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Caribbean Anti Money Laundering Update

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*Alan Lambert**

I intend to give a brief update on the work of the Caribbean Anti Money Laundering Programme (CALP). For those who may be interested, I will also give details about the new U.K. Proceeds of Crime Act, which introduces civil forfeiture and some very new elements into the U.K. methods of investigating, tracing, and forfeiting assets derived from criminal activity, which are all possible without the prerequisite of a criminal conviction. Time does not permit an in-depth assessment of this legislation, but I would be happy to discuss it or provide further information if contacted.

I believe this aspect of U.K. law enforcement work to be quite relevant to this conference, being that many of the Caribbean jurisdictions are looking to follow the United Kingdom down this road, and being cognizant of the impact such legislation has on individual human rights. The interest shown by Caribbean countries was evident when we held the 3rd Symposium for Caribbean Law Enforcement supervisors in Trinidad in November 2002. At that symposium, civil forfeiture proved to be one of the topics of greatest interest to the delegates.

Following several years of regional meetings and initiatives, the CALP finally commenced in March 1999 with the appointment of a program director. Later on in 1999, three specialist technical advisors were appointed. The CALP is funded primarily by the European Union and the governments of the United States and the United Kingdom, and it is envisaged that the CALP will have a five-year life span.

The main objective of the CALP is to provide specialized technical assistance in the fight against money laundering in three critical areas, with the ultimate aim to make the region self-sufficient. The three critical areas are legal and judicial, financial services, and law enforcement. There are three specialist technical advisors, and each is well qualified to address his or her own area of expertise. I have worked as a consultant for the CALP, specifically on the law enforcement side, since 2000. My work in the Caribbean started back in 1997, when I was appointed by the British Foreign Office to assist in the training and formation of a dedicated counter drug/crime task force in Trinidad.

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So what exactly does the CALP do? Well, in my case, the nature of the work is threefold. First, I assist in the establishment and formation of dedicated national financial intelligence and financial investigation units, which is similar to the American Financial Crimes Enforcement Network in some ways, although on a much smaller scale. This involves setting up a database, introducing systems, and producing standardized documentation tailored to local needs. In many cases, I may also work with government officials and representatives of the local financial sector to facilitate the smooth running of the system of suspicious transaction reporting.

Second, I run, jointly with a colleague, dedicated financial investigation courses for police and customs officers from around the Caribbean region. In addition, I also revisit those units I have helped to establish, and spend time working with local officers on live investigations. My purpose in revisiting these units is to see if the systems put in place are working, to see if the database is being used, and to ensure that the unit has attained a standard that allows the financial investigators to be fully accredited. In order to achieve accreditation status, officers must complete three training phases. The first phase requires the student to research and study his or her own legislation as it relates to the investigation of money laundering, asset tracing, freezing of assets, and confiscation and forfeiture procedures. The officer must then make a presentation, or must be prepared to answer questions on the subject when attending a financial investigation course.

The second phase involves the satisfactory completion of a two-week financial investigation course, during which the students receive instruction on a variety of subjects, including legislation, interview techniques, link charting, executing searches (with a focus on financial material and information), and conducting financial investigations. Practical exercises are included on all of these subjects. In addition, the students receive presentations from both the legal/judicial and the financial services technical advisors on relevant issues, which now include terrorist financing.

The third phase takes place when I, or one of my colleagues, make a return visit to the student's home country, where the Financial Intelligence/Investigation Unit (FIU) was originally established. Upon returning to the home country, I mentor those officers working in the FIU who have completed the first two phases of training on conducting live investigations. In a number of cases, accreditation has also been achieved where Caribbean officers were attached to established FIUs in other countries. Some of these officers were sent to the United Kingdom, some to Canada, and others to one of the more established Caribbean jurisdictions.

Since January 2000, over 170 Caribbean officers, both police and customs, have been trained by CALP in twelve financial investigation courses. One special course was held in Martinique for police officers from Haiti. This course was run jointly with French customs and CALP at the Centre Interministeriel de Formation Anti-Drogue in Fort de France, Martinique. Another course was held in October 2002 in Curaçao, Netherlands Antilles (at their request) for local officers, with legislative input provided by a local prosecutor and a high court judge.

Many of those trained have achieved accreditation status. The last course delivered by CALP took place in December 2002 at the Regional Drug Training Centre (REDTRAC) in Jamaica. It was preceded by a course to train the trainers, because REDTRAC has now assumed responsibility for the continuation of these courses. At the beginning of 2003, my colleague completed a two-week observer assessment of the first course run by REDTRAC. Hopefully this is the first aspect of self-sufficiency to be achieved.

However, the learning does not end there, and we are now looking to further our training. Indeed, there has been a very strong call from those Caribbean countries serviced by CALP for the delivery of some advanced training in financial investigation, to include subjects such as forensic accounting, seizing and examining computers, computer evidence, and, of course, civil forfeiture. Consequently, my colleague and I have now put together an advanced financial investigation course. The first advanced course is due to be delivered to sixteen accredited officers in Antigua on May 6-15, 2003. If it is successful, we may be asked to deliver another, similar course in the future, and perhaps this course will also subsequently be delivered under the auspices of REDTRAC.

I have been personally involved in the establishment and training of FIUs on behalf of CALP in Trinidad & Tobago, Antigua & Barbuda — both on Foreign Office appointments — St. Kitts & Nevis, Grenada, and Belize. I was also on standby to assist in Surinam later in the year of 2003, with a serving police colleague from the Netherlands.

My fellow consultants have assisted in Barbados, Dominica, St. Vincent, and the Grenadines, and one is on standby to assist in St. Lucia in the very near future.

I understand that the only countries covered by the CALP that have yet to receive the kind of assistance referred to are Haiti and Guyana. The political climate and potential travel risks in these two countries prevent further assistance from being provided at this time.

With regard to the Financial Action Task Force (FATF) list of Non-Cooperative Countries and Territories (NCCT), there is one Caribbean

country remaining on that list, although I believe it is at a stage referred to as the “implementation phase.”¹

Throughout my detective career, I have always been a hands-on practical individual, and with the last twelve or so years of my service being directly involved in financial investigation, it is extremely rewarding for me to now be in a position where I can pass on the benefits of my experience. That experience is particularly useful when it comes to the application of the law and practical procedures in this very specialized area of U.K. law enforcement.

Drafting and passing legislation is one thing, but the practical application and working procedures required by legislation are something quite different, particularly in Caribbean countries. When new legislation is introduced in the United Kingdom, there is a detailed and predetermined infrastructure in place to circulate, notify all those affected, and provide an explanation of the legislation. I have no doubt that something similar occurs here in the United States.

However, it is often a very different story in the Caribbean, where the introduction of new legislation might initially result in catchy newspaper headlines, but then fades into the background. Legislation does not become effective until it appears in the local gazette, but a full circulation of the legislation rarely takes place. As a result, agencies affected by the legislation are often unaware of its existence or the impact and responsibilities it places upon them.

As you may be aware, many of the Caribbean jurisdictions follow the English common law system, and have customarily introduced legislation based on an English model. It is to those countries that I refer. Sometimes, however, a little tinkering has taken place, with bits added in from the legislation of another country, or other bits taken out. When subsequently viewed as a whole, the legislation is then found to be unworkable.

I found a prime example of this in Trinidad in 1997. The Misuse of Drugs Act in place at that time required the high court to hold a hearing regarding the finances of every person convicted of a drug trafficking offense, so that confiscation or forfeiture could be considered. However, although the legislation had been in place for over seven years at the time no such hearings had ever taken place. The high court judges were unaware of the requirement, and were waiting, as they always do, for

1. Financial Action Task Force on Money Laundering, Annual Review of Non-Cooperative Countries or Territories, *available at* http://www1.oecd.org/fatf/pdf/ncct2003_en.pdf (last visited Sept. 18, 2003); Organisation for Economic Co-operation and Development web site, *available at* <http://www.oecd.org/home> (last visited Sept. 18, 2003).

direction from the attorneys or counsel, who themselves were either unaware or unsure of how things should work. It is also possible that the judges just chose to ignore the requirement altogether.

We were able to address this whole issue by delivering a presentation, offered to the chief justice by the British high commissioner, to the judges of the high court and court of appeal on how similar legislation worked in the United Kingdom. This presentation included the procedures to be followed, and provided some specimen documentation. The then attorney general was particularly enthusiastic about this whole issue, as the establishment of a dedicated Task Force was his pet project. This happened despite the fact that he had been described as a poacher turned gamekeeper, because when in opposition he made his living by defending major drug traffickers.

The presentation in Trinidad was extremely well received, with one judge commenting that “this sort of thing was extremely useful and didn’t happen often enough.” It also proved to be extremely timely, being that a major drug trafficker was awaiting trial at that time. Following the defendant’s conviction, the first confiscation hearing was successfully concluded, with the trial judge issuing confiscation orders totaling TT \$5.7 million.

The meeting with the judiciary also provided an opportunity to establish appropriate procedures for police officers to make application directly to the judge for production orders to require financial institutions to produce relevant specified material. Until then a mistaken view was held by the High Court Registrar and local attorneys that police officers did not have a right of audience before a judge, despite what was written in the legislation.

That same legislation provided police and customs officers with the power to seize and detain cash above a certain threshold being imported or exported from the country, as long as there were reasonable grounds to suspect that the cash was connected to drug trafficking. Customs officers, who were in the front line at Piarco International Airport, were totally unaware of this power or provision, and they found it difficult to accept, being that historically they were only required to concentrate on collecting customs revenue. Anything outside that field was referred to the police.

A further major impediment in that same legislation was discovered in relation to the procedures to be followed in connection with the seized cash. The law provided for the continued detention of the money, for up to two years if necessary, but, due to the tinkering to which I referred earlier, there was no provision contained in the law to deal with the money thereafter. There was nothing about forfeiture, and nothing about whether the money should be returned to the subject from whom it was seized. Just

nothing. Happily, I can report that the legislation that has since been introduced in Trinidad & Tobago is considered to be some of the best in the region, and has been used as a model for other jurisdictions.

I can refer to a number of similar instances elsewhere in the region — some of which still exist — where the practical application of the legislation as drafted and passed has not been possible due to the many obstacles and impediments contained in the law. This has led to frustration on the part of law enforcement officers, particularly financial investigators, who have spent considerable time and effort on investigations before putting together their report seeking confiscation or forfeiture orders, only to find that they were bound to fail. Perhaps just as important, the failure to take the money from the major criminals and drug traffickers reflects badly on the country, and has, in some instances, perhaps led to the belief that a particular country was not serious about addressing the issue.

In general, however, you will now find that the current money laundering and drug trafficking legislation in many Caribbean countries is very new and is much more effective, incorporating wide powers in relation to confiscation and forfeiture. In some cases, new legislation only came about following the issuance of the FATF-NCCT list. That said, since the inception of CALP in 1999, the legal/judicial advisor has been working consistently with those jurisdictions covered by the CALP to provide specific advice and guidance on such legislation in order to ensure that all countries meet, and in some case exceed, international standards. More recently, as might be expected, this has also included laws that address the financing of terrorism.

Perhaps I should also mention at this point that many of these smaller jurisdictions do not always have a rule of law to cover circumstances which are clearly against the law in other countries. One instance that I am aware of involves child pornography where it is believed that a computer server containing such material is located in an offshore jurisdiction, and is being operated through the identity of an international business corporation. Despite a willingness to assist an international investigation on the part of the government in that jurisdiction, there is no legal power to require the production of records or otherwise take action, because no offense is committed under their existing legislation.

I have highlighted some practical issues because I strongly believe that they are fundamental to the way in which the criminal law and the rule of law are applied, and yet are often overlooked. The practical steps to be taken, the procedures to be followed, how it all fits together, and who does what are all issues that can easily be overlooked by those responsible for implementing new legislation, perhaps not only in the Caribbean region, but elsewhere as well.

Working in the Caribbean is reminiscent of how things used to be in the United Kingdom in the early days of my police career, more years ago than I care to remember. The majority of cases are prosecuted by police officers — usually corporals or sergeants. In fact, it is reported that over ninety percent of all drug trafficking cases are prosecuted by the police. The state prosecutor, the Director of Public Prosecutions (DPP), often will only have a limited number of staff to support him, and therefore will only appear to prosecute murders and other very serious crimes. Sometimes so-called special prosecutors have been appointed to deal with confiscation and drug-related issues, and ease the burden on the DPP.

The judiciary and the prosecutors may attend formal presentations that provide a general overview of the law, but they are not told how to apply the law, what procedures are to be followed, what difficulties law enforcement officers face in meeting the requirements, or how the law is intended to work in practice. Only when faced with a live situation are they required to confront the problem, and then it is often a case of making an uninformed or misguided decision on the spot.

I have no doubt that regular meetings between the judiciary, prosecutors, administrators, law enforcement officers, and court staff would result not only in much greater understanding of the formal practice and procedures to be followed, but would also serve to highlight and address any areas of difficulty faced by any one particular section. Such collaboration has not happened frequently enough in my opinion, but perhaps the situation is now slowly changing.

Until now, there have been relatively few cases in the Caribbean region where major criminals or drug traffickers have had their assets seized and their wealth taken away. For the majority of Caribbean countries, this whole concept is still in its relative infancy, and those trained officers are striving to apply either poor existing legislation or are grappling with very new legislation. I have no doubt that many success stories will materialize in due time. The political will is there, and the degree of effort being applied is considerable.

As I mentioned earlier, there is also pressure being applied from within some jurisdictions to move forward at an even greater pace to embrace the concept of civil forfeiture, based on the experience of the United Kingdom. This experience is highlighted in the report entitled “Recovering the Proceeds of Crime,” issued by the Performance Innovation Unit of the Cabinet Office in June 2000.² The report which led directly to the introduction of the Proceeds of Crime Act 2002, and the establishment of

2. Copies of the report available from the Cabinet Office Performance & Innovation Unit, telephone +44-20-7270-5286/6950. E-mail: piu@cabinet-office.x.gsi.gov.uk.

a U.K. national asset recovery agency. For anyone who has a specific interest in this subject, I would be happy to provide a copy of a Powerpoint presentation for his or her information.