

**THE JUDICIAL RESPONSE TO THE WORLDWIDE
EFFORTS AGAINST OFFICIAL CORRUPTION –**

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**THE CAYMAN ISLANDS PERSPECTIVE ON THE
RECOVERY OF THE PROCEEDS OF CORRUPTION**

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The Cayman Islands are one of the few remaining British Overseas Territories. With a resident population of only some 50,000 people, but made up of some 100 different nationalities, it has come to claim its place in the world as a rather cosmopolitan little Caribbean Island State where a disproportionately large share of the world's financial transactions take place. Indeed, the Regulators of the Finance Industry there report that 43 of the worlds top 50 international banks do business there with assets on deposits exceeding USD 1 trillion; that there are more than 8,000 registered investment funds; more than 740 captive insurance companies with assets totaling more than USD 87 billion; that there are more than 80,000 active registered companies and so on and so on.

Being three beach-fringed Islands in the middle of the Caribbean Sea there is also, as one would expect, a fair bit of tourism going on. Indeed tourism accounts for about 50 percent of GDP.

But the focus of the topic at hand will be the Finance Industry, the other main plinth of the Islands economy and which Hollywood has relentlessly sought to portray as the archetypal haven for tax dodgers and money launderers.

I trust that by the end of this talk, you will be able to judge for yourselves, the difference between fact and fiction.

I speak to you, therefore, from the Cayman Islands perspective which, although not unique, has special lessons to share and impart from its experiences with international co-operation against economic crime.

Of all the economic crimes, none can be more pernicious and devastating than official corruption. Once stimulated and indulged, the acquisitive instincts of corruption seem to know no bounds. The world has witnessed

the staggeringly cases in which tens, hundreds of millions and even billions of dollars have been mercilessly pillaged from the public coffers of developing countries, at times resulting in the devastation of their economies. In such cases, the need for international co-operation becomes paramount essential as it is to the quest to restore the very livelihood of nations and the economic survival of their citizens.

Especially, in today's globalised economy - in which money can so easily move across international boundaries and legal systems - the crime of official corruption also gives new meaning to the duty to co-operate. More than in any other context, this duty is underscored by the need for urgency.

Indeed, where the recovery of a nation's life blood can depend upon urgent international co-operation, tardiness can itself become the enemy. It is most especially in this context of its obligation to give assistance in the fight against serious international crime, that the Cayman Islands is resolute in its policy that confidentiality - so-called "bank secrecy" - must not be allowed to stand in the way.

Accordingly, there are a number of measures by which assistance can be obtained from the Cayman Islands in respect of the investigation and prosecution of economic crimes, including official corruption. These measures are however not at the moment regarded by the Cayman Islands Government as sufficiently comprehensive for the granting of assistance. The intention of the Cayman Government is therefore to enhance the existing regime by the immediate introduction of new domestic legislation to give effect to the 2002 *U.N. Convention against Corruption* and to the 1997 *OECD Convention*.¹ To both of these Conventions, the United Kingdom, which is responsible for the international relations of the Cayman Islands, subscribes and has extended them to the Islands.

This means that all Convention States will shortly be able to send requests for assistance pursuant to the Conventions directly to the Cayman Islands.²

As to the present state of the law, because official corruption at the domestic level has long been criminalised in the Cayman Islands by the adoption there of United Kingdom legislation,³ a significant range of legal assistance can already be given in response to requests from any country in the world, based on principles of comity, reciprocity and dual criminality.

I will not take your time now over a detailed discussion of the different avenues of assistance.

Even while we await the Conventions being incorporated into domestic law, there are already six such avenues of assistance. They include Judicial Letters of Requests (or “Letters Rogatory” as some of you may know them) which are available to the Courts of every country in the world with which Her Majesty’s Government maintains diplomatic relations. Other avenues are based on legislation and/or treaty as in the case of our Mutual Legal Assistance Treaty with the United States or as in the case of the extradition treaties. In the event you may wish more detail on the different existing measures, they are described in a schedule to this paper which is available.

But what I think may be of more immediate interest to you on this occasion, would be an examination of some of the actual cases in which assistance was given to other countries and which will, in the process of examination, also help to explain the modalities and procedures for the granting of assistance.

Time is always of the essence of an international request for the restraint or forfeiture of the proceeds of crime. As already mentioned, the response must be quick and urgent. In the age of electronic transfers in which we live, the slightest delay can result in the flight of the proceeds and further obfuscation of the money trail.

The Cayman Islands experience has shown that a willingness to co-operate and to innovate in appropriate circumstances to meet the justice of the case, can secure a just outcome; provided only that the requesting Court or State can substantiate the claim.

This requirement will of course involve, in the case of a formal request, a full description of the circumstances of the crime, of the law(s) under which it is criminalised (to allow for an assessment whether the conduct would be criminal if committed within the Cayman Islands) and the reasons for believing that there is a connection with the Cayman Islands (eg: that there is relevant information to be obtained from within the Cayman Islands or that there are assets to be restrained within a bank there and which can be ultimately confiscated).

There are however, as yet no provisions in Cayman Statute Law for temporary or provisional restraint orders. At the moment, a restraint order

can be obtained only if it is represented to the Cayman Court that the intention is ultimately not only to restrain but also to forfeit the proceeds within the Cayman Islands. Such restraint orders are therefore made and are intended to remain in place until a final order for forfeiture is obtained. The absence of statutory power to make temporary or provisional restraint orders is a specific matter that will need to be addressed to give full effect to the anti-Corruption Conventions. In this regard a more elaborate statutory regime for the restraint and ultimate confiscation and for future of the proceeds of crime, based upon the U. K. Proceeds of Crime Act is soon to be adopted.⁴ The Conventions require member States to be able to restrain proceeds of corruption temporarily to enable repatriation to the State from which they have been defrauded. At present, an order of restraint will only be made where it is shown that there are already proceedings instituted which will lead to an outright confiscation order or that such proceedings will be instituted in the requesting State within 21 days of the restraint being obtained.

There however, are already exceptions to these requirements. For instance, where the Cayman authorities, out of concern that the local anti-money laundering laws are being violated, commence their own proceedings (even if based on information obtained from a foreign authority or in a foreign request), they may obtain a restraint order on the basis that they intend to get a forfeiture order from the Cayman Grand Court. Later, however, such an order may be discharged to allow assets to be repatriated to other countries. This has been a make-shift way of getting temporary restraint orders in appropriate circumstances so as to be able to give assistance for repatriation of funds to foreign countries even when no final order of forfeiture had yet been obtained. Or, as other cases will show, the same result has been achieved where a foreign Government starts its own civil action in the Cayman Islands against the holder of a bank account (or other Cayman asset) and gets a restraint order indefinitely until the civil case is finalised in the form of a judgment debt for the stolen amounts.

Moreover, the existing statutory provisions certainly allow for the enforcement of final orders of forfeiture already obtained from foreign courts.⁵ Where the request is for the enforcement of such a foreign forfeiture order, there will need to be an affidavit confirming that it is a final order, in the sense that no further steps are necessary to be taken in the requesting State to make it conclusive.

The following examples I think will be illustrative of the foregoing principles and of the mechanics of enforcement which exist in practice:

In the matter of Re Codelco, an early warning from the Cayman Financial Investigative Unit (CAYFIN) was given to a local bank, putting it on notice that it may hold accounts which contain the proceeds of official corruption. This was corruption on a large scale which had been carried out against the State-owned copper producing enterprise of Chile (i.e: Codelco). The bank decided not to allow any transactions on the account. In responding in that way the bank's primary early concern was to avoid its own potential civil liability to the Chilean Government as a constructive trustee;⁶ not simply to withhold the money so that it could be recovered. But its stance nonetheless allowed the Chilean Government time to get discovery orders against the bank for disclosure of information about the accounts and ultimately to freeze the accounts and recover the proceeds, part of USD 180 million which had been defrauded.⁷ This resulted also in information being disclosed for use in proceedings in other jurisdictions to recover other assets and to be used by the **U.S. Commodity Futures Trading Commission** in proceedings taken against some of the co-conspirators. These were the U.S. based actors who were employees of a large futures brokerage firm regulated by the **CFTC**. The United States based individuals had been acting in concert with employees of the Chilean entity.

This case provides an illustration timely response leading to the early restraint of assets.

Once a judgment is finally obtained against the perpetrator, there are a number of ways in which such a judgment might also be enforced within the Cayman Islands, depending, among other things, on the nature of the action which was taken overseas and which led to the foreign judgment being obtained.

In certain circumstances not only judgments in *personam*, but also judgments *in rem* (ie: judgments obtained directly against the funds or assets to be recovered) can also be enforced.

Some actual cases which I will now discuss will illustrate the law and procedure, including that related to *in rem* judgments.

In the *Codelco* matter just mentioned, the plaintiff was the Chilean state-owned copper-mining, - refining and - selling company, which also traded in copper futures. A Mr. Davilla, the head of its futures trading department, was investigated in Chile for improper trading activities. During the investigation, it was discovered that he had received very large sums of money by way of bribes in respect of trading which he had carried on contrary to Codelco's interest and which also involved employees of two of the world's largest metals brokerage firms, those co-conspirators based in the United States. Davilla had accepted millions of dollars of bribes from them for having entered Codelco into metals futures contracts which were very favourable to the co-conspirators, but highly unfavourable to Codelco.

When prosecuted in Chile, Davilla was convicted of fraud, imprisoned and ordered to pay damages to Codelco.

Codelco brought proceedings in a number of jurisdictions including the Cayman Islands, to recover the damages owed to it – the amount of USD 180 million already mentioned.

In the Cayman proceedings, Codelco sought and obtained a declaration that moneys frozen in bank accounts within the Cayman Islands (as the result of the proceedings described earlier) and which were connected to Davilla, were actually held by him on trust for it. Under the Cayman Islands principles of unjust enrichment (based on English principles of Equity), Davilla could not be permitted to profit from his wrongdoing by receiving bribes or other unlawful payments. In Equity, Davilla had not only immediately become a debtor to Codelco (his employer to whom he owed a fiduciary duty) for the sums received; but also a constructive trustee of the unlawful payments or any property acquired with them. Davilla was therefore found by the Cayman Court to be liable to account to Codelco for all sums received.⁸ Some 40 million dollars was recorded and repatriated to Chile.

A different approach was taken, but with an equally successful outcome, by the **Kuwaiti Investment Authority** ("the K.I.A") in its worldwide quest to recover a judgment worth USD 800 million from its former director. The former director, a Sheik and member of the Kuwaiti Royal Family, had been put in charge of the K.I.A. - established circa 1990 - with the mission of diversifying Kuwaiti investments under the then looming threat of Iraqi

invasion. In gross breach of his duty of faith to his country and people, the Sheik set about, with the assistance of others, to defraud the K.I.A.

Some of the hundreds of millions of dollars defrauded made its way into trusts in the Channel Islands, the Bahamas, and the Cayman Islands and into properties brought in England.

Early restraint orders were obtained from the Cayman Court freezing the trust assets in Cayman. Orders were also made requiring early disclosure by the Cayman Trustee of information about the trusts.

Eventually, the K.I.A. succeeded in its main action brought in England (the K.I.A. was based in London and the fraud was primarily committed there). That judgment was obtained in the amount of USD 800 million and the K.I.A. sought its enforcement. It elected to seek early recourse in the Bahamas where the Sheik had acquired domicile, and there obtained an order of the Bahamian Court adjudging him to be a bankrupt. This was on the basis that the judgment liability of USD 800 million exceeded his known assets.

The K.I.A. next sought and obtained orders from the Grand Court of the Cayman Islands in recognition and enforcement of the Bahamian bankruptcy judgment.⁹ The Trusts which had been maintained by him in the Cayman Islands were made to surrender their assets – more than \$30 million – in partial satisfaction of the English judgment debt for which he had made bankrupt.

*In Canadian Arab Financial Corporation (trading as Kilderkin Investments Grand Cayman) and others v Player*¹⁰, the plaintiffs were trust companies incorporated in Ontario which had been the victims of a series of speculative property deals. They had been persuaded by the defendants to finance those deals. The plaintiffs instituted proceedings in the Supreme Court of Ontario to recover their investment when it appeared that the property deals had become merely illusory. A Receiver was appointed by the Ontario Court over one of the defendant companies, which had apparently made substantial deposits into banks into the Cayman Islands.

The plaintiff subsequently applied to the Cayman Court for the recognition and enforcement in the Cayman Islands of the appointment of the Receiver and this was granted thereby enabling the Receiver to recover the monies

deposited with the Cayman Islands banks. This case establishes the basis upon which receivers appointed by foreign courts will be recognized by the Cayman courts. The same principles would apply to foreign receivers appointed at the instance of a foreign Government seeking to recover the proceeds of corruption.

As a further illustration of the manner in which the action to be taken to recover the proceeds of corruption can depend upon the nature of the cause and remedy to be enforced, a recent case involving ships registered in the **Cayman Islands' Registry of Ships** may also be instructive.

These were ships registered in the names of companies which were in turn owned or controlled by persons alleged to be implicated in the largest fraud in Turkish banking history. In its efforts to recover the assets of out of the banks, the Turkish Government brought an action in the Cayman Islands to prevent any transactions involving the ships being recorded on the Registry - in effect to restrain any dealings whatsoever with the ships; notwithstanding that the ships had been at all material times, in Turkish territorial waters.

Orders temporarily restraining all dealings on the Register, have been granted and are still in place.¹¹ These orders (and ultimately the final de-registration of the ships in Cayman) allowed the Turkish government to auction the ships and recover approximately 40 million dollars of the bank's depositories, money which the Turkish Government had to underwrite and had already paid to depositors.

Vladimiro Montesinos Tores was the long-standing head of Peru's National Intelligence Service (SIN) under President Alberto Fujimoro. For many years, he had single-handedly institutionalized official corruption in Peru, by the acceptance and issuance of bribes for just about any important public function connected to his office. His functions included the acquisition of armament for his country. He maintained control of his operatives whom he bribed by the tape recordings he kept of them accepting their bribes.

By an ironic twist of fate, in 2000 secret videos were televised in Peru which showed him bribing a politician and the ensuing scandal caused Montesinos to flee the country and hastened the resignation of Fujimoro. Subsequent investigations revealed that Montesinos had been at the centre of a vast web of illegal activities; including corruption, drug trafficking, gun-running and embezzlement of his country's money; for which he has been standing trial

after trial. On some of those trials, he has already been sentenced to many years of imprisonment.

In one transaction alone - involving the acquisition of three Russian made fighter jets - in return for “kickbacks” he had caused the Peruvian Government to pay USD300 million, while the actual cost is said to have been less than USD 100 million.

The investigative trail of his corrupt activities led to many bank accounts in several different countries.

Switzerland is reported to have repatriated more than USD50 million to Peru.

There also proved to be a Cayman connection. The Courts of the Cayman Islands got a request from the Peruvian Court in respect of bank accounts in Cayman. The Peruvian Letter of Request simply asked the Cayman Court to “lift the bank financial and stock market secrecy procedures, as well as to execute preventive attachment in the form of a restraining order” on all or any bank accounts held in the Cayman Islands in the names of Vladimiro Montesinos-Torres or in the name of several other related parties.

With the assistance of the CAYFIN, accounts were identified at two banks within the Cayman Islands and were restrained. Without the need for further proceedings some USD44 million were repatriated to Peru. This was achieved without a trial taking place in respect of the ownership of the money because the persons named on these accounts, all related to Montesinos, saw the futility of their objection and did not resist the making of the repatriation orders.

Their “co-operativeness” was ensured because in an urgent response to the Judicial Request from Peru, the restraint order was obtained from the Cayman Court, freezing all bank accounts which could be identified. This afforded the Peruvian Government the time it needed to prepare and present its case for the ultimate declaration of its ownership over those accounts as containing the proceeds of the crime.

Montesinos was a fugitive at the time of the request, and so it was unlikely that there would have been a conviction and a civil trial to recover the proceeds, based on his proven guilt. However, because the accounts had

been frozen and would likely have remained so indefinitely while he was at large; others, including his wife, whose names were linked to the accounts, did not oppose the repatriation of the funds to Peru.

Thus, in effect, what the Peruvian Government sought and obtained, was an order which enforced the Preventive Seizure Warrant which had been issued by the Peruvian Court in the same matter.

As already mentioned above for further discussion, there have been a number of cases before the Courts of the Cayman Islands which have resulted in the direct enforcement of warrants in rem issued by the United States Courts against the proceeds of drug trafficking. The same principles would apply to in rem judgments for the proceeds of corruption. These proven in rem cases were in proceedings taken by the Cayman Courts, in furtherance of requests from the United States under the MLAT with that country.

- One such was the case of Jose Cruz Londono. The MLAT request originally sought the restraint of Cayman Islands bank accounts in the name of Cruz Londono, who at the time was the head of an infamous Columbian cartel. The basis of the request was that there were intended to be criminal proceedings instituted against him in the United States for drug trafficking, in which a confiscation order over the proceeds (some potentially held in the Cayman bank accounts) was likely to be made. In the event, no criminal proceedings were instituted against him since he was believed to be in Columbia, which had no extradition arrangement with the United States. In May 1994, the U.S. Government obtained instead an external confiscation order from the New York Court, in which the defendant was not Londono himself, but a defendant in rem namely: “all funds on deposit in any accounts maintained by persons known to be linked to (Londono) or in his name”. In this in rem forfeiture order, funds were stipulated as located in, among other places, London and Grand Cayman.

Pursuant to similar statutory regimes in both places,¹² the English and Cayman Islands courts made orders restraining the respective accounts and ultimately enforcing the in rem order of the New York Court by the forfeiture of the accounts.

- ***The Londono*** case was subsequently followed and applied in ***Re Leon and Four others***¹³ and in still subsequent cases to the same effect, resulting in the forfeiture in rem of the proceeds of drug trafficking.

In In Re Leon the persons involved were Columbian businessmen who had received US dollars illegally through the Columbian pesos black market currency exchange in circumstances which revealed that the money also represented the proceeds of drug-trafficking operations in the United States and Europe.

Some of these businessmen including Mr. Leon had opened bank accounts in the Cayman Islands into which large amounts of the proceeds were deposited.

Although the account holders were not themselves involved in the drug trafficking, the U.S. Department of Justice had obtained a warrant of arrest in rem against the proceeds in their accounts and the Cayman authorities were requested to “arrest, seize and restrain the defendant property” to prevent its dissipation pending criminal proceedings in the United States against certain named drug-traffickers. The property was described as “all funds in all foreign accounts representing proceeds of narcotic drugs and money laundering” and the relevant Cayman accounts and the drug money in each were listed in the warrant. The warrant was sent for enforcement under a request through the U.S. - Cayman MLAT.

The Cayman Court, in granting the restraint order, reaffirmed the jurisdiction to enforce the in rem warrant.

Not all foreign requests for orders for the recovery of the alleged proceeds of crime - and official corruption in particular - have however, been successful.

In ***In the Matter of Falcone***¹⁴ there were letters of requests from the French Government and from the Swiss Government. These were based on allegations against Mr. Falcone as having corruptly obtained arms contracts from the Angolan Government and as having paid bribes to Angolan officials. These requests were refused.

One reason for the refusal was legal and jurisdictional: it was that there were no proceedings instituted in France against Mr. Falcone which could lead to his conviction and (given the state of the law at that time) the Cayman Court could only grant a restrain order under the statute (the PCCL)

where such proceedings had been instituted (or would have been instituted within 21 days) and which proceedings could lead to a confiscation order.

It seems that, unlike under the Misuse of Drugs regime, the Court ***In Falcone*** did not see the PCCL statute as enabling a restraint *in rem* (as in *In re Leon* above) and it is not clear whether or not that point was fully argued.

Given that decision, the outcome in the *Montesinos* matter, which involved the proceeds of corruption as well as fraud - must all the more be regarded as exceptional. This has been recognized by the judiciary and it is at least in response to their recommendations, that there is now legislation which clearly spells out the Court's jurisdiction to enforce foreign *in rem* warrants in all matters involving the proceeds of all serious crimes.

The other reason for the refusal of assistance in the *Falcone* matter and which involved an earlier letter of request of the Swiss Investigating Magistrate, seeking evidentiary assistance; was the failure to satisfy the requirements of the legislation that regulates the giving into evidence of confidential information (here in foreign proceedings) in the absence of a treaty. These are to the effect, among other things, that there must already be criminal proceedings instituted in a foreign Court.¹⁵ No such proceedings had as yet been instituted in Switzerland.

CONCLUSIONS

Having described these cases for you, what then is the message that I can properly leave with you from the Cayman Islands' experience?

Certainly, one lesson underscores the need for urgency which was first mentioned – it is that time must always be regarded as being of the essence if the Courts are to fulfill their duty of comity to assist other countries in their quest to recover the proceeds of official corruption.

While the due processes of the law – especially those created to ensure a fair trial and to protect the interests of innocent third parties – must be observed; experience has shown that the same processes of law can be manipulated and abused to the advantage of the sophisticated criminal.

It is therefore difficult to over-emphasize the importance of an urgent response to a request for assistance. Equally as with the proceeds of drug

trafficking, the funding intended for terrorist activities and the proceeds of large scale fraud; there is a strong case to be made for enabling the recovery of the proceeds of corruption by means of *in rem* civil procedures - procedures which do not depend upon first obtaining a criminal conviction against the wrong-doer. The typical modus operandi of corrupt officials is to flee from their countries after having stashed away their ill-gotten gains. Recovery of the proceeds - the resources which rightfully belong to their countries, should therefore not have to depend on them being first caught and convicted.

Finally, and perhaps of most immediate interest for those of us who are judges here - and indeed for the practitioners who need to be aware of this - is the crucial role that the Courts have to play in the exercise of their common law and statutory jurisdiction to meet their obligations of comity in this very important area of international co-operation.

The Commonwealth Courts have long had the jurisdiction and obligation to grant Letters of Request from the Courts of foreign States which enjoy relationships of comity with our own States.

So, even in the absence of the International Anti-Corruption Conventions, the Courts have not been powerless to act. As the Cayman Islands experience has shown, a lot of good can be achieved by the use of the Court's inherent powers for the restraint of the proceeds of corruption, for the disclosure of information about them and even perhaps, for their repatriation to the rightful ownership to the treasuries of the countries from which they are stolen.

These are forms of assistance that as judges we should never hesitate to give in appropriate cases.

Hon. Anthony Smellie
Chief Justice of the Cayman Islands

August 24 2007

¹ Full title – “The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Transaction”.

² The bill for law entitled “ The Anti-Corruption Law, 2008 is now before the Legislative Assembly (since the presentation of this paper, the bill was passed into Law on 18th August 2008. See www.gazette.gov.ky

³ See Sections 88-91 of the **Penal Code** which respectively provide:
Whoever –

88. (a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly solicits, receives or obtains, or agrees or attempt to receive or retain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or
- (b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of such act or omission on the part of the person so employed is guilty of an offence and liable to imprisonment for three years
89. Whoever being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any award beyond his proper pay and emoluments, or any promise of such reward is guilty of an offence and liable to imprisonment for three years.
90. Whoever being employed in the public service, receives any property or benefit of any kind for himself, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom that person is interested, in any transaction then pending or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service, is guilty of an offence and liable to imprisonment for six months.
91. Whoever being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly, a private interest in such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, is guilty of an offence and liable to imprisonment for one year.

⁴ Since the presentation of this paper, the Proceeds of Crime Law 2008 (law 10 of 2008) was passed on 21 August, 2008. See: www.gazette.gov.ky . The law includes in sections 44 and 45 the power of the Court to make interim restraint orders without an express representation that confiscation proceedings will be brought.

⁵ Section 48 of the Misuse of Drugs Law (1999 Revision) and section 188 of the Proceeds of Crime Law, 2008. Applications are made on behalf of the foreign Government by the Attorney General.

⁶ Under Cayman law, a bank put on notice that it holds the proceeds of a fraud, becomes liable as constructive trustee to account to the rightful owner for those proceeds. A public official who accepts corrupt payments in breach of his fiduciary duties is also deemed to hold those payments on behalf of the Government that employs him (See *In Re Codelco* at endnote 16 below).

⁷ *Deutsch-Südamerikanische Bank A.G. v Corporacion Nacional Del Cobre de Chile 1996 CILR 1* and *In Re Codelco 1999 CILR 42*.

⁸ *Codelco v Interglobal Inc. et al* 2002 CILR 298.

⁹ *In the matter of Sh. Fahad Al Sabah* 2002 CILR 148 upheld on appeal to the Privy Council 2004-200 CILR 373.

¹⁰ 1984 CILR 63.

¹¹ Grand Court Cause 478 of 2005; 2006 CILR 351. – *T.M.S.F v Wisteria Limited and others*. Since the presentation of this paper the Turkish Government obtained full possession of the ships by judgment given on 12.05.2008.

¹² See also the English proceedings at S.L. In (*Restraint Order: External Confiscation Order*) [1996] QB 272; [1995] 4 All E.R. 159; or sub nom. *Re Londono* [1995] 139 Sol. Jo. (L.B.) 166.

¹³ See *In the matter of Leon and Four others* 2000 CILR 336. Consideration is being given to adopting legislation based on the U.K. Proceeds of Criminal Conduct Act 2002 to allow a broader basis for in rem proceedings and orders. It should be noted however, that the U.K. Act is considered not to allow temporary restraint orders pending the enforcement of foreign in rem judgments, only for their immediate enforcement – a shortcoming which modern legislation should seek to avoid. (This shortcoming was avoided in the Proceeds of Crime Law (law 10 of 2008) – discussed above).

¹⁴ 2003 CILR Note 30.

¹⁵ The Confidential Relationships (Preservation) Law, Section 4.