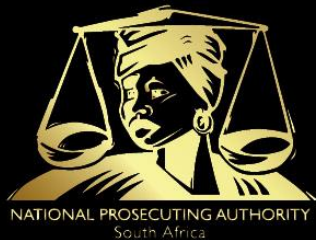


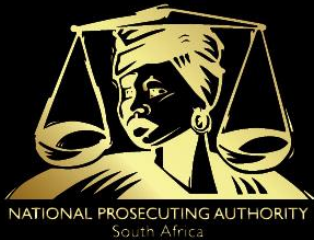
FINANCIAL INVESTIGATIONS

Money laundering and Asset tracing



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Financial Investigations in the AFU



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What are Financial Investigations

- For the purposes of asset forfeiture proceedings, a financial investigation is the use of financial information to:
 - Trace and locate assets
 - Determine ownership or interest in such assets
 - Determine if there is any equity in the property
 - Determine if the property is proceeds of crime
 - Determine if property is an instrumentality of unlawful activity

What are Financial Investigations

- Conduct a lifestyle analysis
- Challenge versions provided by suspects/ interested parties in relation to property and the source of funds used to purchase these, or the source of cash that is seized

What are Financial Investigations

- Normal investigation techniques eg observation, surveillance, deduction/analysis, interview and evidence collection all apply to a financial investigation in the asset forfeiture environment

The Role of the Financial Investigator

- To deal with any financial investigation in the AFU in support of asset forfeiture processes: Basic Case Assessment and Detailed Financial Investigations
- Litigation support such as conducting further investigations to answer allegations made in answering affidavits/ drafting a financial affidavit to be used as a supporting affidavit in an application

The Role of the Financial Investigator

- Assist Curators in the execution of orders/tracing of property
- Open criminal cases for non-compliance with asset forfeiture orders in terms of section 75 of POCA
- Formally apply for urgent FIC freezes of funds in accounts pending the obtaining of an order

Financial Investigations

BASIC CASE ASSESSMENT(BCA)

- A BCA is conducted in every case referred to the AFU
- A BCA or any financial investigation will require the interrogation of available databases as well as use information acquired through the criminal investigating officer, victims, intelligence sources, surveillance, confidential sources and informers

Financial Investigations

BASIC CASE ASSESSMENT(BCA)

- A BCA consists of checking for any of the following that may be held by a suspect or person holding an interest in property on behalf of the suspect or who received an affected gift:
 - Vehicles
 - immovable property
 - directorships/ memberships in company/
 - CC (BCA for each entity is also conducted)

Financial Investigations

DETAILED FINANCIAL INVESTIGATION (DFI)

- A DFI will commence once a BCA is completed
- By virtue of its definition, a “Detailed Financial Investigation” is more complex than a BCA.

Financial Investigations

DETAILED FINANCIAL INVESTIGATION (DFI)

- The following terms would highlight the high level aspects of a DFI:
 - Locate evidence
 - Collect the evidence
 - Collate or organise the evidence
 - Interrogate the evidence
 - Analyse the evidence
 - Interpret the evidence and
 - Present the evidence

Financial Investigations

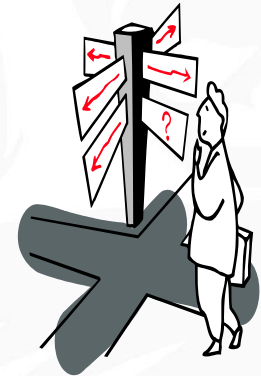
DETAILED FINANCIAL INVESTIGATION (DFI)

- At this stage, the following could be undertaken:
 - drafting s205 subpoenas for bank records;
 - analysis of bank records:
 - to trace assets
 - to follow the proceeds of crime to establish where proceeds may be located and/or if payments were made to third parties who are holding the property on the suspect's behalf and/or to identify whether or not affected gifts were made to identify further criminal activities eg related criminal activities
 - drafting a financial affidavit for use in an application



Sources of information

- Bail affidavits: details of assets may be disclosed here as well as family members who may also be investigated as possibly holding assets
- Informers: to trace assets that may not be on a person's name but concealed on other persons' names who are unknown to investigators
- Credit Checks
- Gambling records



Sources of information

- Company searches
- Deeds Office in relation to immovable property
- Master of Deceased Estates iro of wills/ executors (for service purposes)
- Master's office iro tracing Trusts
- Banks: bank account records/safety deposit boxes/ accounts held
- Dumpster Diving or garbage searches

Sources of information

- SARB to check cross border movements of funds and point to interests outside of SA or verify versions that relate to cash seizures concerning funds that were allegedly brought into RSA
- SAPS eg border control movements to trace persons for service or check on “turn-around times” to make the case that a person’s travel activities are suspicious and suggestive of being a mule;

Sources of information

- Searching for additional dockets to prove related criminal activities/ criminal lifestyle/ trace other assets/ compare allegations of employment/ sources of income

Sources of information

- Dept of Home affairs: eg to check marital status/ identify family members who may be investigated as holding assets such as children
- Dept of Transport (eNaTIS) to check for vehicles
- FIC: obtaining intelligence regarding details of accounts/ bank records/ suspicious transaction reports

Sources of information

- SARS including Customs: to ascertain what income was declared (“S 71” request) and compare that to assets held in a lifestyle analysis or challenge versions given in respect of income and the source of funds used to purchase assets
- SA Insurance Crime Bureau for any insurance policies
- SABRIC: SA Banking Risk Identification Centre: for intelligence regarding accounts held

Sources of information

- CARIN(Camden **Asset Recovery** Inter-Agency Network) and ARINSA(Asset Recovery Inter-Agency Network for Southern Africa) are Networks for intelligence regarding assets outside of SA
- Police to Police requests for intelligence relating to assets outside of SA/ verifying versions

Rationale for Asset Forfeiture

- The introduction to POCA and its preamble states the purpose of the legislation *inter alia* as follows:
 - To introduce measures to **combat organised crime**
 - To provide for the **recovery** of the **proceeds** of unlawful activity; for the **civil forfeiture** of criminal property that has been **used to commit an offence**, property that is the proceeds of unlawful activity or property that is owned or controlled by, or on behalf of, an entity **involved in terrorist** and related activities

POCA: 2 Chapters

Chapter 5 – criminal forfeiture

- *In personam*: person targeted
- Conviction required
- Derive a benefit from offence or related criminal activity

Chapter 6 – civil forfeiture

- *In rem*: property targeted
- No conviction required vs innocent owner
- Instrumentalities & proceeds of crime



Restraint order

Section 25(1)(a) of POCA - Cases in which restraint orders may be made

- A High Court may issue a restraint order when
 - a prosecution for an offence **has been instituted** against the defendant concerned,
 - either a confiscation order has been made against that defendant or it appears to the court that there are **reasonable grounds for believing** that a confiscation order **may** be made against that defendant and
 - the proceedings against that defendant have **not been concluded**; or

Restraint Order Summary

- **Purpose of restraint order:** To freeze assets pending conviction and confiscation application
- **Standard of proof:** Reasonable grounds to believe
- **Requirements: Need to show:**
 - Prosecution/ to be charged
 - Confiscation order may be made
- **Procedure:** Conviction based

Confiscation Order

Section 18 of POCA

- Whenever a defendant is **convicted** of an offence the court convicting the defendant **may**, on the application of the public prosecutor, **enquire** into any **benefit** which the defendant may have derived from
 - **that offence**,
 - **any other offence** of which the defendant has been convicted at the same trial; and
 - Any criminal activity which the court finds to be **sufficiently related** to those offences

Preservation order

Section 38 of POCA - Preservation of property orders

- The National Director may by way of an ***ex parte*** **application** apply to a **High Court** for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property if there are **reasonable grounds to believe** that the property concerned
 - is an instrumentality of an offence referred to in Schedule 1,
 - is the proceeds of unlawful activities; or
 - is property associated with terrorist and related activities

Instrumentality of an offence

- Section 1:

“any property which is **concerned in** the commission or suspected commission of an offence at any time before or after the commencement of this Act, whether committed within the Republic or elsewhere.”

Not 'intended or suspected to be ...'

Offence listed on schedule 1



Instrumentality of an offence

- “Concerned in”?
 - In some way facilitate the commission of the offence;
 - Sufficiently close link between the property and its criminal use
 - Not simply incidental such as the venue for the crime
 - Achieve the purposes of POCA
 - Its nature or manner of utilisation

Civil Forfeiture - Instrumentalities

- Cars or boats concerned in transporting of contraband (drugs, abalone, copper, stock etc.)
- Community irritants – brothels, gambling houses, shebeens and drug houses
- Factories or businesses

Civil Forfeiture - Proceeds

Examples of offences:

- Fraud – 419 schemes
- Drugs
- Green crimes eg abalone, rhino horns
- Theft
- Corruption
- Counterfeit offences
- Non-ferrous or precious metals

Forfeiture order

Section 48 of POCA - Application for forfeiture order

- If a preservation of property order is in force the National Director may apply to a High Court for an order forfeiting to the State all or any of the property that is subject to the preservation of property order if the Court finds on a **balance of probabilities** that the property concerned
 - is an instrumentality of an offence referred to in Schedule 1,
 - is the proceeds of unlawful activities; or
 - is property associated with terrorist and related activities

Forfeiture order

Section 48 of POCA Application for forfeiture order

- The validity of a forfeiture order is not affected by the outcome of criminal proceedings.

Section 54 of POCA - Exclusion of interests in property

- So-called “innocent” owner defence



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