



FijiFIU

Fiji Financial Intelligence Unit



Speech by Razim Buksh, Director, Fiji Financial Intelligence Unit, at the 41st Annual Congress of the Fiji Institute of Accountants held at the Sheraton Fiji Resort on Saturday 8 June 2013

The Nexus between Anti-Corruption and Anti-Money Laundering Systems in Fiji.

Contents

A. Introduction.....	2
B. Background.....	2
C. The 10 Key Nexus	4
1.National Coordination and Cooperation	4
2.Preventative Measures & Financial Institutions.....	5
3.Establishing Source of Funds/Income	6
4.Politically Exposed Persons	6
PEPS and the Draft Constitution of Fiji.....	7
5.Record Keeping.....	7
6.Wire Transfers	8
7.Confiscation of Corrupt Proceeds.....	8
8.Money Laundering Offence	9
9.Suspicious Transaction Reports.....	10
10.The Financial Intelligence Unit	11
D. Unexplained Wealth	12
E. Conclusion	13
<u>Additional Notes:</u>	
F. Brief AML History.....	14
G. International Standards.....	14
H. How big is the problem of Corruption and Money Laundering?	15

A. Introduction

Bula Vinaka and Good Morning.

In my presentation this morning I will first try to discuss some general background on what corruption and money laundering offences are and I will also try to clear a common misperception about corruption of public officials and the private sector.

I will also try to connect the efforts made by the relevant international organisations and then I will examine at some length the 10 important nexus of legal, institutional and operational frameworks on anti-corruption and anti-money laundering that exists in Fiji.

Time permitting; I will also discuss a few money laundering cases involving suspected corrupt proceeds.

I will try to highlight some of the new developments that the Fijian Government is trying to address. This will include some aspects of the Draft Constitution of Fiji and the new unexplained wealth provisions under the Proceeds of Crimes (Amendment) Decree and the Prevention of Bribery Promulgation.

My topic this morning is an interesting and an equally challenging one.

The authorities in Fiji began to give the anti-corruption and anti-money laundering laws and systems a high priority since 2006 although and these existed for some time.

As you know my background is more as a financial and criminal intelligence specialist than a hands-on anti-corruption practitioner.

B. Background

Fiji has taken a number of measures in the past 10-15 years to combat money laundering and corruption. The Financial Intelligence Unit (FIU) and the Fiji Independent Commission Against Corruption (FICAC) were only recently established in 2006 and 2007, respectively.

While I do not wish to discuss technical issues in detail, I believe it is important to share with you first the nexus between the two criminal activities; corruption and money laundering.

The 2007 Prevention of Bribery Promulgation creates a number of corruption offences as provided under the United Nations Convention Against Corruption (UNCAC). Most of these offences are also provided under the 2009 Crimes Decree.

Corruption offences are generally committed for the purpose of obtaining a private gain.

Corrupt funds are generated from bribery, extortion, self-dealing, misappropriation, embezzlement, and other related offences. The proceeds given or obtained as a financial gain from any corrupt activity must be laundered so that the persons engaged in the corrupt practice can enjoy it without fear of detection and confiscation.

Therefore, the parties involved in a corrupt transaction need to disguise their identity and the source and origin of the funds so that they can place these funds into the financial system and use it without suspicion.

In my view, there is a common misperception that corruption is a problem that is exclusive to the public sector. Corruption can involve the private sector businesses corrupting public officials and corruption can also occur between the private sector parties only.

Without looking at corruption in the legal form, the Prevention of Bribery Promulgation as well as the Crimes Decree creates an offence on part of the private sector first and an offence on part of the public official second; Sections 4(1) and Section 134, respectively. Simply said, the two parties to a corrupt transaction would be the provider, “*offerer*” or the giver on one hand AND the receiver, acceptor, “*soliciter*” or the taker on the other hand.

Money laundering is simply *the way* these corrupt parties would receive, possess, convert, transfer, conceal, use or dispose their ill-gotten proceeds. Furthermore, any person who renders assistance to a corrupt party in laundering of the corrupt proceeds is also taken to be engaged in money laundering. The offence of money laundering also includes a person who engages in a transaction that involves corrupt proceeds. To convict a person for money laundering, the Court must be satisfied that the person knew or ought to have reasonable known that the money was derived or realized from some form of unlawful activity. Secondly, the offence of money laundering is not predicated on proof of the commission of a corrupt practice or related offences.

An inter-governmental body called the Financial Action Task Force (FATF) that was established in 1989 is responsible for setting the global standards and promoting implementation of measures for combating money laundering.

The Financial Intelligence Unit plays an important role in Fiji’s anti-money laundering regime, particularly during pre-investigative and intelligence gathering stage. The FIU acts as an interface between the private sector financial institutions and FICAC, by assisting with the flow of relevant financial information.

Anti-money laundering measures have now become a powerful tool in Fiji that FICAC, in particular, has begun to use in the fight against corruption.

For example, in 2012, the FIU received 20 requests from FICAC for assistance on financial transaction and related information and profiling on 73 individuals and 32 business entities.

From January to May this year, the FIU has already received 20 requests from FICAC for assistance also for financial transaction and related information and profiling on 39 individuals and 5 business entities.

C. The 10 Key Nexus

I would like to now discuss some of the nexus and linkages that exist in Fiji for combating corruption and money laundering.

1. National Coordination and Cooperation

Fiji has an effective national coordination and networking framework on combating money laundering. The National Anti-Money Laundering Council is established under the Financial Transactions Reporting Act and includes the following members, the:

- Permanent Secretary for Justice, as Chairperson;
- Director of the Financial Intelligence Unit;
- Director of Public Prosecutions;
- Commissioner of Police;
- Governor of the Reserve Bank of Fiji;
- Chief Executive Officer of the Fiji Revenue and Customs Authority;
- Director of Immigration Department (invited member).

Realising the inter-linkages between anti-corruption and anti-money laundering systems and the important role of FICAC in the overall efforts by the Fijian Government to combat crimes and the need for closer cooperation and networking, FICAC has been invited to become the newest member of Council.

The next slide shows the current networking mechanism on domestic coordination and information exchange between the FIU and other key partner stakeholders.

Memorandum of Agreements Between FIU and FICAC and Other Partner Agencies		
Agency	Date MOA Signed	Type of MOA
Immigration Department	12 July 2007	Information exchange
Fiji Revenue and Customs Authority	28 November 2007	Information exchange and secondment of two staff with the FIU
Fiji Police Force	24 January 2008	Information exchange and secondment of a staff with the FIU
Investment Fiji	13 June 2008	Information exchange
Ministry of Justice	3 July 2008	Information exchange
Land Transport Authority	5 October 2009	Information exchange
Fiji Independent Commission Against Corruption	3 November 2009	Information exchange
Data Bureau Ltd	18 December 2009	Information exchange
Joint Taskforce RBF/FRCA/FIU	14 April 2010	Information exchange
Maritime Safety Authority of Fiji	16 August 2012	Information exchange



Signing of MOU between the Financial Intelligence Unit and the Fiji Independent Commission against Corruption: 3 November 2009

2. Preventative Measures & Financial Institutions

Corruption also requires access to the financial institutions.

Corrupt officials, as well as the persons and businesses who corrupt the corrupt officials, require access to the financial system, firstly, to facilitate the corrupt transaction and secondly to launder and use corrupt proceeds.

The Financial Transactions Reporting Act covers not only the commercial banks, foreign exchange dealers, money remitters, insurance companies and finance companies; it also includes lawyers, accountants and real estate agents.

These financial institutions are required to undertake numerous preventative measures such as customer due diligence, monitoring of transactions, etcetera, that are relevant in the fight against corruption.

3. Establishing Source of Funds/Income

Financial institutions are required to establish the source of funds or income of their customers before opening a bank account, conducting a financial transaction or establishing a business relationship. Customers or clients are also required to disclose the ultimate owner or beneficiary or beneficial owners of customers that are legal entities.

These measures certainly increases transparency and make it difficult for the corrupt parties to operate behind other people or business entities and trusts.

4. Politically Exposed Persons

A politically exposed person (PEP) is an individual who is or has been entrusted with a prominent public function, for example, the Prime Minister and other Cabinet Ministers, senior politicians, senior government, judicial or military officials, senior executives of state owned entities and important political party officials. PEP also includes a person entrusted with a prominent function by an international organisation.

Financial institutions are currently required under the FTR Act to undertake enhanced due diligence of all foreign PEPs including taking measures to establish the source of wealth/funds and conducting enhanced ongoing monitoring of the business relationship with the PEP.

The National Anti-Money Laundering Council is currently examining the requirement under the new FATF Standards to include all domestic PEPs. A proposal will be submitted to the Government as part of Fiji's action plan to implement the new Standards.

Furthermore, these requirements would also apply to family members and close associates of PEPs.

These measure increases the possibility of detecting instances where senior public officials and others PEPs are abusing their positions for private gain. It will also assist financial institutions and the FIU to connect transactions originating from the private sector players who may be a party to the corrupt transaction.

PEPS and the Draft Constitution of Fiji

In view of the above requirements under our anti-corruption and anti-money laundering systems, the proposed establishment of an Accountability and Transparency Commission under the Draft Constitution must be fully supported.

Article 141 of the Draft Constitution deals with a code of conduct that will be established under a new law, which, among other things, will provide for the annual declaration by certain public officers of their assets and liabilities and financial interests to the Accountability and Transparency Commission. The definition of domestic PEPs is somewhat similar to definition of public officers that will be captured under the assets declaration requirement under the Draft Constitution.

Another interesting and relevant section under the Bill of Rights, Article 25 of the Draft Constitution is the right of access to information that is held by any public office.

In my view, this would be another proactive approach by the Fijian Government to create transparency, accountability and disclosure by the public sector officials.

In this way, the public as well as the private sector would not do anything that will get public attention for the wrong reason.

I would like to also add that in line with the above requirements for the public sector, the Fijian Government has introduced the assets and liabilities disclosure requirements for the applicants and executives as well as their spouses and children under the Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013.

5. Record Keeping

Record keeping requirement under the FTR Act has already become an extremely important tool for investigation and prosecuting financial crimes, including establishing paper trail to trace proceeds of corruption.

The FTR Act sets out exactly what types of records are to be retained by all financial institutions operating in Fiji. Records of all transactions, correspondences and a person's identity are also to be kept for a minimum period of 7 years.

The FTR Act further requires financial institutions to keep transaction records in a manner that can be easily reconstructed by FICAC and other law enforcement authorities that allows them to establish a complete trail of financial flows in a corrupt financial transaction.

6. Wire Transfers

The FTR Act requires money remitters in Fiji to collect and transmit originator and beneficiary information for all international funds transfer transactions. All international funds transfers, immaterial of monetary value of the transaction, are reported to the FIU. This disclosure and reporting system mitigates the risk of proceeds of corruption from moving across borders undetected.

Reports Submitted to the FIU by Financial Institutions						
	2008	2009	2010	2011	2012	Total
Electronic Funds Transfer Reports	95,859	303,380	315,634	450,849	830,959	1,996,681
\$10,000 Cash Transaction Reports	37,551	132,547	133,487	144,191	200,404	648,180
\$10,000 Border Currency Reports	198	244	223	194	477	1,336
Total	133,608	436,171	449,344	595,234	1,031,840	2,646,197

7. Confiscation of Corrupt Proceeds

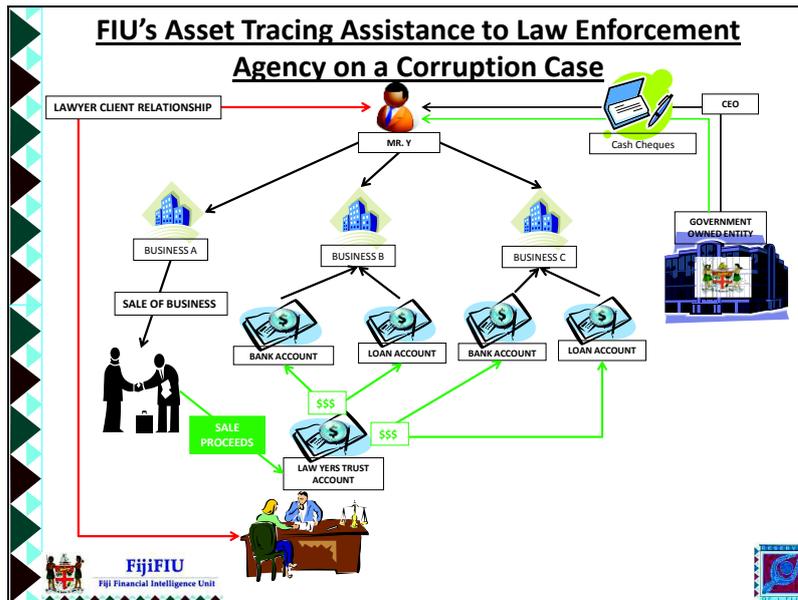
The Proceeds of Crime Act and the FTR Act provides some very valuable tools for asset tracing, freezing and confiscation of proceeds of corruption and bribery offences that is intended to ultimately deprive the corrupt officials of their ill-gotten gains.

The Proceeds of Crime Act also provides for a non-conviction based forfeiture of tainted property.

The authority to restrain and forfeit assets under the Proceeds of Crime Act is vested upon the Director of Public Prosecutions, however, I have read with some interest a recommendation made by the UNCAC implementation review group in June 2012 report that FICAC may also be given this authority to restrain and confiscate assets tainted with corrupt proceeds.

Case Study: Asset Tracing

The FIU received information from a law enforcement agency that Mr Y (the CEO for government owned entity) was disposing his business/assets and the sale was facilitated by a law firm. The law enforcement agency requested FIU to assist by confirming and establishing further details on the business assets of Mr Y. The FIU has powers under the FTR Act to request information from law firms in Fiji. The final beneficiary of the sale proceeds was identified (information provided by the law firm). The FIU was also able to identify other businesses owned by Mr. Y. the amount involved for the sale of business/assets was \$250,000.



8. Money Laundering Offence

Money laundering is criminalized under the Proceeds of Crime Act and applies to all serious offences, including corruption and bribery. I have already discussed earlier the ingredients of a money laundering offence.

The penalty for the offence of money laundering is 20 years maximum imprisonment or \$120,000 maximum fine if the offender is a natural person. The penalty for a body corporate is a maximum fine of \$600,000.

Money Laundering Prosecutions and Convictions			
Date of Conviction	Case Reference No.	Amount Involved	Sentence
14 April 2011	State vs Anand Kumar Prasad, Reenal Praneel Chandra, Reenal Rajneil 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

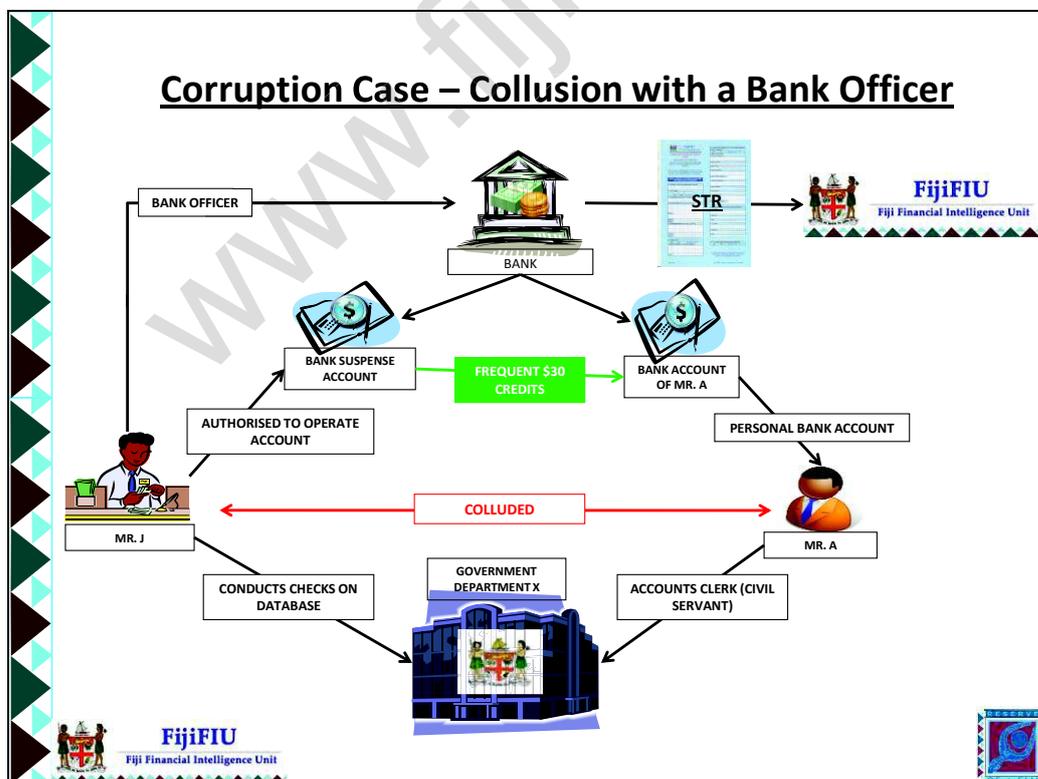
9. Suspicious Transaction Reports

Reporting of Suspicious Transaction Reports (STRs) is a fundamental component of Fiji's anti-money laundering system. The FIU continues to receive STRs that involve corrupt persons and transactions that reflect serious anomalies in the type, frequency and value of that transaction against the background and occupation of the customer who is a public officer.

The case study below shows how the FIU was able to trace a person employed in a private sector institution was able to corrupt a public officer that was reported in a suspicious transaction report.

Case Study

The FIU received an STR on a clerk at a government department who was colluding with an employee of a commercial bank to commit fraud by "pocketing" revenue belonging to the Government of Fiji. A customer would pay a service fee ranging from \$30 to \$310 for a search report that would be extracted from a government database. The employee of the bank would collect the service fee from the customer and systematically deposit it into the clerk's personal bank account. The clerk would conduct the search on the government database and provide the report to the bank employee and immediately withdraw the service fee from his personal bank account for their own use and benefit. The FIU was able to establish that between January 2006 and May 2010, 440 transactions totalling over \$25,000.00 were fraudulently credited to the clerk's personal bank account for the payment of a service fee for database checks at the government department.



10. The Financial Intelligence Unit

The FIU plays a central role in Fiji's anti-money laundering operational and intelligence network. The strong network and sharing of information between the FIU and FICAC is already evident with the few statistics I mentioned earlier.

Requests Made to the FIU for Investigative Assistance in 2012			
Requesting Agency	Number of Requests	Number of Checks on Entities	Number of Checks on Individuals
Department of Immigration	7	0	9
FICAC	20	32	73
Fiji Police Force	66	20	138
Foreign FIUs	4	1	28
FRCA	17	25	14
Reserve Bank of Fiji	3	1	5
Others	16	4	34
Total	133	83	301

Case Example:

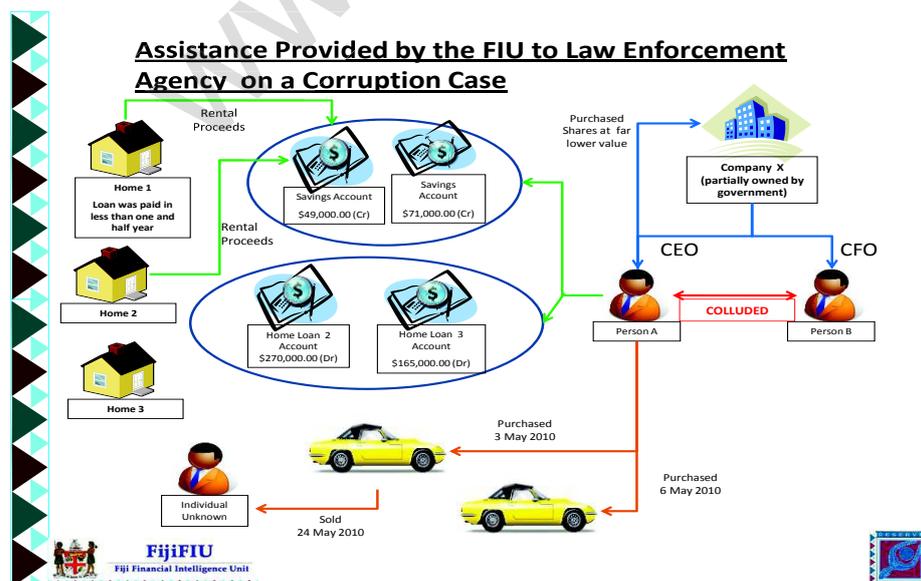
FIU received a request from a law enforcement agency.

The FIU conducted a thorough investigation and extensive profiling of the persons and transactions involved. Intelligence developed by the FIU showed the following:

Person A was working as CEO/Director of company X (partially owned by government). He received constant irregular "salary deposits" into his bank accounts and then diverted these funds into repayments of his home loan accounts.

Person B is the CFO (chief financial officer) of the government owned company X. Person A reportedly colludes with Person B;

The FIU established that Person A repaid his home loan of \$500,000 within 1½ years, and purchased 2 motor vehicles. 1 vehicle was sold only a few days before investigations commenced. Investigations also revealed that Person A had purchased shares of Company X for far less than the actual value of the company's assets at the time of sale.



D. Unexplained Wealth

There is nothing wrong in acquiring wealth and improving the material wellbeing by people. However, this must be done legally and lawfully.

As most of you know, we now have a more modern law for dealing with sophisticated proceeds of crime cases. The Proceeds of Crime (Amendment) Decree (No. 61 of 2012) in September 2012 now allows authorities to take a person to Court to explain his or her wealth.

If that person fails to provide a satisfactory explanation to the Court as to how he or she was able to acquire properties and maintain a standard of living beyond his or her means and lawful emoluments, will be ordered to pay the value of his or her unexplained wealth to the State.

To explain this in simpler terms, the new provisions requires a person to show that wealth was obtained lawfully in order to keep it, rather than the law enforcement agencies to show that the wealth was obtained unlawfully in order to forfeit it.

The idea is to deprive persons from enjoying their ill-gotten wealth and this would hit the hardest on persons who live and profit from unlawful activities.

I will be happy to provide a more detailed background and analysis of the new unexplained provisions perhaps at the next Congress or at the Institute's future technical workshops

So what is the connection between this law and combating corruption?

Article 20 of UNCAC talks about illicit enrichment. Section 10 of the Prevention of Bribery Promulgation creates possession of unexplained wealth a criminal offence for public officials.

The penalty for illicit enrichment offence is to a fine of \$1million and to imprisonment for 10 years. In addition to this, Section 12AA provides that the value of unexplained wealth can be forfeited to the State.

Therefore, the unexplained wealth provisions for both public officials and private individuals and businesses are the best mechanism that can now be used in Fiji.

The idea is to take the profit and wealth away and deprive them from enjoying their ill-gotten wealth who live and have profited from unlawful activities and tax crimes.

This process can be undertaken whether or not the DPP and FICAC are able to secure a conviction of the predicate offence.

E. Conclusion

Fiji has a number of anti-money laundering measures, some of which I have discussed this morning, serves as an important tool in the fight against corruption. These measures support the detection, tracing, and forfeiture of proceeds associated with corrupt practices.

Financial institutions are required under our anti-money laundering framework to take a number of actions such as customer due diligence, monitoring of transactions, record keeping and suspicious transaction reporting, that also supports combating corruption.

These measures also mitigate the risk posed by politically exposed persons.

The FIU has created a new platform in Fiji that promotes an intelligence driven investigation by putting together pieces of information for use by law enforcement agencies that would otherwise be difficult by any agency doing it on their own.

In my view, the most evident nexus in Fiji's anti-corruption and anti-money laundering systems is the one that is demonstrated by the successful coordination and networking between the two relevant agencies, FICAC and the FIU.

While the Government continues to take appropriate measures since 2007 to combat corruption and money laundering, drugs and human trafficking, cyber and computer crimes, border and national security, in my view, we still need to build our domestic coordination efforts and begin to actually utilise some of the newer provisions such as the unexplained wealth law.

In my view, we also need the right people and the right resources and we will continue to build on this.

And lastly, the Government will continue to take steps to further strengthen our obligations and requirements under the relevant international instruments and standards. I will be happy to take questions during the panel discussion.

Thank you and Vinaka Vakalevu.

Razim Buksh

Director

Fiji Financial Intelligence Unit

Tower Level 5, Reserve Bank of Fiji, Suva, | FIJI

Phone: +679 322 3333 | Fax: +679 331 6454 | Mobile: +679 9928303

Email: razim@rbf.gov.fj

Website: www.fjifiu.gov.fj

8 June 2013

Additional Notes:

F. Brief AML History

Addressing money laundering, corruption, organised crimes and other financial crimes has been a challenge even for developed countries.

Fiji took heed of the relevant conventions of the United Nations and introduced two laws in 1997; the Proceeds of Crime act and the Mutual Assistance in Criminal Matters Act. However, the two laws were not implemented until the events of 2000 when Fiji's first suspicious transaction was filed by a commercial bank on suspicion that some individuals were illegally taking funds out of Fiji.

Section 69 of the Proceeds of Crime Act that criminalized money laundering as a serious offence was used for the first time in 2005. The provisions on forfeiture, confiscation, restraining, monitoring and disposal orders were not used until after 2006.

In the next span of six years to 2012, a number of reforms were taken by the Fijian Government to address the ongoing threat of money laundering, proceeds of crime, corruption, drug and human trafficking and cybercrimes.

The Financial Intelligence Unit, as the agency responsible for implementing the Financial Transaction Reporting Act, provided awareness and education for the financial institutions and developed new rules and policies to ensure that Fiji's financial system was not abused for channeling tainted financial transactions.

The relevant authorities in Fiji particularly the Fiji Police Force, FICAC and our tax authority began to realize the important role the FIU plays as an intelligence arm of the Government by processing scattered information and developing it into meaningful intelligence for use by law enforcement authorities.

In 2012, 5 conviction of money laundering offence was achieved, details of which I showed in my earlier slide.

G. International Standards

The World Bank report on the review of Fiji's anti-money laundering framework that was published in conjunction with the Asia Pacific Group on Money Laundering in 2006 showed that Fiji remained vulnerable to corruption as well as money laundering crimes in Fiji.

The report mentioned that there was a perception that corruption was a widespread problem within Fiji although the view was that it was largely low level corruption. It also mentioned the involvement of government officials in Fiji's largest financial scandal involving the collapse of the National Bank of Fiji.

In 2003 the General Assembly of the United Nations decided to deal with the problem of corruption more strategically and issued the Convention Against Corruption or UNCAC as I mentioned earlier. Many years earlier, in 1989, an inter-governmental body called the Financial Action Task Force (FATF) was established.

The mandate of the both the UN and FATF are to set global standards and promote implementation of measures for combating corruption and money laundering.

H. How big is the problem of Corruption and Money Laundering?

The World Bank estimates a monetary value of about US\$1trillion that is paid in bribes each year worldwide. The UNODC and the IMF estimate an amount of US\$2trillion that is money laundered annually worldwide.

In 2009, the FIU made a public statement that funds laundered through financial transactions in Fiji was estimated to be around F\$100 million annually. The FIU further announced that approximately more than one third of this amount was believed to be linked to tax evasion transactions and the remaining were possibly linked to proceeds generated from criminal activities such as fraud, corruption, drug trafficking, theft, and other related financial crimes.

Under both the international standards, countries are required to undergo an evaluation or assessment of their domestic framework to see if they are in line with the international standards and that countries are taking acceptable measures as expected of the wider international community. I am pleased to say that the World Bank – APG mutual evaluation of Fiji’s anti-money laundering systems in 2006 as well as the review of Fiji’s anti-corruption systems in 2011 showed that Fiji was addressing its corruption and money laundering vulnerabilities adequately and both reports provided a set of recommendations for further improvement.

Razim Buksh

Director

Fiji Financial Intelligence Unit

Tower Level 5, Reserve Bank of Fiji, Suva, | FIJI

Phone: +679 322 3333 | Fax: +679 331 6454 | Mobile: +679 9928303

Email: razim@rbf.gov.fj

Website: www.fijifiu.gov.fj

8 June 2013