

Anti-Money Laundering Regimes in PNG and Fiji

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Outline

Introduction

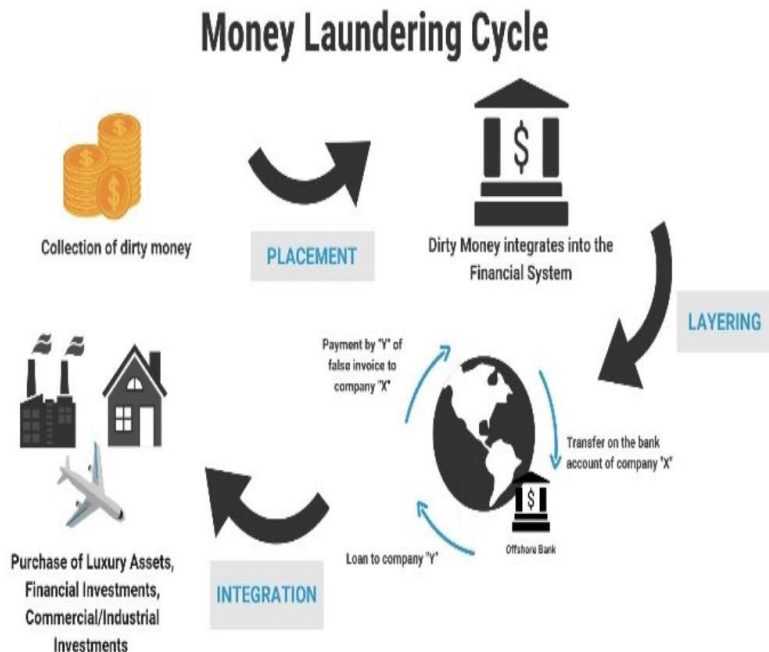
PNG's AML/CTF regimes

Fiji's AML/CTF regimes

Unexplained wealth act: the new frontier

Unintended Consequences

Definition



“...the conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of **concealing or disguising the illicit origin** of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions.”
UNODC

There is no clear evidence that AML/CFT standards have effectively prevented terrorism (Brzoska, 20016), deterred serious crimes (Levi and Reuter, 2006), or money laundering (Pol, 2018a).

Criminalising and recovering illicit gains

Since the 1990s: scholarship moves beyond prosecuting criminals to also depriving them of their criminal wealth.

The acquisition of money through criminal activities is usually financially motivated (Van Jaarsveld, 2011);

If a conviction results in a prison sentence, as well as the removal of the proceeds, the motivation will be eliminated (Alexander, 2015, p. 36).

AML Regimes in PNG

Proceeds of Crime Act 2005

Border Development Authority Act 2008

Anti-Money Laundering and Counter Terrorist Financing Act 2015

Securities Commission Act 2015

United Nations Financial Sanctions Act 2015

Central Depositories Act 2015

PROCEEDS OF CRIME (AMENDMENT) ACT 2015

Criminal Code (Amendment) Act 2016 - ICT and money laundering

Income Tax (2018 Budget) (Amendment) Act 2017

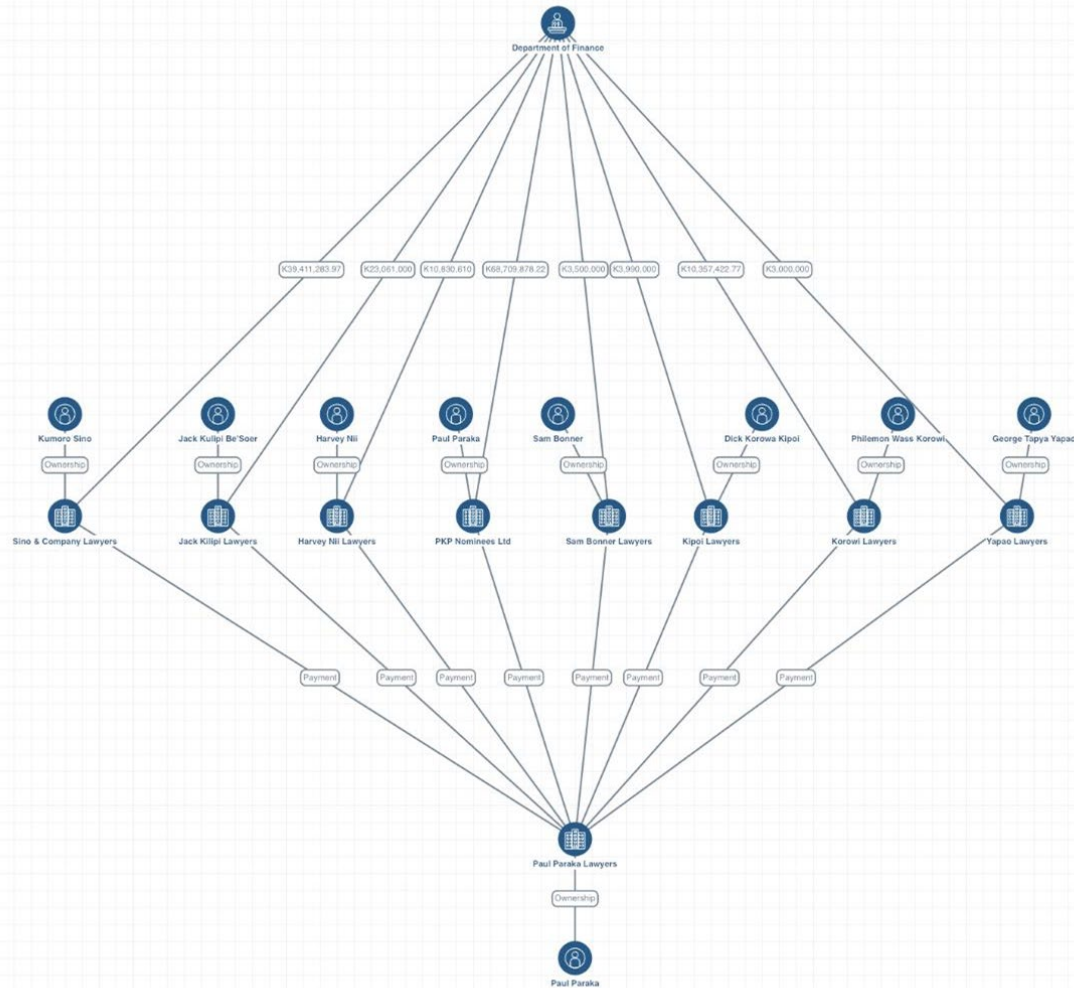
Unexplained Wealth Act (yet to be certified)

Constitution of the Autonomous Region of Bougainville 2004

Penalty: If the offender is a natural person –a fine of K100, 000.00 or imprisonment for 20 years, or both; or If the offender is a body corporate –a fine of K500, 000.00.

State v Bae [2019] PGNC 227; (20 September 2019): K72,380.30 misappropriated, **none recovered**

State v Tomande [2019] PGNC 228; (20 September 2019): obtained by false pretence was K372,131.74, **none recovered**



The Paraka Gate

K162 million laundered

(UD\$ 42 million)

Channelled through seven law firms & one nominee

Submissions on penalties on 23 June

Appeal possible

AML Regimes in Fiji

Proceeds of Crime Act 1997

Mutual Assistance in Criminal Matters Act 1997

Immigration Act 2003

Proceeds of Crime (Amendment) Act 2004

Financial Transactions Reporting Act 2004

Financial Transactions Reporting Act 2004 -
Financial Transactions Reporting Regulations
2007

Proceeds of Crime (Amendment) Decree 2012

National Payment System Act 2021

Unexplained Wealth Act 2022

Maximum penalty for money laundering: 20 years prison or fine of \$120, 000, or both is offender is natural person

O'Keefe v State [2007] FJCA 34; [25 June 2007] the Court of Appeal:

Value of proceeds of crime was \$ 90,930.78 and out of which only \$ 1500. 00 had been recovered.

State v Lata [2017] FJHC 927; HAC118.2014 (7 December 2017); Crime involving \$285,680.96, of which \$ 169,640 was recovered

Unexplained Wealth (unexplained wealth orders)

United Nations Convention Against Corruption (UNCAC) (Article 20) proposes the criminalisation of “illicit enrichment” defined as:

“...a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income” (UNODC [United Nations Office on Drugs and Crime], 2004).

Definition expanded to include **anyone involved in serious and organised crime and are not limited to public officials** as per the illicit enrichment definition (Keen, 2017, p. 11) (Fiji, Ireland, Australia, Colombia, PNG*)

UWO – which in effect is the confiscation order – will require the person to repay the difference between total and legitimate wealth (Mills and Barker, 2018; Reurts, 2017).

Unexplained wealth - Fiji

Proceeds of Crime (Amendment) Decree 2012, Fiji

71F. Any person who—

(a) maintains a standard of living above that which is commensurate with his or her present or past lawful emoluments; or

(b) is in control of pecuniary resources or property disproportionate to his or her present or past lawful emoluments,

shall, unless he or she provides a satisfactory explanation to the court as to how he or she was able to maintain such a standard of living or how such pecuniary resources or property came under his or her control, be required to pay to the Forfeited Assets Fund the amount specified in the unexplained wealth declaration under section 71K.

Director of Public Prosecutions v Lata [2020] FJHC 1071 (10 December 2020)

\$28, 000 declared ‘unexplained wealth’ and forfeited to the state. Judge adopted an Australian case:

Supreme Court case Director of Public Prosecutions for Western Australia v Gypsy Jokers Motorcycle Club Inc (2005), Judge Templeton stated:

“...person who becomes the owner of substantial property by legitimate means ought reasonably to be expected to be able to prove that fact, on a balance of probabilities, without any great difficulty...”

Challenges for both countries

- Jurisdictional constraints may limit the potential for criminal prosecution and confiscation outside the jurisdiction in which the crimes were committed.
- Concealing assets outside the territories from which assets are stolen obstructs civil recovery of those assets in any jurisdiction. Corrupt PEPs (politically exposed persons) may thus avoid adverse legal consequences in both the criminal and civil spheres (Clancey, 2018)

“Cayman of the Pacific”?

- Foreign Designated Non-Financial Business and Professionals of Australia under no obligation to disclose beneficial ownership information

Impact varies on different stakeholders



Why does the unbanked matter?

High rural population, high unbanked population

Asia-Pacific – 0.9 billion







PNG – 8million (World Bank/PNG Audit Report 2018)

Vanuatu – 1/3 of the population (UNCDF, 2017)

Solomon Islands – 1/3 of the population (CBSI, 2015)



AML/CFT Structures

	FATF	Financial Agency Task Force	40 + 9 recommendations	
	APG	Asia Pacific Group on Money Laundering	Mutual Evaluation Reports	
	FIUs	Financial Intelligence Units	Collects SARs, investigate, ensure compliance	
	Financial Institutions	Domestic Banks	Customer Due Diligence & Suspicious Activity Reports	

*Hierarchical nature of the structure

*Success of AML/CFT depends on financial institutions