



FijiFIU

Fiji Financial Intelligence Unit



Speech by Razim Buksh, Director - Financial Intelligence Unit, at the Joint Symposium held at the Reserve Bank of Fiji on 11 December 2014

Unmasking Corporate Secrecy in Transnational Financial Crime.

THE SCHOOL OF LAW OF THE UNIVERSITY OF FIJI IN ASSOCIATION WITH
THE FIJI LAW SOCIETY AND THE RESERVE BANK OF FIJI

A. Introduction

Bula Vinaka and good morning.



I am indeed very pleased to be invited to speak and be part of the joint symposium on such an important topic. Corporate secrecy and financial crimes are two united and interlinked issues that both need to be unmasked or rather divorced from their *de facto* relationship. The global community that is tasked to protect and police the financial and commerce world is beginning to realize and understand the dangerousness of corporate secrecy and its abuse as a weapon of mass financial fraud.

The FIU estimates that \$100million of illicit money flows annually through Fiji's financial system. More than one third of this is suspected to be linked to tax evasion, while the remainder suggests tainted funds linked to corruption, fraud, money laundering, unexplained wealth, cyber fraud, drug trafficking and other serious financial crimes. According to reports published by the UNODC in 2009, it is estimated that US\$2.1 Trillion is laundered annually through the global financial system.

Fiji has a long history of financial crimes.

The collapse of the National Bank of Fiji in the 1990s triggered a national concern and the biggest ever financial crime investigation. Customers of the National Bank of Fiji, both individuals and corporate clients, had a field day "looting" millions of dollars out of the National Bank of Fiji's lending portfolio. Some individuals hid behind corporate entities, used clerks of law firms to set up \$2 companies and borrowed hundreds of thousands of dollars with nonexistent and valueless collateral. Entirely, and all those who supported and orchestrated the unprecedented crime basically left the vaults to dry, leaving behind a debt of \$220 million, the price Fijian tax payers and the country continues to pay.

I was the bank examiner turned fraud investigator in the mid to late 1990s assigned from the Reserve Bank of Fiji to investigate the NBF fraud. While

no major successful convictions were recorded, a number of lessons were learnt.

This resulted in improvements in our legal, institutional, and regulatory systems. More recently, the establishment of the Financial Intelligence Unit, Fiji Independent Commission Against Corruption, and the capacity building programs for the Fiji Police Force Fraud Investigators and our State Prosecutors shows the strong commitment of the Fijian Government to address the risks associated with money laundering and organised financial crimes.



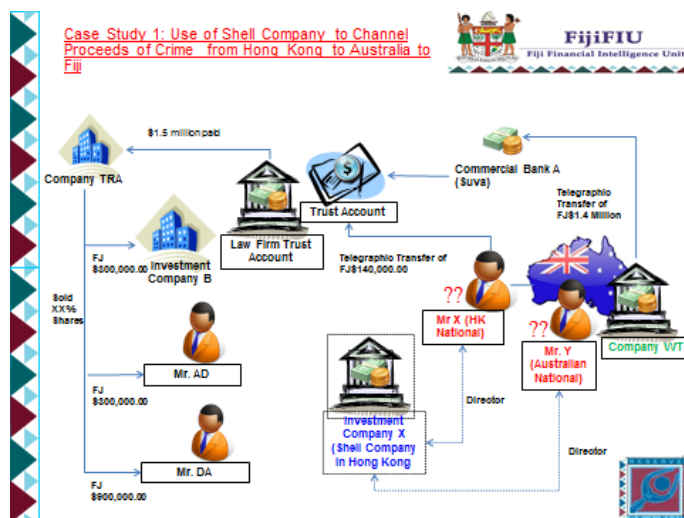
Recent Money Laundering Convictions

Money Laundering Prosecutions and Convictions			
Date of Conviction/ Judgement	Case Reference No.	Amount Involved	Sentence
14 April 2011	State vs Anand Kumar Prasad, Reenal Praneel Chandra, Reenal Rajneel Chandra, Deo Narayan Singh, Shirley Sangeeta Chand and Atishma Kirti Singh Criminal Case No: 024 of 2010	\$840,00.00	Convicted and sentenced by the High Court as follows: <ul style="list-style-type: none"> Anand Kumar Prasad 6 years Deo Narayan Singh 4 years Atishma Kirti Singh 2 years
14 December 2011	State vs Monika Monita Arora Criminal Case No: HAC125 of 2007	\$472,466.47 (ML); & \$10,000 : Corrupt Practices	Convicted and sentenced by the High Court to 7 years imprisonment
16 March 2012	State vs Deepak Rajneel Kapoor and Krishneel Khanaiya Bhola Nath Criminal Appeal No. HAC 042/2009	\$111,894.54	Mr Deepak Rajneel Kapoor pleaded guilty and was sentenced by the High Court to 16 months imprisonment
11 April 2012	State vs Johnny Albert Stephen Criminal Case No: HAC 088 of 2010	\$38,861.46	Convicted and sentenced by the High Court to 7 years imprisonment
1 November 2012	State vs Doreen Singh; Criminal Case No. HAC 086 of 2009	\$157,423.94	Convicted and sentenced by the High Court to 6 years imprisonment.
November 2012	State vs Nirmala Devi	\$1,095.00	Convicted and sentenced by the Magistrates Court to 1 year imprisonment suspended for 2 years.
27 September 2012	State vs Kapil Kushant Samy Criminal Case No. 325/2012	\$11,398.67	Convicted and sentenced by the Magistrates Court to 3 year suspended imprisonment
11 November 2013	State vs Robin Shyam	\$349,871.00	Convicted and sentenced by the High Court to 12 years imprisonment
21 November 2013	State vs Faiyaz Khan (Sinha Case accomplice)	\$170,000.00	Jailed by the High Court in Lautoka after being found guilty of charges including ML, uttering forged documents and obtaining money on forged documents. Sentenced to non-parole jail term of 4 years.
31 July 2014	Sate vs Manoj Khera (Mahakali Jewellers)	\$44,611.00	Sentenced on 3/10/2014 for 4 years imprisonment

I would like to now share a few case examples of the abuse of corporate secrecy and beneficial owners and transnational organised financial crimes that were committed or attempted in Fiji.

Case Example 1

- In April 2006 substantial amount of money approximately FJ\$1.35 million was transferred via an international remittance transaction to the trust account of a law firm in Fiji.
- The FIU had established that the funds were initially sourced from a company in Hong Kong. The funds were first sent to a front company in Australia before it arrived in Fiji. The company in Australia was reportedly a shell company.
- The funds were to purchase shares in a property in Fiji for “investment” purposes.
- Prior to this the first tranche of FJ\$0.15 million was sent directly by an individual acting on behalf of the entity in Hong Kong.
- The FIU further established that the entity in Hong Kong was a shell company that was established to facilitate laundering of money derived from lottery scams that were carried out by a number of syndicates in Brazil, UK and the Philippines. The idea to bring money to Fiji was to park it as legitimate investment funds before laundering it back to Australia.
- The identities of the real beneficial owners who were hiding behind corporate secrecy remain hidden from the authorities. However, we were able to unmask the perpetrators and syndicates who attempted to abuse the disclosure requirements on corporate ownership under the Fijian Financial Transactions Reporting Act.



Case Example 2

- In February 2006 an international entity, in partnership with the vulnerable indigenous land owners in Fiji submitted a proposal to invest US\$3 billion in exchange for benefits from Fiji's forestry and sugar refining activities.
- The proposed security or collateral in exchange of the US\$3 billion was to surrender all future rights on timber and forestry in Fiji.
- It was through the intervention in 2007 of the Financial Intelligence Unit that profiled the international entity and the scheme and alerted the Fijian Government.
- It was established that the ultimate beneficiaries of the bogus proposal were unknown individuals who had put Fiji's sovereignty at risk.

Case Example 3

- In 2005 Fiji recorded its first ever money laundering conviction of an Australian citizen who perpetrated a fraudulent scheme using a front business entity that was set up in Fiji to launder criminal funds sourced from Australian victims.
- The front entity was registered with the Fiji Registrar of Companies as a business name with him as a "ultimate beneficiary". The sole intention to register this entity in Fiji was to disguise it as a legitimate business under the fraudulent scheme.
- The beneficiary was able to use this business entity to receive remittance transactions from 51 known victims in Australia amounting to FJ\$90,930.78 within 2 months.
- The diligent work of two commercial banks in Fiji resulted in timely filing of suspicious transaction reports that triggered investigations by the FIU.
- The Australian launderer was caught red-handed at the commercial bank lobby while cashing his last booty.

Case Example 4

- In 2012 an investor from Arizona, USA was intending to invest billions of capital funds in Fiji.
- Profiling conducted by the FIU revealed that the beneficial owner, "the natural person", had substantial controlling and shareholding interest in 11 corporate entities registered in New Zealand.

- The beneficial owner was receiving large remittance funds transactions from one of his company in New Zealand into a number of his bank accounts in Fiji.
- The FIU further established that the intention to set up the business and beneficiary in the USA was probably to use it as a disguise.
- The ultimate beneficial owner in this case was a New Zealander with 4 previous convictions relating to fraud and obtaining pecuniary advantage.

Case Example 5

- In 2013 the FIU conducted background checks on 2 entities intending to invest substantial funds in Fiji.
- Profiling of the 2 entities revealed that the natural persons behind the entities were linked to 3 entities registered in New Zealand that had 4 common shareholders and directors.
- Further checks on the NZ based companies revealed that the 4 Shareholders/Directors had a total of 96 entities registered under their respective names (71, 8, 11 and 6 entities respectively). Most of these companies were either no longer active or some were under liquidation and subject to tax investigation.

The AML Framework in Fiji and International Scrutiny

The World Bank conducted a comprehensive assessment of Fiji's anti-money laundering framework in 2006. The World Bank noted that Fiji had exemplary AML laws. However, Fiji was assessed to be partially compliant with majority of the requirements primarily due to gaps in the implementation of the laws.

Fiji will undergo another round of mutual evaluation that will be conducted in October 2015 by a team of experts selected from members of the APG Group. In preparation for the assessment, a national risk assessment of money laundering in Fiji will be conducted early next year.

Fiji has come a long way since 2006 in addressing the gaps and shortcomings identified by the World Bank. This is reflected firstly in the establishment of the FIU and a number of other AML reforms in the legal, law enforcement and regulatory sectors.

The latest progress report that was submitted to the APG Group in July 2014 noted that Fiji is now largely compliant with almost all the international AML requirements.

Some of the new requirements that is currently being considered by the National AML Council includes the inclusion of domestic politically exposed persons under the FTR Act, the use of wider range of investigative techniques by the Fiji Police Force, such as, undercover operations, intercepting communications, accessing computer systems and controlled delivery. Tax crimes are also being considered for proceeds of crime investigations and the full implementation of unexplained wealth provisions under the Proceeds of Crime Act and the Prevention of Bribery Promulgation.

Unmasking Corporate Ownership in Fiji

The Financial Transactions Reporting Act provides for the specific overriding of secrecy for disclosures of information to the FIU. This not only includes bank-customer secrecy but also includes solicitor-client privileges.




The FTR Act provides a number of measures to unmask corporate secrecy in relation to beneficial ownership.

For example, a customer of financial institution that is a company must disclose the identity of each key natural person who directly or indirectly owns the company, has effective control of the company and each natural person who exercises a signing authority over the company's financial affairs.

Section 4(2) – FTR Act

Identification of Legal Persons

- **Section 4(2) – FTR Act:**
if the customer is a legal entity, **a financial institution must adequately verify its legal existence and the structure of the legal entity, including information relating to:**
 - (a) the customer's name, address and legal form and its control structure;**
 - (b) the principal owners, directors and beneficiaries;**
 - (c) provisions regulating the power to bind the entity; and**
 - (d) whether the person purporting to act on behalf of the customer is so authorised, and to identify the person.**



Furthermore, when determining indirect ownership, consideration must be given to proportionate ownership by its shareholders, partners and vested beneficiaries. Not only that, ownership consideration must also be given to family members in its entirety, such as, ownership by brothers and sisters whether by whole or half blood, spouse, ancestors and lineal descendants.

Proposed Additional Measures

Additional measures are being considered under the proposed new Companies law in Fiji, including the prohibition on issuance of bearer shares, disclosures on beneficial and third party ownership, and access to information held with the registrar of company.

Statement from the British Prime Minister

Secret owners of 'shell' companies to be made public

"A list of the owners of "shell" companies where firms keep money offshore to avoid tax will be published to discourage tax evasion", David Cameron has announced.



The Prime Minister said the *"cloak of secrecy"* surrounding company ownership had led to "questionable practice and downright illegality".

Source: <http://www.bbc.com/news/uk-24752633>
31 October 2013



Corporate Secrecy and Beneficial Ownership



Beneficial Owners

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. [FATF]

Conclusion

Fiji has introduced the most modern laws on anti-money laundering, proceeds of crime and other financial crimes. The number of money laundering convictions and the recovery of criminal proceeds are a testimony to the application and effectiveness of these laws.

The Fijian Government is already addressing the risks and vulnerabilities associated with the use of corporate vehicles and the window on secrecy of beneficial ownership to conduct organised transnational financial crimes in Fiji. Of course more needs to be done and I am positive that this symposium will generate further food for thought for us to consider as we prepare for our assessment by the APG Group next year.

The FIU has not only contributed towards the successful investigation and prosecution of complex financial fraud cases in Fiji, it has also proactively engaged with its stakeholders to ensure the safety and protection of Fijians and our financial system from money laundering and other financial crimes.

Thank you for listening and Vinaka Vakalevu.

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