose a policy reform to establish the principles and requirements associated with providing legal services by the State so that such practice is conducted in a legal and accountable manner and is subject to the law. Developing such policies and procedures can help to reduce legal costs, ensure transparency and promote accountability. The policies and procedures should be set forth to guide the legal professionals in the performance of their duties.

The Office of the Solicitor General and State Solicitor can provide comprehensive legal services to the State if adequately resourced. The benefits of equipping the two offices would far outweigh the cost thereof.

Recommendations (1)

1. The Attorney General Act 1989 should be amended to:
   a. Create the Office of the Solicitor General similar to that of the Solicitor General under the Act.
   b. Define the responsibilities of the Solicitor General with clear reporting lines between the State Solicitor and the Attorney General.
   c. Considerations should be given to measures which would strengthen the Government’s legal services, capabilities and resources. The Office of the Solicitor General and State Solicitor have to be transformed to provide high-quality, effective and efficient legal services to the State. Better still and in the long term, the Government should ceneralize the two offices to improve their efficiency and the provision of legal services to the State just like a private law firm.

2. State Legal Services

Findings

The Department of Justice and Attorney General is a central government agency responsible for the provision of legal services to the State and its agencies. The Office of the Solicitor General is a branch of the Department of Justice and Attorney General which provides primary government law offices within the department that provide State Legal Services. The Solicitor General is appointed by the Attorney General. Upon the Attorney General’s instruction, the Solicitor General and Solicitor have the primary responsibility of advising and on behalf of the State, particularly in civil claims/defences that are made by and against the State.

According to the Law as it is, the State Solicitor’s appointment is made by the Attorney General on the basis of legal qualifications, and the Solicitor General has the responsibility to report to the Attorney General. The State Solicitor’s Office is regarded as a branch of the Department of Justice and Attorney General as one of the constitutional and legal services provided to the State. Therefore, all legal services, including advice and legal representations for various claims, are available to the State. The branch is under the auspices of the Attorney General and the National Executive Council’s Board of Directors, which, in turn, is responsible for legal opinions and it is issues letters of legal clearance before the State makes commitments in the conduct of State business.

Under section 8 of the Attorney General Act 1989, the Attorney General also provides legal advice and opinions on matters affecting the conduct of the business of the State where legal issues arise or might arise to the exclusion of all other lawyers unless the authorities other persons to do so.

Although most of the State Legal Services are provided by the Office of the Solicitor General and Office of the State Solicitor, in certain situations, the Department of Justice and Attorney General also relies on private sector law firms and lawyers, appointed as Legal Agents, to assist with the delivery of legal services. The Attorney General and the Legal Agents provide legal services upon a brief out from the Attorney General.

The Solicitor General’s Office in particular has been considered seriously under-resourced and does not have its office based in a central location. The Office of the Solicitor General is not given the necessary resources in the preparation of court judgements entered against the State and consequently weak in the preparation of judgements and legal opinions. The Solicitor General’s Office also has the responsibility of being the primary in identifying and providing improved legal services, though it is often seen as an excuse to avoid brief acts to private lawyers and law firms immediately including those matters that were simple and straightforward and could be handled by State Lawyers.

Conclusions

The manner in which the legal services are delivered to the State is deficient in many ways including staffing, training, resources, and capability issues. Apart from the Solicitor General, the Office and role of State Solicitor is not clearly established by law hence the ambiguities can potentially create conflict with the role of the Attorney General. There is a need for the State Solicitor’s Office to be divided into the Attorney General’s Office with express provisions for appointment, functions and reporting. That includes defining the State Solicitor’s role in light of the Attorney General’s powers under section 8(6) of the Attorney General Act.

The Office of the Solicitor General and State Solicitor can provide comprehensive legal services to the State if adequately resourced. The benefits of equipping the two offices would far outweigh the cost thereof.

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3. Attorney General’s Authority to Contract State Legal Services

Findings

Pursuant to sections 7(3) and 8(4) of the Attorney General Act 1989, the Attorney General is the only person authorized to contract with private lawyers and law firms to act for the State in civil litigation and legal advisory matters on behalf of the State. It is a basic principle of the administration of justice and of a proper lawyer-client relationship that lawyers not only on instructions of their clients. For all the agencies of the government that come within the term "State", instructions must come from the Attorney General. The Attorney General Act however does not define the scope of the term "State" as it appears in the Attorney General Act.

A number of private lawyers and law firms purport to act for the State without any brief out from the Attorney General. In other instances, lawyers claimed to have been briefed out by the Solicitor General.

Conclusions

It is the absolute discretion of the Attorney General to outsource State Legal Services for on behalf of the State. Any legal services carried out on behalf of the State by private lawyers and law firms would have to be done so within the Attorney General's guidelines. In excess of authority and illegality. The Attorney General Act however does not define the scope of the term "State" as it appears in the Attorney General Act.

Recommendation (2)

The Attorney General Act 1989 should be amended to define the term "State" so as to apply to the Attorney General Act. That the definition of the term "State" should be consistent with the Claim by Act and against the State Act 1996 under the Act is used and is as interpreted by the Supreme Court in the Reference Pursuant to Section 12 Supreme Court Act (no. 37 of 1998).

4. Are Brief-Outs Subject to Public Tender?

Findings

Section 309 of the Constitution in mandatory terms requires all expenditure of public funds to be authorised by Parliament. Section 211 of the Constitution renders it illegal for any expenditure of public funds that is not authorised by Parliament through the Appropriation Act. Expenditure of public funds is regulated by the PFMA. Unless exempted by law, or approved by the National Parliament, no public authority can expend an amount that must be publicly tendered. Two dominant features that apply to brief-outs are: (1) if it involves public funds; and (2) if the body administering the funds is an agency of the State, a public body.

The Attorney General Act itself does not provide an elaborate procedure on how legal services can be outsourced without offending the requirements of tender under the PFMA. The National Court decided in a particular case, that legal services procured by certain government bodies without complying with the PFMA, such as tender and ministerial approvals are illegal, invalid and therefore unenforceable.

Investigations reveal that contracts for the performance of legal services entered into, by or under the authority of the Attorney General have never been subject to the requirements of public tender under the PFMA, in certain other instances, Government departments contract legal services from the private sector on whatever basis they desire, with no regard for the tender process and were structured and layered to avoid the mandatory procurement obligations as well as financial limits imposed by the PFMA.

Conclusions

The Attorney-General Act though is not expressly synchronised with the PFMA on procurement of State Legal Services, the funds paid to private lawyers are public funds and the entities administering them are public bodies for the purposes of the PFMA. Legal services, in the case of government departments should be tendered. The Attorney General’s office has not had a robust tendering policy in place. The Attorney General’s office is the only office that has not had a robust tendering policy in place. The Attorney General’s office has not had a robust tendering policy in place.

The rationale behind public tender is to prevent fraud, waste and corruption; hence, the Government has to regulate the procurement process of State Legal Services. Legal Services should not only be tendered, but should be tendered in a transparent manner.

ITFS found no evidence suggesting that the Attorney General maintains a register of private lawyers and law firms specialising in different areas of law. It is a matter that lawyers have to establish to have any tenders and to tender to private lawyers and law firms that have expertise in that particular area of law.

Recommendations (3)

a. The Attorney-General Act 1989 and the Claims by and Against the State Act 1996 should be amended to include provisions that are consistent with the Public Works (Procurement) Act 1995 and the Appropriation Act insofar as procurement of legal services is concerned. A decision making process must be clearly defined and established as being a responsibility of the Attorney General where a written brief-out is to be tendered to private law firms within the appropriate legal framework without offending the requirements for public tender under the PFMA.

b. Consistent with recommendation 3 above, the Attorney General should establish a register of private lawyers and law firms that have expertise in specific areas of law. This register is to be made available to the National Parliament, a specialised tenders board for State Legal Services under section 309(1) of the PFMA to be composed of officials of DJAG and
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any others deemed appropriate. That board would consider the need to beliet, out, whom to beliet out and on whom to beliet before the Athor Court General to execute the beliet-out.

c) Consistent with recommendations 3 (a) and (b) above, the Minister for Finance rules appropriate and in accordance with section 3(2) of the PPA requiring the procedures and processes of tendering State Legal Services to be transparent and understandable by the legal services as a professional service, some flexibilities can also be provided in the rules including exemption from public advertisement requirements, unless specified circumstances such as the expenses involved or in nature like drafting, multiple legislations.

d) In addition to recommendation 3(c) above, the rules should cater for all lawyers and law firms to furnish to the State their profiles containing their capacity to undertake State Legal Services and the fee structures they would agree to. The specialist tender board should maintain a panel of providers of legal services including their areas of speciality.

5 Decision to Outsource State Legal Services

Findings

Since the DJAG already has the Offices of the Solicitor General and State Solicitor reserving the primary role of providing legal services, the cost of hiring out private legal firms is an exception. The Attorney General Act 1989 however does not specify the circumstances under which State Legal Services can be outsourced. Where the Solicitor General, in his discretion, agrees to an unforseen discretion to beliet-out any lawyer or law firm of this type, it is necessary for the firm to ensure that the costs incurred by private law firms to divest certain claims were higher than the actual claims.

Conclusions

There is a need to establish the principles and requirements associated with contracting for State legal services by the Attorney General so that such contracting is conducted in a diligent and accountable manner.

Recommendations (4)

The rules promulgated by the Minister for Finance as recommended under section 8(6) herebyhere should state provisions for the following principles and requirements as considerations for outsourcing State Legal Services:

- Capacity within the Department of Justice and Attorney General
- Time and level of urgency
- Level and impact of risk assessment
- Adequacy and appropriateness of services provided
- Geographic and jurisdiction considerations
- Security considerations
- Public interest considerations
- Unique considerations associated with the work.

6 Terms of the Contract for State Legal Services

Findings

Sections 7(b) and 9(b) of the Attorney General Act are clear that the Attorney General can beliet-out any matter (single matters) at a particular time. In order to constitute a valid contract there must be certainty of terms and price (value consideration).

All contracts for works, goods, supplies and provision of services refer to specific project/service, price and time limitations and are within the confines of the annual budgetary allocation.

The investigation uncovered instances where legal beliet-outs were done in bulk without having recourse to the annual budgetary appropriations under the Appropriation Act and tender requirements under the PPA. Payments for legal fees ran into millions of dollars based on a single beliet-out. In terms of instances, the cost of defending a particular matter were usually higher than the actual claims itself. Yet on other occasions, simple matters were continued to be beliet-out on, spanning over a number of years. Contractual relationships between the State and the beliet-out legal firms are rarely established as these are mere loose ends of the State in the contractual relationship is protected.

Apart from conveyancing matters, there is no statutory provision stipulating standard charge-out rates for lawyers and law firms when beliet-out. The billing times may be knock-down, value billing or hourly rates. Whatever the fee agreed upon is, the Solicitor General must ensure the terms of the engagement. Dealing with its inefficiencies and lack of provisions to deal with conflict of interests, legal fees of private lawyers and law firms. To compound the problem, the Attorney General does not maintain a standardized schedule of charge-out rates nor impose such rates on lawyers and legal firms who are beliet-out to undertake State legal services.

Conclusions

A written contract for State Legal Services with certainty of price, time and the scope of services to be provided will provide the State with some assurance of the expected costs of the Solicitor-General and Solicitor-beliet-out. Timelines for the completion of the legal services are a sine qua non to enable solicitors to understand the fees are billed. It also allows for technical legal processes to open an open ended bill to a private lawyer or firm that extends the State's expenditure obligation without the limitations of the annual budget, added to the need for public tenders. Beliet-outs should be documented in all matters. Furthermore, one of the most effective ways to prevent abusive or fraudulent legal billing practices is to use a clearly defined and unambiguous legal services contract and scope.

Recommendations (5)

a) The rules made under recommendation three (b) (ii) should specify conditions of beliet-out agreement and as much as possible have them written into every contract for State Legal Services where appropriate. Conditions such as:
- The amount of time & level, required.
- The novelty or difficulty of the tasks required.
- The scope of work to be performed by the lawyer/ lawyers or law firm.
- The tasks required to be performed by the client or the solicitor.
- Protection of the client's interests, including the possibility of modifications or√
- The fees required to perform the legal services.
- The case cannot be decided without the solicitor's knowledge or whether it would prejudice the solicitor to take other cases.
- The end result of the case, including the fee.
- The fee charged to the client or the solicitor.
- Precautions taken to protect the client, including legal dealings or history with the client.
- Expenses and disbursements.
- The solicitor's role and the fee charged to the client.
- The solicitor's role on the fee charged.
- The solicitor.

b) A standard legal services contractual agreement should be adopted whereby the conditions stated in recommendation four (d) shall be included in a standard contract. An example standard contract is attached herein as Appendix (R1).

c) The State should adopt a fee structure for outsourced State Legal Services consistent with its fiscal and public expenditure policy.

7 Management of Legal Beliet-Outs

Findings

All beliet-out matters under section 7(b) of the Attorney General Act are managed by the Solicitor General on behalf of the Attorney General. All files registered with the Solicitor General including briefs or files are identified by a unique file reference number. All lawyers and clients are advised to quote that file reference number for all purposes of correspondence with the Solicitor General or any other department of the Solicitor General. Any lawyer operating off the Office of the Solicitor General to manage a particular beliet-out matter. The Office of the Solicitor General maintains a summary of all beliet-out matters. The Solicitor General's Office has an electronic database maintained by the solicitor that records all events concerning a particular matter. When legal bills are submitted for verification and payment, the solicitor or any other Department of the Solicitor General is notified of the fees or the said fees as the case may be. If the Solicitor General is satisfied with the writing, the State shall subject to the terms of the fee, in the same fee, the solicitor's fee, the payments for the solicitor.

It was uncovered that the Solicitor General was denied by lawyers and legal firms. The Solicitor General does not have the ability to ensure that lawyers and legal firms who have been beliet-ed out to them. In certain other instances, there were no Solicitor General's file reference numbers and no evidence of brief cases.

Conclusions

This State has to actively monitor the performance of the beliet-out in order to ensure that the contracted legal service provider services the performance in accordance with the solicitor's file. This is to ensure the delivery of a cost effective and reliable service at an agreed price and standard.

The billing of legal services by the Solicitor General is there to prevent lawyers from unjust enrichment and fraudulently raising the fees.

Recommendations (6)

a) The proposed amendment to the Attorney General Act 1989 and New Financial Instructions recommended under 7(b) herein should also provide that:
- All clients' files maintained by the Attorney General under section 7(b) of the Attorney General Act 1989 in the Solicitor General's office; and
- All legal actions brought by the Attorney General from external lawyers and law firms under section 6(4) of the Attorney General Act 1989 have to be managed by the Solicitor General.
- The bills concerning the respective contracts have to be verified and cleared by the respective management offices for settlement.

b) A Chart demonstrating the process of briefs and Payments is enclosed herein and marked as “R6”.

8. Clearance for Payment of Court Judgement Debts

Findings

Funding for settlement of Court Judgement debts and out of court settlements are appropriated under Division 207 (Miscellaneous) within the Department of Finance and Treasury. On the other hand, legal fees for brief-outs are appropriated under the DJAG.

An understanding had been reached between the Department of Finance and the Office of the Solicitor General following the written correspondences detailing the process for the settlement of court orders/judgments etc. The process of settlement follows an agreed and well established payment process jointly administered by the Office of the Solicitor General and Expenditure Control Division of the Department of Finance. The Solicitor General retains running files of all State litigation matters and ensures that a particular matter has reached its finality. The Solicitor General is obliged to request the Solicitor General to exercise his power under section 14 of the CBAS to endorse a certificate of judgment.

The Solicitor General assesses the judgment debt including the interest and other charges due and then informs the client in a letter with a unique batch number to the Department of Finance for payment. The matter is not paid out of court orders/judgments etc. depends on the 99% of the warrant released by Department of Treasury. The matters cleared for payment are processed according to their established priority system. The costs of delayed settlement in terms of interests etc are paid.

A number of payments had been made by the Department of Finance without the requisite clearance from the Solicitor General. In one instance, exorbitant interest on a judgment was made by the Department of Finance to a warrant which was cleared up by the Solicitor General. Investigations uncovered that the client was not given a single cent of the millions he obtained purportedly as outstanding Interests on Judgment. In a number of other occurrences, payments were made based on previous Court orders that principles such as the age of judgment, the costs of delayed settlement in terms of interests etc are paid.

Conclusions

The Solicitor General is the authority in the departments and processes of settlement of court judgment debts and legal fees into appropriate Financial instructions under section 117 of the PPA to better control and manage payments of same.

Recommendations (7)

The Solicitor General should take full control of all suitable (Certification of Clearance for Payment), accompanied by other supporting documents such as copies of the Originating Process, Court Order and Certificate of Judgment.

In the proposed Financial Instructions under 7(b) herein, it should be provided that all clearances for payment must be in accordance with the warrant released by the Department of Treasury. If the warrant is exhausted and a clearance matter is not settled, the Solicitor General must be advised and a fresh clearance must be issued.

A Chart demonstrating the process of settlement of Court Judgement Debts is enclosed herein and marked as “R1”.

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9 Payment of Legal Fees, Court Judgments etc.

Findings

When Parliament, by way of an Appropriation Act, approves the expenditure of public funds as budgeted, funds are to be drawn out of the relevant fund. However, Section 31 of the PFMA, no public moneys shall be committed or expended except as authorized by a warrant or a financial authority of the PFMA who is using the fund. Warrants are issued based on the availability of the funds under that warrant. In circumstances where a particular vote is exhausted, there are limited options to source funding within a fiscal year. The first option is to adjust the appropriations between services. The Treasury, through its Treasury Advisor, has a limited allocation for unauthorized financial expenditure needs. And finally, revert back to Parliament for approval.

As a consequence of the Commission of Inquiry into the Department of Finance in 2000 which exposed the gross abuse of Cash Adjustments and Suspense Accounts to settle court orders and wind up unclaimed debts, the Department of Finance, the Trust Branch of the Accounting Framework and Standard Division of Department of Finance is responsible for the management of trust accounts, which is a non-bank account.

The Department of Finance has introduced a new finance system called the Financial Management System (FMS) since 2011. It is used for planning, budgeting, accounting and financial reporting to improve controls and support decision-making to comply with the requirements of the PFMA. It is understood that this system was designed to capture all transactions, both large and small, and approve before processing. Should it be the case however, that SMF is still a work in progress.

Court Judgments debts and court out settlements are performed through the expense and the trust under vote 207. Miscellaneous Payments (General) M Department of Finance, which is approved by the relevant Portfolio Committee. The Court Fines are usually drawn based on the clearance letter from the Solicitor General. A number of payments had been drawn from that vote without the clearance from the Solicitor General. It has been found that when the court/Judgment vote was placed in August 2012, payments were directed and sourced out of trust accounts. Payments were made by Department of Finance without the warrant authority to determine the amount of the fines as the warrants were released by Department of Treasury.

Some of the warrant accounts were legal bills yet were categorized as "court order" payments when processed out of vote 207. It is also understood that the actual allocation for legal fees vote of SDAJ is small hence payments were drawn out from a bigger purse at the Department of Finance.

Although millions of scrips were paid out, the documents and payment vouchers depicting the reasons for the payments are conveniently missing or insufficient. Department of Finance does not appear to take a serious approach in the maintenance of its records keeping.

Conclusions

It is a breach of the Constitution, PFMA and the Appropriation Act to draw funds from a budgetary vote appropriated for other purposes. Funds have been illegally drawn to pay court judgement debts and legal fees. Legal fees had been committed to court orders without their clearance. Several court/Judgment vote at Department of Finance instead of being paid out through DTA. Several knowledgeable witnesses have pointed out that the use of reserve trust accounts and payments without the warrant authority was totally improper and illegal. The abuse of trust accounts by public officials and exposure of expenditures by Department of Finance is recurring and must be permanently stopped or abolished.

Recommendations (8)

The internal controls of the Department of Finance and Treasury including the IFMS should be reviewed with a view to testing the system to reject payments that are not supported by legal clearance. The systems should also be designed to reject payments drawn from reserve trust accounts and payments without warrant authorities.

10 Legal Bills

According to section 62(2) of the Lawyers Act 1938 and Order 22 rule 49 of the National Court Rules 1983, all legal bills should contain particulars such as the work done by the lawyers, the basis on which the fees are and expenses, the disbursements made and the costs claimed for the work done amongst others. Department of Finance and Treasury report that they have not received any legal bills submitted and received payments on bills that were not authorized or are not in accordance with the bills being supplied. The bills were submitted directly to Department of Finance instead of through the Office of the Solicitor General.

Department of Finance does not have the legal mandate and capacity to vet legal bills.

The investigation uncovered some of the egregious instances of double billing, padding hours, billing on matters not contracted/briefed out, clarifying payment on work not done, bills with overlapping costs and services, fees including block billing were also submitted for payment.

Conclusions

A detailed analysis of the facts has convinced the investigation team that the gross majority of the legal bills submitted directly to Department of Finance by lawyers has been padded. The billing process by Solicitor General was avoided. The State was left guessing on what the solicitors were billing. The process of block billing obscures the amount of time spent on each particular task, precluding State from determining whether the time billed was actually spent on the legal bills. The various instances of block billing may add transparency to legal bills and enable the State to avoid payment for improperly billed tasks.

Recommendations (9)

The proposed Financial Practices issued by the Solicitor General, in respect of the legal profession, consistent with the Lawyers Act 1983 and the National Court Rules 1983, make it mandatory that all legal bills for lawyers briefed out to undertake Legal Services should be sufficiently particularized. All block billing should be outlawed.

11 External Oversight of Legal Clearances and Payments

The investigation did not find existence of an external oversight arrangement to review the decisions of the State Solicitor and Solicitor General. The Solicitor General is subject to supervision by the Attorney General. The Solicitor General does not receive any instructions from the Attorney General. The Attorney General (if he is also the Minister) who is most of the time busy with other important matters, rarely scrutinizes the functioning of the Solicitor General. The Office of the Solicitor for Justice is responsible for administration purposes only and has no statutory authority to supervise the State Solicitor and Solicitor General so as to determine whether their activities are proper.

ITFS did find several instances where the Solicitor General issued clearance letters to the Department of Finance for payment without actually vetting the bills. Had the legal bills been properly vetted, clearance would not have occurred as the bills were irregular and bogus. There were also occasions where Department of Finance mailed the payments directly without the knowledge of clearance from the Solicitor General. There were no recorded documents on how such irregularities were paid out of DTA. DTA, how much was paid by Department of Finance and the amount outstanding. The State was duped into an ongoing payment cycle.

Conclusions

Whilst the State Solicitor and Solicitor General are allowed to freely perform their mandated functions, some form of oversight is helpful to prevent any abuse. The Solicitor General has abused his authority by clearing bogus bills for payments. Lack of recognition has led to gross overpayments and fraud. The decision to clear the payments for payment must be periodically reviewed by an external oversight committee.

Recommendation (10)

An external Oversight Committee (e.g Audit/Review Committee) should be established to conduct periodic review of all payments of legal bills, interest and payment against court judgement debts. The composition of the Committee should include a lawyer and an auditor.

12 Money Laundering

12.1 Lawyers and Money Laundering

Findings

Private Lawyers and Law firms operate trust accounts for the purposes of holding money in trust for and on behalf of their clients. The lawyers (Trust Accounts) Regulations 1999, as amended, regulates the use of the Lawyers Trust Accounts. Under the Regulation, practitioners are required to submit to the Law Society Council their annual financial reports on the use of their trust accounts. The Regulation demands that the accounts be prepared by an accountant. Part VII of the Lawyers Act provides for the Law Society to appoint an inspector to inspect the report prepared and report to the Council of his findings. The Council can then refer the report to the lawyers' disciplinary Committee for further action. The investigation did not establish how effective the Council uses these statutory provisions to scrutinize the operations of lawyers trust accounts.

Lawyers often claim that whatever amount that is deposited in the trust account is earned by their clients. This does not address the permissible nature of clients, which are defined as solicitor or client privilege. Whilst this is acceptable, there are lawyers who exploit the privilege in facilitating illicit transactions and conceal criminal activities.

Lawyers who have had no History of acting for a particular client, or a matter appears to have been used for the purpose of laundering money on behalf of a client. On the face of it, it appeared that these lawyers were used as debt collectors. However, following the investigation by the external oversight, the trust accounts were used as conduits to conduct fraudulently and launder them.

On another case under investigation, a particular law firm that works under the Country Order was used by the Minister for Finance and Treasury under the PFMA for the use of that trust account to receive and expend public funds.

On one other case, a particular law firm presented a cheque to a solicitor worth R1.5million with a supporting court order in part to a particular commercial bank. The commercial bank flagged the transaction as suspicious and ensuing investigations revealed that the Court Order was a fake one.

It is understood that lawyers trust accounts are also being used by receivers under the receivership or liquidation of real estate property.

The legal profession category under a category of professions in which the public would expect魚 protection. They are called Designated Non-Financial Businesses and Professionals (DNBF) which are defined as businesses or professions that provide designated services as defined by POCA, DNFBPs are targeted by government based on the need for vigilance and vigilance of criminal exploitation. Part of the recommendations of the Financial Action Task Force (FATF) is to impose reporting obligations on lawyers under the respective national primary money laundering (AML) legislations, PNS is a member of the FATF and has adhered to the provisions under the POCA. The POCA also includes the legal profession and other DNFBPs as “cash dealers”. The FATF is however yet to establish the implementation mechanisms to review these bodies subject DNFBPs to the reporting requirements under POCA.

Conclusions

ITFS has noted a decline in the established traditions and cases of professional ethics of lawyers in this country. As a result of the marked increase in lawyers' misconduct and the failure of the Law Society Council to discipline violations, the effectiveness of the legal profession has been brought to disrepute by actions of a few lawyers.

Law firms trust accounts are increasingly becoming instruments of money laundering. Lawyer's trust account, which was considered as the beacon of unblemished financial integrity, is becoming the vehicle ofiquitous criminality. The ease with which law firms trust accounts are being used to facilitate laundering proceeds of illegal activities for the benefit of lawyers who, among other things, is aiding and abetting the prohibited actions of clients to adjudge lawyers to the reporting requirements under POCA.

Recommendations (11)

a) Designated Non-Financial Businesses and Professionals (DNFBP) such as lawyers and law firms should be subject to the legal controls requiring the future Federation Minister for Justice and Attorney General should request the Federation through the Minister for Police to implement the regulations under DNFBPs.

b) The Law Society Council should lift its affords in scrutinising lawyers trust accounts through the reports submitted to them annually with a view to taking disciplinary actions against misconducting lawyers. The Attorney General should write to the President of the NGA Law Society of these findings and recommendation.

12.2 Financial Institutions and Money Laundering

Findings

The POCA places an onerous responsibility on cash dealers dealing with international financial transactions. Only the commercial banks have working AMIL systems with the National Treasury and the POCA. Other intermediaries and financial companies are not required to comply with the reporting requirements. The POCA issued Guidelines on 1st June 2011 for the banks to be guided in the conduct of their duties. Pursuant to those Guidelines, the banks are required to establish the legitimacy of government payments and are also required to make demands on banks, bank’s demand supporting documents such as contracts etc.

Although the POCA requires cash dealers to report suspicious transactions to Fiu, there is no explicit provision in the POCA.
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for the cash dealers to reject the transactions that they believe and can be proved to be fraudulent money laundering. The task force also extends the case to include money laundering by banks that are known to have been involved in money laundering.

Suspicious transactions relating to court judgement debts and legal fees payments were found to have been conducted by a number of banks. Some banks also failed to provide the necessary evidence to support their claims. This has led to the Banks Association of India taking action against these banks.

Third parties were involved in these transactions. They are believed to be providing legal advice and guidance to the banks. The task force has also identified a number of third parties who have been involved in these transactions.

Conclusions

Banks play a key role in the fight against money laundering. Without their involvement, it would be impossible to detect and stop this illegal activity. The task force has highlighted the need for banks to be more vigilant and to report suspicious transactions to the authorities. The task force has also recommended that banks should be required to conduct due diligence on all transactions and provide this information to the authorities.

Insulating Public Servants against Political Interference

Public servants are often targets of political interference. This is because they are in a position to make decisions that can affect the political power of those who hold power. The task force has recommended that public servants should be provided with adequate protection to prevent political interference.

Recommendations (24)

a) The task force recommended that public servants should be provided with adequate training and education on the risks of political interference.

b) The task force recommended that public servants should be provided with adequate legal protection against political interference.

12.3 Bank of Papua New Guinea and Money Laundering

Findings

The Central Bank of Papua New Guinea has been investigated by the task force. The findings of the investigation revealed that the Bank has been involved in money laundering activities.

Conclusions

The findings of the investigation have shown that the Bank has been involved in money laundering activities. The task force has recommended that the Bank should be investigated further and that appropriate action should be taken to ensure that the Bank is not involved in money laundering activities.

12.4 PNG FIU's Ability to Combat Money Laundering

Findings

The findings of the investigation revealed that the PNG FIU has been effective in combating money laundering activities. The task force has recommended that the PNG FIU should continue to be effective in its efforts to combat money laundering activities.

Conclusions

The findings of the investigation have shown that the PNG FIU has been effective in combating money laundering activities. The task force has recommended that the PNG FIU should continue to be effective in its efforts to combat money laundering activities.

13 Insulating Public Servants against Political Interference

Findings

Public servants are often targets of political interference. This is because they are in a position to make decisions that can affect the political power of those who hold power. The task force has recommended that public servants should be provided with adequate protection to prevent political interference.

Recommendation (15)

A review should be undertaken to protect public servants from political pressures that are designed to undermine their independence and impartiality.

14 Dealing with Habitual Misconducting Public Servants

Findings

There are certain public servants who have been involved in misconducting public servants. These public servants have been involved in activities that have caused damage to the government and the public.

Conclusions

The findings of the investigation have shown that certain public servants have been involved in misconducting public servants. The task force has recommended that appropriate action should be taken to deal with these public servants.

15.1 Conclusion

The findings of the investigation have shown that certain public servants have been involved in misconducting public servants. The task force has recommended that appropriate action should be taken to deal with these public servants.