



REPUBLIC OF VANUATU

OFFICE OF THE AUDITOR-GENERAL

AUDITOR-GENERAL'S REPORT

ON

THE COMPLIANCE AUDIT

OF

THE STATE LAW OFFICE TRUST FUND

FOR THE 2006 YEAR

Submitted to : Attorney General

Date : 30 June 2010



Contents

1. Introduction	1
2. Purpose of the State Law Office Trust Fund	1
3. Audit Mandate	1
4. Audit Objectives	1
5. Audit Scope and Methodology	1
6. Relevant Laws and Regulations	2
7. Detailed Audit Findings and Recommendations	2-10
8. Conclusion	11
9. Subsequent Events	11
10. Acknowledgment	11

1. Introduction

This report presents the result of a Compliance Review on the State Law Office (SLO) Trust Fund.

The State Law Office (SLO) Trust Fund commenced operations on 11 February 2002 after an Amendment Act No. 9 of 2001 was passed in Parliament for the creation of a special trust fund.

2. Purpose of the State Law Trust Fund

The purpose of the Trust Fund as outlined under Section 24A of the State Law Office (Amendment) Act No.9 of 2001 is basically for the purpose of the following:

- Providing financial incentives to legal and support staff within the Office;
- Training and development of legal and support staff within the Office;
- The purchases of equipment and furniture for the Office;
- Additional legal and support staff for the Office; and
- Such other matters related to the functions of the Office that the Attorney-General authorizes in writing.

3. Audit mandate

The Auditor-General is authorized under the Expenditure Review and Audit Act No.3 of 1998 to investigate matters that affect the management of public money. Also the SLO Law (Amendment) Act No. 9 of 2001, section 24B (2) provides for the Trust Fund to be audited within 3 months after the end of the financial year by the Auditor-General or a person authorized by the Auditor-General.

4. Audit objective

The Auditor-General carried out an independent audit review to confirm whether the Trust Fund was legally established, whether the funds are used for the purposes intended and that there was no mismanagement or misuse of the fund.

5. Audit scope and methodology

The audit covers the financial year from 1 January 2006 to 31 December 2006.

The following documents were reviewed:

- SLO Act No. 4 of 1998 & SLO (Amendment) Act No.9 of 2001, SLO Trust Fund Rules/Guidelines, Bank Statements, SLO Staff Manual, SLO Corporate Plan, SLO 2006 Annual Report and other related documentation of the fund;

Other relevant information was obtained through interviews and discussions with the Corporate Service Manager and Finance & Resource Officer responsible, as well as other staff of the SLO.

6. Relevant Laws and Regulations

SLO (Amendment) Act No. 9 of 2001, Section 24A, subsection (1) provides for the establishment of the Trust Fund Account.

Section 24A, subsection (3) & (4) provides for the sole purpose of the use of the Trust Fund.

SLO Trust Fund Rules/Guidelines outline the following responsibilities:

Section 1 of the SLO Trust Fund Rules provides for a person who satisfies the following criteria is entitled to receive a payment from the Trust Fund:

*the person is an employee of the State Law Office as of the 1 of November each year;
the person is a Ni-Vanuatu (other than for the position of the Attorney General);
the person has been employed with the State Law Office for at least 3 months in the 12 months preceding 1 November of each year.*

Section 2 subsection (1) provide for each person is to receive a payment of the same amount from the Trust Fund.

Subsection 2, states that if a person is employed for a period of less than 12 months, the person's payment is to be reduced as follows:

*for a period of at least 9 months but less than 12 months – 25% reduction;
for a period of at least 6 months but less than 9 months – 50% reduction;
for a period of at least 3 months but less than 6 months – 75% reduction.*

Subsection 3, states that payment is to be made on the 1 of December each year. If this is not a working day, it is to be made on the next working day.

Subsection 4, states that all application forms for a performance bonus must be submitted to the Corporate Service Manager on or before the 14 November each year. This will ensure that the bonus is paid on the first pay in December each year.

Section 4, provides for the maximum amount that can be payable to any eligible staff is VT 100,000.

Section 5, provides for all costs as a source of revenue for the Trust Fund received by the State Law Office must be banked in the relevant interest bearing bank account by the Finance Officer within 1 week of receiving the costs whether by cheque or cash.

7. Detailed audit findings and recommendations

7.1 SLO Trust Fund

Finding

SLO books and records were reviewed to ascertain whether SLO Trust Fund was legally established.

The SLO Bill Amendment went before the Parliament in year 2001 and on 30 December 2001 it was assented and came into force on 11 February 2002.

Subsection 24A (1) of the SLO (Amendment) Act No.9 of 2001 provides for the establishment of the SLO Trust Fund.

Subsection 24A (2) provides for the sources of funds paid into the Trust Fund.

Subsection 24A (5) provides for money received shall be invested only with the National Bank of Vanuatu.

Subsection 24A (3) & (4) provide for the purpose of the fund and use of fund as follows:

- Providing financial incentives to legal and support staff within the Office;
- Training and development of legal and support staff within the Office;
- The purchases of equipment and furniture for the Office;
- Additional legal and support staff for the Office;
- Such other matters related to the functions of the Office that the Attorney-General authorizes in writing.

Furthermore, the SLO Trust Fund Rules/Guidelines was approved in August of 2003 to safe guard the Office for proper use of the trust fund monies accordingly.

On 25 May 2005, the SLO Trust Fund was closed following an instruction received from the former Minister of Finance, Hon. Moana Kalosil Carcasses from the Ministry of Finance and Economic Management. Under Section 43 of the Public Finance & Economic Management Act No.6 of 1998, subsection (4) that no bank account will be opened or operated or continued to be operated for the purpose of the deposit and/or withdrawal of public money without the express authority of and on such conditions as the Director General determines.

On 17 November 2005, the SLO Trust Fund was re-opened following an order made by the then Minister of Finance, Hon. Willie Jimmy Tapagararua.

Cause of finding

The establishment of the SLO Trust Fund was to provide incentives to SLO lawyers and its staff and also to meet other contingencies expenses such as filing of court documents and payment of other court related costs.

Implication of finding

The unlawful establishment and operation of the SLO Trust Fund Account.

Recommendation

None, as the establishment of SLO Trust Fund was in accordance with the SLO (Amendment) Act No. 9 of 2001.

7.2 Payouts from SLO Trust Fund in 2006

Finding

The 2006 payouts record of Trust Fund Monies was reviewed to ascertain whether the payouts fully complied with SLO Trust Fund Rules/Guidelines.

According to the approved Trust Fund Rules/Guidelines, that in order for staff to be eligible to receive payment from the trust fund, the following criteria must be satisfied:

- The person is an employee of the State Law Office as of the 1 of November each year;
- The person is a Ni-Vanuatu (other than for the position of the Attorney General);
- The person has been employed with the State Law Office for at least 3 months in the 12 months preceding 1 November of each year.

Furthermore, the following procedures must be upheld when distributing the monies to each staff.

Each person to receive a payment of the same amount from the trust fund;

If a person is employed for a period of less than 12 months, the person's payment is to be reduced as follows:

- for a period of at least 9 months but less than 12 months – 25% reduction;
- for a period of at least 6 months but less than 9 months – 50% reduction;
- for a period of at least 3 months but less than 6 months – 75% reduction.

The payment is to be made on the 1 of December each year. If this is not a working day, it is to be made on the next working day;

All application forms for a performance bonus must be submitted to the Office Manager on or before the 1st of November each year.

Before the actual payout or staff members receive bonus payments as an incentive, an application form for a performance bonus must be filled out and submitted to the Office Manager on or before the 1st of November each year.

However audit found that the performance bonus applications that were filled out had gone missing or misplaced and no records were available in respect of the 2006 staff bonus payouts.

In 2006, a total amount of Vt 660,308 was paid out to 24 staff members of SLO as shown below:

STATE LAW OFFICE TRUST FUND

Bonus Scheme for Distribution to SLO Staff Members for the Payment of 1st Dec 2006

Distribution Amount (VT):	674,990	Project (VT):	168,747	100% Distribution
Total SLO Trust Fund B/c:	843,737	Undist Amount:	14,674	Distributed Percent
Names	Months	Distribution (VT)	AG's Approval (Y/N)	%
Litigation Section				
John Stephens Tougon	12	29,347		4.35
Florence Williams Reur	12	29,347		4.35
Frederick Gilu	12	29,347		4.35
Justine Ngwele	7	14,674		2.17
Viran Molisa	12	29,347		4.35
Tom Joe Botleng	12	29,347		4.35
Dudley Aru	12	29,347		4.35
Anges Tari	12	29,347		4.35
Kepry W Wapayat	12	29,347		4.35
Frederick Sam Loughman	12	29,347		4.35
Corporate Service Unit				
Carolanne N'gui	12	29,347		4.35
Sherine Tari	12	29,347		4.35
Stephen Sam	12	29,347		4.35
Tina Quai	12	29,347		4.35
Jack P Semeno	12	29,347		4.35
Rosen Aru	12	29,347		4.35
Drafting Unit				
Angeline Saul	12	29,347		4.35
Jane B. Jereva	12	29,347		4.35
Seth Saul David	12	29,347		4.35
Toutanou Bakokoto	12	29,347		4.35
Avock Godden	2			
Jason Kalfaou Pakoasongi	12	29,347		4.35
FIU				
Mackenzie Tariobed	12	29,347		4.35
Kevin Tari	12	29,347		4.35
Total		660,308		97.87

SLO PAYMENT SCALE BASED ON THE PERIOD WORK - Based on SLOTF Policy Approved on 6/08/03				
MONTH FOR PAYMENT	12	9 - > 12	6 - > 9	3 - > 6
PAYMENT %	100	75	50	25
PAYMENT PERCENTAGE	4.35	3.26	2.17	1.09

Additional Payment

Vatu

24 staff payout
as per above

Final Payout (Vatu)

660,308

Recommendation

Jack Semeno
Corporate Service Manager

Approved

Dudley Aru
Acting Attorney General

Date:

Date:

Important Notes:

2003	Payment bal Vt	1,207,978
2004	Payment bal Vt	1,852,675
2005	Payment bal Vt	2,864,454
2006	Payment bal Vt	660,308

Section 2, subsection 1 of the SLO Trust Fund Rules/Guidelines, states that each person is to receive a payment of the same amount from the trust fund if a person is employed for a period less than 12 months, the person's payment is to be reduced as follows:

- for a period of at least 9 months but less than 12 months – 25% reduction;
- for a period of at least 6 months but less than 9 months – 50% reduction;
- for a period of at least 3 months but less than 6 months – 75% reduction.

According to the records above, the distribution amount was fairly shared according to the provision of Section 2, of the guideline.

Records of pay out was made on 1st of December, which was executed in line with Section 2, subsection 3 of the SLO Trust Fund guideline, which states that payment is to be made on the 1st of December each year. If this is not a working day, it is to be made on the next working day.

However, audit also found that another bonus payout was made to 24 staff members on 11 January 2006 totaling Vt 2,196,086, as shown below:

STATE LAW OFFICE TRUST FUND				
Bonus Scheme for Distribution to SLO Staff Members for the Payment of 1st Dec 2005				
Distribution Amount (VT):	2,291,563	Project (VT):	572,891	100% Distribution
Total SLO Trust Fund B/c:	2,864,454	Undist Amount:	95,482	Distributed Percent
Names	Months	Distribution (VT)	AG's Approval (Y/N)	%
Litigation Section				
Sampson Endehipa	12	95,482	✓	4.17
Dudley Aru	12	95,482	✓	4.17
Frederick Gilu	12	95,482	✓	4.17
Arnold Kiel Loughman	12	95,482	✓	4.17
Viran Molisa Trief	12	95,482	✓	4.17
Tom Joe Botleng	12	95,482	✓	4.17
John Stephens Tougon	12	95,482	✓	4.17
Florence Williams Reur	12	95,482	✓	4.17
Anges Tari	6	47,741	✓	2.08
Kepry W Wapayat	12	95,482	✓	4.17
Frederick Sam Loughman	12	95,482	✓	4.17
Corporate Service Unit				
Carolanne N'gui	12	95,482	✓	4.17
Sherine Tari	12	95,482	✓	4.17
Stephen Sam	12	95,482	✓	4.17
Rosien Aru	12	95,482	✓	4.17
Tina Quai	12	95,482	✓	4.17
Jack P Semeno	12	95,482	✓	4.17
Drafting Unit				
Angeline Saul	12	95,482	✓	4.17
Jane B. Jereva	12	95,482	✓	4.17
Seth Saul David	12	95,482	✓	4.17
Toutanou Bakokoto	12	95,482	✓	4.17

Jason Kalfaou Pakoasongi	12	95,482	✓	4.17
FIU				
Mackenzie Tariobed	12	95,482	✓	4.17
Kevin Tari	6	47,741	✓	2.08
Total		2,196,086		95.9

SLO PAYMENT SCALE BASED ON THE PERIOD WORK - Based on Revised SLO Staff Manual July 2004				
MONTH FOR PAYMENT	12	9 - > 12	6 - > 9	3 - > 6
PAYMENT %	100	75	50	25
PAYMENT PERCENTAGE	4.17	3.13	2.08	1.04

Additional Payment

Vatu

Final Payout (Vatu)

24 staff payout
as per above

2,196,086

Recommendation

Jack Semeno
Corporate Service Manager

Approved

Dudley Aru
Acting Attorney
General

Date:

Date:

Important Notes:

2003	Payment bal Vt	1,207,978
2004	Payment bal Vt	1,852,675
2005	Payment bal Vt	2,864,454

Cause of finding

The SLO guidelines provide for payments from the SLO Trust Fund to individual staff members and the maintenance of proper books and records for these payments. However audit noted that no proper books and records were maintained.

Due to insufficient funds in the bank on 1st December 2005, payment of staff members' bonus was deferred to 11 January 2006, after the collection of cash monies from outstanding settlement court cost fees were deposited in the Trust Fund bank account. Staff members were fully informed of the cash flow shortage and were happy with the late payment.

However audit found that the performance bonus applications that were filled out have gone missing or misplaced and no records were available in respect of the 2006 staff bonus payouts.

Implication of finding

Annual Reports details extracted from the SLO Trust Fund books and records may not be accurate due to the inadequate books and records maintained.

Staff members not receiving their bonus payment in time may aggravate unrest and low morale at work.

SLO guidelines are being breached for non compliance by staff, in filling out the staff performance appraisal forms before release of bonus payments to individual staff members.

Recommendations

Corporate Service Unit must ensure that the bonus pay outs from SLO Trust Fund to staff always adhere to the approved requirements as set out in the SLO Guidelines/policy. Particularly to ensure that:

1. prepared spreadsheet bonus scheme list distribution is always approved by the Attorney General.
2. completed application forms for performance bonus are always assessed by each Head of Units before the Corporate Service Manager and the Attorney General signs them off.
3. performance appraisal form must always be appraised by the Corporate Service Manager.
4. prepared staff list includes names of staff, date pay-out, payment type (cash, cheque, etc), amount, and signature of staff receiving money.
5. all copies of pay-outs must be filed and kept properly in a safe place
6. daily banking of monies collected will enable sufficient cash flow in the bank to meet staff bonus payments on 1st December.

Management comments

The Corporate Manager stated that:

- the 2006 Performance Bonus forms were assessed, appraised and signed off but the forms were misplaced and therefore not provided to the auditors. He further stated that there would not have been any pay outs in December 2006 had the performance bonus forms not been assessed, appraised and approved.
- They ensure that the books and records are properly maintained.
- With regards to the payouts that were supposed to be made on December 2005, the staff members were well informed before then that the 2005 payouts will be made in early January 2006.
- All other recommendations are noted for future reference and action.

The Attorney General mentioned that based from his observation, the process and the procedures for pay outs from the Trust Fund was transparent and very effective as it enables court cases to be dealt with in a timely manner without undue delay.

7.3. No Cash Book maintained to record monies received and paid out of the Fund

Finding

Apart from the receipt books and the cheque books, there is no Cash Book maintained to record all cash receipts and cash payments of the Fund with the exception of the recordings of bonus payment to staff.

The Corporate Manager stated that all the correspondence relating to SLO Trust Fund, are kept in a filing cabinet under his control, whereas the records of receipts/invoices pertaining to SLO Trust Fund and the cheque butts are kept in a separate locked filing cabinet under the control of Mrs Carolanne N'gui, Office Supervisor. As a result it was difficult for him to prepare monthly bank reconciliations; and furthermore it was difficult to confirm whether all money paid into and out of the Fund during the period were in line with the court orders.

Cause of finding

There are no proper books maintained in relation to money coming into and out of the trust fund.

Implication of finding

The lack of adequate books maintained to account for all monies received and paid out of the Fund may result in monies being misused or stolen.

Recommendations

1. The finance officer must set up and maintain a proper Cash Book or an excel spreadsheet to record all cash receipts and cash payments of the Fund.
2. Court orders for money "coming in" should be under a separate column under the heading "court order fees".
3. The finance officer is to ensure that the books and records of the Fund are maintained up to date on a daily basis.

Management comments

The Corporate Manager stated that he will ensure that the daily maintenance of the recordings of cash received and payments in the excel spreadsheet is done.

7.4 Banking and bank reconciliations**Finding**

Audit enquired as to whether all monies collected have been deposited in the bank on a weekly basis. Furthermore, that bank reconciliations have been prepared on a monthly basis to ensure that all monies received have been banked and that all payments by cheques are accounted for.

The SLO rules/guidelines Section 5 provides for all costs as a source of revenue for the Trust Fund received by the State Law Office must be banked in the relevant interest bearing bank account by the Finance Officer within 1 week of receiving payments whether by cheque or cash.

The Finance Officer at SLO confirmed that cash received are not frequently banked and that no bank reconciliation was done.

Our audit examination of the SLO Trust Fund Cash Receipt Book and bank statements indicated that not all banking was done within 1 week of receiving payment of fees.

Cause of finding

The finance officer has limited knowledge in relation to the preparation of bank reconciliations and further, does not see the importance of banking monies collected, on a daily or weekly basis.

Implication of finding

Funds may have gone missing or misused.

Financial Reports produced may not be accurate as the Corporate Service Manager is required to report on his/her annual report as required by the SLO (Amendment) Act No.9 of 2001 section 24B (3).

Non banking of monies collected, on a weekly basis is in breach of section 5 of the SLO guideline/policy.

Recommendations

1. Bank reconciliations must be prepared on a monthly basis by the finance officer.
2. A Cash Receipts Journal to record all cash collected must be maintained on a daily basis together with a Cash Payment Journal recording all payments made by cheques.
3. The Finance Officer must bank all monies received on a weekly basis in compliance with section 5 of the guideline/policy.

Management comments

The Corporate Manager pointed out that he will ensure the Finance Officer receives relevant trainings on book keeping and bank reconciliations.

7.5 2006 Annual Report

Finding

The SLO 2006 Annual Report was reviewed to ascertain whether the Trust Fund was included in the annual report of the Office.

Section 24B subsection 3 of SLO (Amendment) Act No. 9 of 2001, states that "*details of monies paid into and out of the Trust Fund must be included in the annual report for the Office*".

The Trust Fund was included in the annual report but not in details as specified under Section 24B subsection 3; where as it should also include a detailed report of monies paid into the trust fund and monies paid out of the trust fund for each financial year.

Cause of finding

The SLO annual Report did not include the full details of SLO Trust Fund as required under the Act.

Implication of finding

Failure to report in detail the SLO Trust Fund as required by the SLO (Amendment) Act No.9 of 2001 would be a breach of the Act.

Recommendations

1. The SLO Corporate Service Unit must ensure that 2007 annual report includes in detail a report of the SLO Trust Fund monies that were paid into and paid out of the Trust Fund.
2. The SLO must at all times comply with the Act.

Management comments

The Corporate Manager has noted that he will ensure the preparation of a more detailed annual report is done in the future.

8. Conclusion

This report demonstrates that the SLO Corporate Service Unit has complied with the relevant laws, regulations/rules/guidelines, with the exception of one or two identified weaknesses.

The management controls of the Trust Fund appear satisfactory and the SLO is encouraged to continue with this good practice so that the purposes of the Fund are effectively and efficiently achieved.


9. Subsequent events

According to the Attorney General's comments as follows:

- The operation of the SLO Trust Fund ceased to exist at the end of 2009.
- A repeal of section 24A and 24B in the SLO Act to abolish the Trust Fund has been submitted to Parliament for debate in the first ordinary sitting in 2010.
- Use of the Trust Fund was highly important to the Office for the following main reasons:
 - To pay for the cost of court cases.
 - To provide bonus pay to lawyers as an incentive to retain them in the Office.

10. Acknowledgement

I would like to take this opportunity to thank the Attorney General and his staff for their cooperation and assistance extended to the audit staff during the conduct of the audit.


John Path
Auditor-General



30 June 2010