

# PRESENTATION OF FINANCIAL CRIME CASE CHALLENGES IN SOUTH AFRICA



**ON A JOURNEY TO A SAFER SOUTH AFRICA**

Creating a safe and secure, crime free environment, that is conducive for social and economic stability, supporting a better life for all.

#PatrioticandSelflessService



# FINANCIAL CRIMES INTRODUCTION

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- Financial crimes effects every South African, directly or indirectly, by robbing individuals resources or draining the funds available for the country's development.
- Financial crimes in South Africa is on the rise, undermining gains in economic growth and negatively effecting development



# WHAT IS FINANCIAL CRIME?



- Financial crime is generally defined as any activity that involves fraudulent or dishonest behaviour for the purposes of personal financial gain, although it may also include the illegal conversion of property ownership. Financial crime may be committed by individuals or groups and involve the following activities;
- Money laundering
- Terrorism financing
- Fraud
- Tax evasion
- Embezzlement
- Forgery
- Counterfeiting
- Identity theft



# Background



- The South African Police Service (SAPS) established an independent division under its wings the (DPCI) Directorate for Priority Crime Investigations. Investigating national priority crimes (Serious organised crime, Serious Commercial crime as well as Serious Corruption Crimes).
- The mandate of the DPCI is to prevent, combat and investigate National priority offences focussing on: Serious Organised Crime; Serious Commercial Crime and Serious Corruption



# Background



- **DPCI: Organisational Structure**

Three (3) Operational components:

- Serious Organised Crime Investigation (SOCI)
- Serious Commercial Crime Investigation (SCCI)
- Serious Corruption Investigation (SCI)

Five (5) Operational support components:

- **Priority Crime Specialised Investigation (PCISI)**
- Priority Crime Management Centre (PCMC)
- Digital Forensic Investigation (DFI)
- Integrity Management Unit (IMU)
- Corporate Support (CS)



# Background



- **The component Priority Crime Specialised Investigation (PCSI) were established to support the operational environment**
  - Conduct asset based investigations and to identify possible proceeds of crime in priority offences, thereby contributing to the confiscation of such property.
  - Conduct successful financial investigations by gathering and analysing evidence to support money laundering charges, including lifestyle audits and the investigation of suspicious transaction reports



# Background



- Financial Investigator Dispensation in South Africa focussed on asset tracing and financial profiling
- South Africa make use of the legislative framework that are in place for the prosecution of money laundering or the proceeds of illegal activities. Criminals continue to enjoy these proceeds even if they were found guilty for the offence committed, since they are not prosecuted for the proceeds derived from the crime committed.

# BACKGROUND



- The following legislation enacted by the government where specific financial investigations are required;
- ***Prevention of Organised Crime Act (POCA), no. 121 of 1998***, was voted into law to assist in the fight against organised crime, money laundering, criminal gang activities and racketeering.
- The POCA makes provision for the following two methods of seizing the assets or freezing the assets until the court finally decides whether the assets should be forfeited;
  - **Chapter 5** – Criminal forfeiture – based on UK System only after conviction – provides for the criminal forfeiture of the proceeds of crime. It allows proceeds to be confiscated through a civil action after the accused has been convicted.
  - **Chapter 6** – Civil forfeiture – based on UK System – provides for civil forfeiture of assets. Civil forfeiture states that the burden of proof lies on the state that a financial crime was committed. The balance of probabilities of civil forfeiture can be used when there is enough evidence to prove guilt beyond reasonable doubt.



# What is financial investigations?



- Financial investigations are not much different to criminal investigation in its approach and method.
- Using the same investigative skills, a financial investigator seeks to trace the finances of the criminal and to discover how much they made from their enterprises.
- The method used to link any activities, with the illegal proceeds of those activities.
- Normal investigation techniques e.g observation, surveillance, analysis, interview and evidence collection all apply to a financial investigation.



# FINANCIAL INVESTIGATIONS

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- Key to any successful financial investigation is a strong relationship with financial services providers e.g banks, finance houses, stock exchange, etc.
- A good understanding how these financial service provider's operate internally and how they operate with other corresponding financial systems in other jurisdictions.

# How do we follow the money?



## ➤ Financial profile

### ○ How do we do this?

#### ▪ We start of with what we call “Desktop Searches”

-open source –e.g. Google, Home Affairs, social media

Use information acquired from the victims of the offences, intelligence sources, surveillance, confidential sources and informers.

Closed source – vehicle registration Database, Company Registration office, deeds Office, Family trust data base , Movement Control, Short and long term life and property insurance companies, credit Bureau (all major bureau’s) and the data from a marketing company.

- Conduct checks with Financial intelligence centre, receiver of Revenue and central Bank
- Do informal checks with major banks to see if we can identify accounts
- This we call a BAC (Basic Asset Check) – no invasive investigations and no subpoenas needed.



# Following the money (cont.)



- Detailed Financial Investigation; ( locate, collect, collate, interrogate, analyse, interpret and present data)
- Commences after the Basic Asset Check (BAC)
  - We have established a asset base
  - We have identified proceeds or assets representing benefit
  - Now, we subpoena records needed for court purposes
  - Physically trace and locate assets
  - Analyse financial records to determine lifestyle and also to link proceeds with unlawful activity
  - Draft a Financial investigation affidavit setting out our findings
  - The affidavit should contain an analysis of the information;
    - 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 e.g related criminal activities



# Sources of information

- Banks: bank account records/safety deposit boxes/accounts held (SAPS must use section 205 subpoena)
- Search for additional dockets to prove related criminal activities / criminal lifestyle/ trace other assets/ compare allegations of employment/ sources of income;
- Obtain full criminal profile
- Department of Home affairs; eg to check marital status/ identify family members who may be investigated as holding assets such as children



# Sources of information

- Department of transport (eNaTIS) to check for vehicles
- Financial Intelligence centre (FIC): obtaining intelligence regarding details of accounts / bank records / suspicious transactions reports
- SARS including customs; to ascertain what income was declared and compared 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 or any insurance policies
- SA Banking Risk Identification Centre SABRIC: for intelligence regarding accounts held
- Obtain registration details of vehicles found on premises at time of search and arrest.
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# Sources of information

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- Obtain names and identity numbers of any persons including children, parents, wives, girlfriends/boyfriends and other friends found on the property at time of search and arrest
- Obtain documentation at premises that show possible assets eg invoices for repair of vehicles, insurance policy documents
- Dumpster diving or garbage searches



# CHALLENGES

- South Africa's law enforcement agencies, including the DPCI do not have the skills, manpower or resources to proactively investigate money laundering or terrorism financing. The lack of staff and poor skills are undermining the work of South Africa's priority crime fighting units.
- Not enough financial investigators to do financial investigations and nothing else.
- Experienced investigators are poached by banks and other departments
- Over the past few years South Africa's economic growth has been deteriorating substantially due to "state capture" , Covid 19 fraud just to name a few. The involvement of high ranking government officials and politicians make it difficult to investigate complex transactions between various fronting companies – tracing of money is difficult and time consuming.
- Taking in account the financial aspect of illicit drug trafficking and properties crimes, criminals have the financial muscle to bribe the law enforcement and prosecutorial officials.



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**Thank you**