

UPDATE

Latest Guernsey case concerning a 'Suspicious Activity Report' elaborates on the 'proceeds of criminal conduct' requirement

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A note on *Richard Tucker Loero v Credit Suisse Trust Limited* [2024] GRC075.

The Royal Court recently found that assets held in a foreign law governed trust administered locally by a Guernsey trustee were not the proceeds of crime and ordered that the trustee deal with the trust funds as directed by its settlor and beneficiary.

Introduction

In Guernsey, it is an offence for a business to deal with property it knows or suspects to represent the proceeds of criminal conduct, unless it has obtained Guernsey's Financial Intelligence Unit (FIU)'s prior consent to any such dealings. Without such consent from the FIU, the business is unable to deal with the property without the risk of committing a criminal offence. Due to the risk of 'tipping off', the business is also often unable to disclose the reasons why it cannot deal with the property to its customer.

These circumstances may give rise to a 'private law action' being brought by the customer against the business. In the action, the customer requests an order from the court declaring that the property does not constitute the proceeds of crime. In *Richard Tucker Loero v Credit Suisse Trust Limited* [2024] GRC075, Deputy Bailiff Roland granted the customer's request for such a declaration and found that the business should deal with the property as directed by the customer.

We recently wrote about similar judgments in our Updates [Guernsey court found monies in bank account not the proceeds of crime](#) dated 19 April 2023, [Suspicious activity reports and 'no consent' – recent Guernsey court decision](#) dated 26 July 2023, and [Recent Guernsey case sheds light on the role of a business holding assets subject to a 'Suspicious Activity Report'](#) dated 22 August 2024.

Background

Richard Tucker Loero (**Mr Loero**) was the settlor and beneficiary of a revocable, discretionary, New Zealand law governed trust (the **Trust**) that was established in July 2010. Credit Suisse Trust Limited (**CST**) replaced its New Zealand office as trustee of the Trust in June 2017. In May 2021, Mr Loero formally requested that the Trust be revoked in its entirety (**Mr Loero's Request**).

Following Mr Loero's Request, CST and their office in Switzerland apparently made different representations to Mr Loero as to what is required from him for the purposes of attending to the revocation. CST asked Mr Loero for additional due diligence information, while the Switzerland office indicated to Mr Loera that if he let them have the revocation request, he would not be required to provide any additional due diligence information. There was contemporaneous correspondence confirming that Mr Loera had asked his staff to prepare the necessary due diligence information and provide it to CST, but since he was informed it was not needed, this was not completed.

As a result of what the Court considered to be 'poor communication' between CST and their Switzerland office, Mr Loera did not provide the due diligence information to CST and the money laundering reporting officer (**MLRO**) of CST consequently in August 2021 filed a 'suspicious activity report' (**SAR**) with the FIU. The SAR pointed out that the source of wealth and funds information of Mr Loero were incomplete and

requests for additional due diligence had been refused. While it was noted in the SAR that it may simply be that Mr Loero 'can't be bothered' to provide further information, following Mr Loero's Request, CST's MLRO maintained that without the additional information it could not be certain that the assets held on the trust fund were not the proceeds of crime. It was also noted in the SAR that Mr Loero swiftly progressed from being a teaching assistant to director of a university with significant shareholding in the high-risk jurisdiction of Venezuela (the **University**), which raised some questions about his source of wealth and funds.

In October 2021, the FIU responded to the SAR and confirmed that CST was not permitted to release the assets held on the trust fund of the Trusts.

Subsequently, Mr Loero provided to CST additional information and reports which CST then forwarded to the FIU for consideration. Notwithstanding, the FIU did not provide consent to CST to release the assets held in the Trust and CST accordingly maintained its suspicion that the assets held in the Trust were the proceeds of crime.

A private law action was then commenced by Mr Loero in October 2022.

Proceedings

As Mr Loero and CST had agreed that CST's MLRO had the requisite subjective suspicion that the assets held in the Trust directly or indirectly represented the proceeds of crime, the onus was on Mr Loero to prove on a balance of probabilities that the assets were not. This involved Mr Loero providing evidence to show that the provenance of the assets was not directly or indirectly related to criminal activity. Evidence was put forward by Mr Loero from an accountant who was also the University's national administrative sub-director and from Mr Loero's Venezuelan lawyer. In addition, two expert witnesses were used. A professor provided his expert testimony on Venezuelan law and an accountant who specialised in financial crime did a forensic analysis on the evidence on Mr Loero's source of wealth and funds.

The court ultimately found that on a balance of probabilities the assets held on trust were not the proceeds of crime and CST agreed to progress the revocation of the Trust as requested by Mr Loero.

Comment on the 'proceeds of criminal conduct' requirement

The advocate acting for Mr Loero challenged the view expressed at paragraph 12 of *L, M, N and Mrs B v Credit Suisse AG (Guernsey Branch)* [2023] GRC026 that there does not need to be an underlying conviction to satisfy the 'proceeds of criminal conduct' requirement. The challenge was based on an assessment of section 4 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (POCL) being applicable to the whole of the POCL, including sections 4(2) and 4(3) of the POCL which envisages an extant, underlying conviction.

Ultimately, the court rejected this argument on the basis that section 52 of the POCL mentions that the 'proceeds of criminal conduct' is defined by reference to section 4(1)(a) only. In addition, section 4(2) and 4(3) of the POCL refer to a 'defendant' which in accordance with section 51(1) of the POCL is a 'person against whom proceedings have been instituted, within the meaning of section 37(2), for an offence, whether or not he has been convicted'.

The court held that in these proceedings the parties were not engaged with sections 4(2), 4(3) or 37(2) of the POCL, but were looking to establish whether the assets in question were the 'proceeds of criminal conduct' as defined under section 1 of the POCL. This merely required there to be assets acquired by conduct which constituted a criminal offence under the laws of the Bailiwick of Guernsey that may be tried on indictment, or which would constitute an offence if it were to take place in the Bailiwick of Guernsey.

Accordingly, it is not necessary for the purposes of filing a SAR to have evidence of the customer's conviction of a crime to form a subjective suspicion that the assets of the customer are the proceeds of criminal conduct. It is only required that there be some realistic basis on which to consider that the assets are the proceeds of conduct that would be considered unlawful in the Bailiwick of Guernsey. This means that, for example, allegations of criminality can support a suspicion even if there has been no charge or prosecution.

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