Fish Forests and Filthy Lucre

Illegal Fishing Scenario

Prepared by the Anti Money Laundering Assistance Team Attorney-Generals Department, February 2010
SCENARIO FRAMEWORK

1. The following facts and circumstances are fictitious and are designed to provide a framework for discussion of key issues relating to illegal fishing and related corrupt payments including the detection, investigation and laundering of proceeds of crime.

2. The scenario is intended to provide points for discussion on the following key focus areas;
   - Illegal fishing operations including access agreements and fraudulent payments
   - Fisheries Monitoring, Control and Surveillance (MCS) systems – vessel identification/activity, ports, transhipments
   - Law enforcement investigation nationally and internationally
   - Financial Intelligence Unit (FIU) data collection, analysis and dissemination
   - Undertaking criminal asset proceedings
   - Sourcing and utilising foreign evidence
   - Preventing corrupt payments being made and enforcing access agreements.

3. The countries involved in the scenario include the fictitious country of Davisland which is rich in natural marine resources in particular very productive tuna fishing within its EEZ but is largely undeveloped and has a population living mostly in a subsistance based society spread throughout the small island nation in isolated community groups. Payments from fishing agreements contribute a significant portion to the countries GDP. Moneys received from these agreements is needed to meet health, education and local infrastructure development costs. There is a history of corruption at various levels from the Ministers office to the local fisheries enforcement officers with significant amounts of money being diverted from actually benefiting the citizens of the country.

4. Various international banks operate in Davisland including Westpac, ANZ and Davisbank. Most are based in the capital city Delton with some regional representation in the larger communities located on surrounding islands. The local currency is the Davis Dollar which is currently half the value of the US dollar.

5. Davisland has received international assistance to establish an FIU as well as training for its local Police in respect to corruption and money laundering investigations. Their legislation is reasonably comprehensive and provides for the sourcing of material and investigation of most criminal offences. The recently passed AML legislation compliments the amendments to the criminal code which include the making and receiving of corrupt payments being classified as serious offences. The FIU is based within the Police department and works closely with the anti corruption unit.
6. Other countries involved in the scenario include Hong Kong and Taiwan which are highly developed countries with well established local and international banking operations. The use of these countries is intended to provide a realistic aspect to the movement of money through foreign accounts via the international banking network.

SCENARIO COMMENCEMENT

7. A number of distant water fishing companies operate in the EEZ of Davisland where they catch large quantities of tuna including Yellowfin, Bigeye, Skipjack and Albacore. One such operation is conducted by the foreign registered company Tunacorp Ltd who have a fleet of fishing vessels operating in the Pacific.

8. The Davisland Department of Fisheries and the anti corruption unit in the Davisland Police department have received a number of complaints from the competing fishing companies that information contained in their fishing agreements seems to be getting leaked to Tunacorp whose vessels appear whenever a productive fishing ground is located. Also the Tunacorp vessels seem to be taking in large catches although they can’t be certain they think Tunacorp may be under reporting catches. Also whenever they are in port they are subjected to vigorous inspections particularly of their fishing locations held on GPS plotters and catch records by the local fisheries officers which does not seem to happen to the Tunacorp boats.

9. On the 1st of June 2009 the Davisland FIU received a Suspicious Transaction Report (STR) in which a bank officer at the Delton branch of Westpac was suspicious of a particular customer’s transaction. The bank teller received a bank draft from Ben MASON a senior fisheries department officer who asked to immediately convert the draft to cash. The draft was for $30,000 dollars and was issued by the HSBC Bank in Hong Kong and was payable to Ben MASON. The bank teller knew the customer as he regularly received his salary payments into his Westpac account and he has a current home loan with the bank. The payment seemed to be a very large payment considering the persons salary was about $40,000 per annum. The bank teller was also suspicious of Mr MASON’s nervous behaviour and the fact that he asked that it not appear on his account transaction records. The bank teller prevented the draft from being cashed and advised Mr MASON that he would just have to wait until the draft was cleared which in the case of an international bank draft could take 5 to 10 days at which time the draft would be transferred into his savings account. Mr MASON immediately asked that the draft be paid into his wife’s account.

10. The FIU assessment officer took the STR to his supervisor who then contacted the Davisland Anti-Corruption unit and referred the matter to
them for investigation. The Police case officer asked for further information about Mr Mason from the FIU who were unable to identify any reports of suspicious transactions being linked to him or his account.

11. The FIU requested further details from the Westpac Bank on Mr Mason’s wife, Delorus Mason and they find there have been a number of international funds transfers from a company in Hong Kong named Sovereign International. The payments were for amounts around $30,000.00 and occurred in May 2007 and May 2009. These funds were withdrawn shortly after deposit and applied to their joint home loan which was obtained in July 2007 for the amount of $180,000.

12. The Police suspect that there may be a connection with the inward funds transfers and Mr Mason’s role as appointed Government negotiator with the sole responsibility to deal with the annual fishing access agreements on behalf of the Fisheries Department. Police enquiries ascertain that these agreements come up periodically however the fishing agreements with Tunacorp Ltd are reviewed at the start of each financial year.

13. Police request and obtain fisheries MCS reports on all tuna vessels over the past year – vessel identity, vessel ownership, catch records, catch locations, catch landings and transhipments (in port and at sea). While MCS data on competing company vessels is, overall, consistent and complete, data on Tunacorp vessels is not. This strengthens the amount of evidence of involvement in corruption by fisheries administrators regarding Tunacorp’s fishing activity.

14. Police enquiries conducted in Hong Kong on behalf of the Davisland Police into Sovereign International reveal that the company is a service company which provides financial services to a range of international organisations who would prefer that their identity not be linked to specific transactions connected with their business. To obtain detailed records a search warrant would need to be conducted and this would require a Mutual Assistance in Criminal Matters Act request be sent.

15. The Hong Kong Police also advise that their records indicate that Sovereign International has remitted other funds to Davisland to the ANZ accounts of Harley Accountants over the past 3 years. These funds total just over $1 Million.

16. Police prepare and execute search warrants on the firm Harley Accountants located in Delton where they find records confirming the receipt of payments from Sovereign International through the trust account. The funds are then transferred to an investment company Fishy Investments Ltd. This investment company is controlled by Harley Accountants who hold the directorship but the share holders include the current Minister for Primary Industry and two other former Government Ministers.
DISCUSSION POINTS FOR GROUP REVIEW AND PRESENTATION

OFFENCES

- Which types of criminal offences can you identify from this scenario?
- Which jurisdictions have they occurred in?
- List the key points that make you suspect these offences have been committed?
- What are the evidence/intelligence gaps that you can see?

INFORMATION

- What enquiries would you undertake to fill the evidence gaps?
- How would you make those enquiries?
- What options might be available to you in order to locate the relevant banking records in Davisland?
- Summarise what information you would need to obtain from overseas?
- What issues do you think need to be considered in obtaining foreign evidence including the use of options such as Police to Police and Mutual Assistance?
- What problems or successes have you experienced in the past with foreign evidence?

FIU

- What further details could you seek from the Davisland FIU or a foreign FIU?
PROCEEDS OF CRIME

- What assets can you identify that would be suitable for proceeds of crime recovery action?
- What information do you think you might need to show that the assets are proceeds of crime?
- How could you quantify the benefit that the targets are believed to have made from their involvement in this activity?
- What could you do in respect to assets sent to or derived in foreign jurisdictions?