

# **Global Co-operation – ways and means**

## **The case for agency to agency co-operation**

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**By Julie Read, Director, Serious Fraud Office of New Zealand**

# Introduction

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International co-operation from a Commonwealth perspective – where we have come from, where are we are now and what might the future hold?

- formal and ‘informal’ co-operation
- Case studies

# Some definitions

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**Formal** – central authority to central authority

- implemented by means of treaties and legislation
- generally referred to as mutual assistance

**Informal** – agency to agency

- Implemented by a wide variety of means including legislation, memoranda of understanding and stand alone arrangements

# Where did it start?

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Informal co-operation came first

- International Criminal Police Congress 1914
- International Criminal Police Commission 1923
- Interpol 1946

Formal co-operation within the Commonwealth

- Commonwealth Law Ministers' meeting Harare 1986
- Legislation based upon Harare Scheme

# Where are we now?

Mutual Assistance (formal)	Co-operation (informal)
<ul style="list-style-type: none"><li>○ Central authority to central authority</li><li>○ Treaties and legislation</li><li>○ Specified powers</li> <li>○ May overcome jurisdictional hurdles</li><li>○ May be limited by purpose</li> <li>○ Evidence</li></ul>	<ul style="list-style-type: none"><li>○ Agency to agency</li> <li>○ Legislation, MOU, ad hoc</li><li>○ Potential for a wider range of powers</li> <li>○ May have jurisdictional problems</li> <li>○ Potential for broader scope of co-operation</li> <li>○ Information</li></ul>

# But the biggest difference is time

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## ‘Informal’ co-operation is much faster

- Resource constraints of a central authority
- Double handling – at both ends
- Rules about when a request must or may be refused
- Decision maker may hold a political office
- May require an application to a court
- Dual criminality
- Request for evidence requires delivery in an appropriate format
- Opportunity for appeals
- More extensive powers to assist in some cases

# Case study – mutual assistance

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## The case with every possible problem...

- Multiple requests to multiple jurisdictions
- Double handling
- A first time request
- Appeals
- No appeal!
- Different legal systems and different rules of evidence
- Limited understanding of the evidence
- Limited opportunity to be present to assist overseas central authority
- And three years later, a dead end.

# New Zealand Serious Fraud Office

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## Serious Fraud Office Act 1990

### s51 Agreements with overseas agencies

(1) The Director may enter into any agreement or agreements with any person in any other country whose functions are or include the **detection and investigation of cases of fraud or the prosecution of any proceedings which relate to fraud**, if—

(a) the agreement relates to a particular case or cases of fraud; and

(b) in the case of an agreement providing for the supply of information by the Serious Fraud Office,—

(i) the Director is satisfied that compliance with the agreement will not substantially prejudice the performance of the Serious Fraud Office's functions in relation to any other investigations;

and

(ii) the Director has recommended to the Attorney-General that the agreement be entered into and the **Attorney-General has accepted the recommendation**.

(2) Any such agreement—

(a) may be made orally or in writing;

(b) **may provide for the supply or the receipt of information by the Serious Fraud Office:**

(c) shall contain a condition that no person who receives information pursuant to the agreement shall disclose the information except for any purpose specified in the agreement or with the consent of all of the parties to the agreement.



# Case study – using a s51 agreement

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## Assisting another country to investigate

- S51 agreement used as the foundation of an agreement to provide forensic accounting, electronic forensics and investigative support to a pacific island country
- Investigation related to a public corruption matter – allowed a degree of independence in the process given the small size of the country
- Allowed free communication between the SFO and police

# Case study – cooperation without a s51 agreement

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- Investigation concerning alleged misrepresentations made in a foreign jurisdiction about investment assets located in New Zealand
- A proposed s51 agreement did not proceed due to jurisdictional issues in the foreign jurisdiction
- Ultimately addressed through a direct relationship between investigation leads which allowed the exchange of information within the confines of our respective jurisdictions
- SFO formally released information pursuant to an alternative power
- Followed by a formal mutual assistance application

# Our approach to s51 agreements

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- An agreement can be made for reciprocal exchange of information
- But could be a one way agreement – for the supply of information by the SFO
- Where the SFO does not have an independent investigation, a s51 agreement allows us to use our powers for the purpose of assisting a foreign agency
- Depending upon the nature of the assistance sought, a formal mutual assistance request may be necessary to obtain information in evidential form
- The agency to agency approach can assist in refining a mutual assistance request

# The future

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- Formal co-operation
  - focus of Commonwealth and UN
  - addressing some evidential issues
- ‘Informal’, agency to agency co-operation
  - Value not diminished by reform to mutual assistance
  - May need further legislative support where available

# Questions?

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