

The New Anti-Money Laundering Standards and its Impact on the Private Sector Financial Institutions

Razim Buksh
Director
Financial Intelligence Unit

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Tower Level 11 – Reserve Bank of Fiji



**FIJI INSTITUTE OF
ACCOUNTANTS**



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INSTITUTE OF ACCOUNTANTS SEMINAR

Money Laundering Standards and its Impact on Private Sector Financial Institutions

requirements that impacts on the private sector
private financial institutions, as defined under the FTR Act,
banks and accountants in Fiji: (1) greater scrutiny on the
financially exposed persons; (2) greater transparency on the
enhanced risk – based approach on due diligence of
financial institutions as a predicate offence for money laundering; and (5)
. A few recent money laundering case studies will be

Dr. Jim Buksh
Director, Fiji Financial Intelligence Unit

Room 11, RBF Building, Suva

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Outline of Presentation

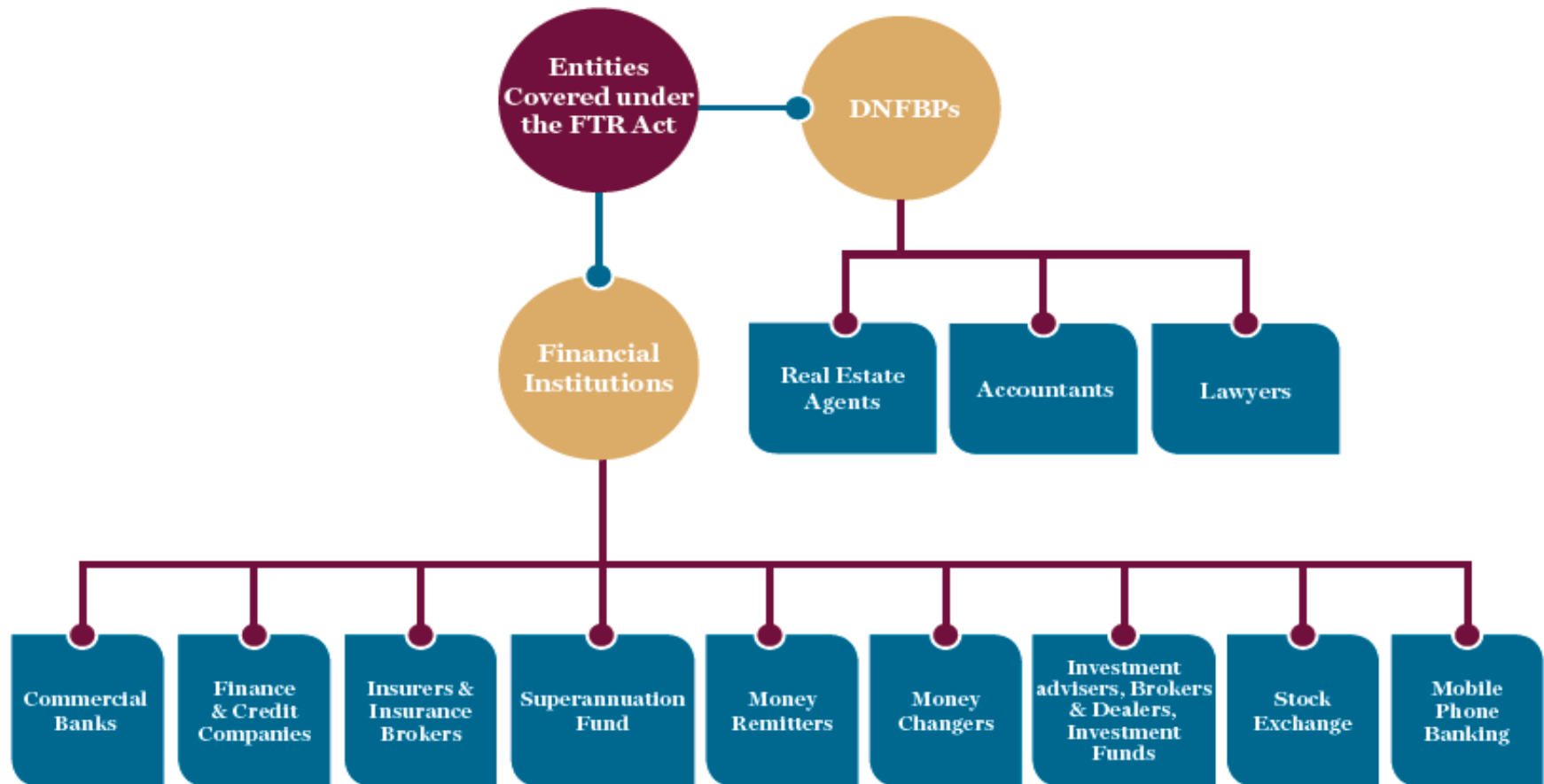
- Section 1:** Role of the FIU;
- Section 2:** Definition of “Financial Institution”;
- Section 3:** The New FATF 40 Recommendations on AML/CFT;
- Section 4:** R.12: Politically Exposed Persons;
- Section 5:** R.24 & 25: (+R.10-CDD) Transparency and Beneficial Ownership of Legal Persons & Legal Arrangements;
- Section 6:** R.1 Assessing Risks and Applying a Risk-Based Approach;
- Section 7:** R.3 Inclusion of tax crimes as a predicate offence for money laundering; and
- Section 8:** R.31 greater law enforcement powers.
- Section 9:** Case studies.

Section 1 : Role of the FIU

- ✓ National Intelligence Agency of the Government;
- ✓ Intelligence Function:
 - Receive Information;
 - Analyze Information;
 - Develop Intelligence
 - Disseminate Intelligence;
- ✓ Regulatory, Compliance & Enforcement;
- ✓ National/International Networking & Coordination;
- ✓ Assist Investigations;
- ✓ Trace Proceeds of Crime;
- ✓ Awareness & Training;

Section 2 : Definition of financial institution

Entities and Businesses Covered by the FTR Act



Section 3 : New Standards

WHY?

The FATF standards have been revised to strengthen global safeguards and further protect the integrity of the financial system by providing governments with stronger tools to take action against serious crimes.

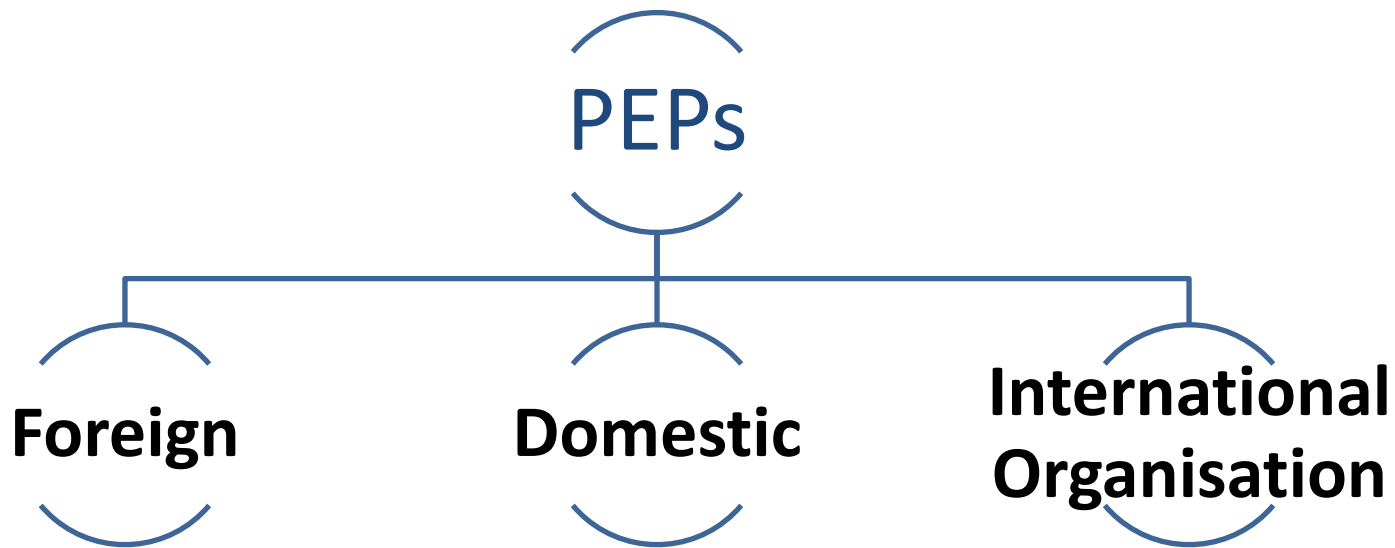
Section 3 : New Standards

- ✓ Money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction are serious threats to global security and the integrity of the financial system;
- ✓ The FATF standards are applied by over 180 countries;
- ✓ All countries to have effective systems for preventing and addressing ML, TF, PF;
- ✓ Measures on:
 - **criminal justice and regulatory systems;**
 - **preventive measures to be taken by FIs and DNFBPs;**
 - **transparency on the ownership of legal persons & arrangements;**
 - **competent authorities with appropriate functions and powers;**
 - **mechanism for domestic cooperation; and**
 - **arrangements to cooperate with other countries.**

Section 4 : Politically Exposed Persons (PEPs)



SCRUTINY ON POLITICALLY EXPOSED PERSONS



SCRUTINY ON POLITICALLY EXPOSED PERSONS

Who are PEPs?

- Individuals who are or have been entrusted with a prominent public functions domestically or by a foreign country.
- E.g. Head of State or of Government;
 - politicians;
 - senior government, judicial or military officials;
 - senior executives of state owned corporations;
 - important political party officials.
- Does not cover middle ranking or more junior individuals in the above categories.

Examples of Domestic PEPs

- President
- Prime Minister
- Cabinet Ministers
- Members of Parliament
- Permanent Secretaries and Department Heads
- Heads/Deputy/Executives of FICAC, RBF , FDB, FEA, Housing Authority, Water Authority of Fiji, LTA, FRCA, AFL, (other similar agencies & institutions)
- Chief Justice
- Members of the Judiciary
- Senior officials of political parties e.g. president, vice president, general secretary, treasurer
- Other.



FIJI TODAY
A.S.K back as A-G » 3
No more wet trips to school for
Nauluvatu Village students » 18
FBC TV to air Chinese movies » 1



FIJI
Sun

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LITTA CRAN

The first vote of Parliament yesterday is a sign of things to come. Thirty-two (32) votes by the Government, 18 votes by the Opposition. All this over the name for a Deputy Speaker of Parliament. In the end, it was a foregone conclusion and Phipps' parliamentarianism proved Noduko Noduko was elected over Vilhena Taghehem of the Social Democratic Liberal Party (SDLP).

The script is basically written for the next four years. The Government intends to push forward with its impressive public reforms and infrastructural development. It will need parliamentary approval for its spending and deposits. It has the numbers and the discipline to do so. The Opposition begins to differ, believing it can play a pivotal role in holding Govern-

Newly appointed Deputy Speaker of the House Mr Nicholas said: "The feeling of being chosen was exciting. I was not expecting this but I thank the Leader of the House and also the Government for their support."

"With the current position, I will need to work closely with Minister Spindler because she has a lot of experience and I am new to this. I will be working closely with her."

His nomination was moved by Sami Karachissoon and seconded by Joel Gonski.

ALSO READ
A.S.K back at A-G >P3
No lame ducks, insists Proust >P5
Analysis: Reality check for Opposition >P6

PM's statement



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The 50 Members of Parliament outside Parliament in Suva after their swearing-in yesterday.

Front row (from left): Parveen Kumar, Mira Yuniwaga, Aayaz Sayed-Khaliqui, Vorrege Barinmaram, Veensithi Kijjar, Lorna Eddy, Rosy Akbar, Dr. Mohendra Poddar, Balinder Singh, Teja Srinivas, Laisenia Tuftufo.
Second row (from left): Ajeet Khandro, Alvinetti Nabulava, Telsia Delana, Sanjiv Patel, Osea Nogaomo, Faiyaz Mir, Mon PILLay, Jose Uameto, Kirivimone Rikiri, Joeli Cawski.
Third row (from left): Asiri Koroone, Zabu Kimo Kuaabalo, Netami Rika, Dr. Brj Lal, Ashreeel Sudhakar, Vijay H. Somera Karawati, Ratu Seta Nonofo, Dr. Neil Sharma, Alkali Maharaj, Batu Vilimee Togiavatu.
Fourth row (from left): Tamsi Natava, Ratu Seta Tioeka, Salote Baradava, Ro Toimamu Kapa, Ratu Suliana Ma-tiboba, Pruen Singh, Dr. Briton Singh, Mosewe Bolumbe, Vilamine Gurika.
Back row (from left): Josefa Divali-Nava, Tugotu Draunidilo, Phi Thloedavou, Ruveni Nalatu, Ratu Naoana L. Baluru, Nien Nememika, Anare Vadai. Photo: Rama



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SCRUTINY ON POLITICALLY EXPOSED PERSONS

Who are International Organisation PEPs?

- Persons who are or have been entrusted with a prominent function by an international organisation;
- refers to members of senior management or individuals who have been entrusted with equivalent functions;
- E.g. directors, deputy directors and members of the board or equivalent functions

Examples of International Organisation PEPs

- UN
- EU
- ADB
- PFTAC
- SPC
- PIF
- ILO
- Senior Diplomats
- Etc.

Required Measures for Foreign PEPs

1

- apply normal due diligence checks when establishing business relationship with client

2

- apply risk management systems to determine whether the client or beneficial owners is a PEP

3

- obtain senior management approval before establishing (or continuing for existing client) such business relationships;

Required Measures for Foreign PEPs

4

- take reasonable measures to establish the source of wealth and the source of funds of clients and beneficial owners identified as PEPs;

5

- conduct regular and enhanced monitoring on that business relationship

FTR Act s4(3); FTR Regulations s20(6-7)

Required Measures for Domestic & International Organisation PEPs

- FATF Recommendations now requires scrutiny of domestic and international organisation PEPs

Required Measures for Domestic & International Org PEPs

1

- Apply normal due diligence checks when establishing business relationship with client

2

- Reasonable measures to determine whether client or the beneficial owner is a domestic PEP or international org PEP

3

- If client or beneficial owner is a domestic PEP or international org PEP, **assess the risk of the business relationship.**

4

- If High risk business – apply enhanced due diligence (similar to foreign PEPs)
- If Normal to Low risk business – normal due diligence measures

Family Members and Close Associates of PEPs

- Family members and close associates of PEPs must also be treated as high risk customers and should be subjected to enhanced identification checks.
- FTR Act s4(3) & Regulations 20(6) & (7) requires above measures on foreign PEPs .
- Revised FATF Standards now require scrutiny on domestic PEPs and international organisation PEPs.

Why PEPs?

- Due to their position and influence, it is recognised that many PEPs are in positions that potentially can be abused for the purpose of committing ML offences, corruption and bribery;
- This has been confirmed by analysis and case studies.
- Therefore preventive measures must be applied with respect to business relationships with PEPs.
- to prevent the misuse of the financial system by PEPs, and to detect such potential abuse if and when it occurs.

Why PEPs?

These requirements are preventive (not criminal) in nature, and should not be interpreted as branding or labelling PEPs as such being involved in criminal activity. Refusing a business relationship with a PEP simply based on the determination that the client is a PEP is contrary to the latter (i.e. labelling PEPs as criminals) and spirit of the international standards (R.12).

Why PEPs?

Current Requirements: **[Political Parties & Independent Candidates]**.

- ✓ Disclose full particulars of all funds obtained from any source **[Section 21 Political Parties ... Decree]**
- ✓ Information on the source of funds:
 - From members and supporters;
 - Amount and sources of donations received
- ✓ Income & Expenditure
- ✓ Assets & Liabilities
- ✓ Above information to be published in Gazette and in the media.

Why PEPs?

S.4 - FTR Act V/s S.21, 22 & 23- Political Parties ... Decree

- X** Foreign Government, Inter-Government - Non-Government Organisation & Multilateral Agency;
- X** > \$10,000;
- X** Not a Fijian Citizen & not a former Fijian Citizen;
- ✓ Founding Member (no threshold);
- ✓ An Individual (Max.\$10k);
- X** A Company, Body Corporate or any other Entity;
- X** A Company ➡ An Individual ➡ PP;
- X** payment/waiver of advertising expenditure.

Funding:

Political Party, Office Holder of PP, Candidate, Agent, Campaigner, etc.

Why PEPs?

S.4 - FTR Act V/s 24 - Political Parties ... Decree

- ✓ Total Assets (in Fiji & Abroad);
- ✓ Total Income (“);
- ✓ Business Connections (“);
- ✓ Directorship in a Corporation (“);
- ✓ Business Transaction (“);
- ✓ Gifts Received (excludes customary/relates gifts);
- ✓ Assets Acquired (“);
- ✓ Liabilities Incurred or Discharged (“);

Application:

Applicant & office holders , Candidates + Spouse & Children

Why PEPs?

S.4 - FTR Act V/s The Constitution of Fiji

CHAPTER 8—ACCOUNTABILITY

Part A—CODE OF CONDUCT

Code of conduct

149. (a) code of conduct applicable to:

- ✓ the President;
- ✓ Speaker, Deputy Speaker;
- ✓ Prime Minister, Ministers, & MPs;
- ✓ Holders of Constitutional Office/ Office under any written law, members of commissions;
- ✓ permanent secretaries, ambassadors or other principal representatives of the State, and persons who hold statutory appointments or governing or executive positions in statutory authorities, and to such other offices (including public offices) as may be prescribed by written law;

Why PEPs?

S.4 - FTR Act V/s The Constitution of Fiji

CHAPTER 8—ACCOUNTABILITY

Part A—CODE OF CONDUCT

Code of conduct

149. (f) code of conduct applicable to:
provide for the annual declaration by the officers mentioned in paragraph (a) of the assets and liabilities and financial interests of the officer, and of such other direct relatives of the officer as may be prescribed, to the Accountability and Transparency Commission, and for such declarations to be accessible to the public.

By NAISA KOROI

The salaries and benefits of Members of Parliament, Prime Minister, Cabinet Ministers, Speaker, Leader of the Opposition and President have been gazetted. Details below.



- Official car with driver
- Official mobile phone
- Internet connection at residence
- FNPF contribution
- 4 weeks leave per annum, which must be compensated if not used
- Free accommodation and meals for all official local travel
- Overseas travel - business class travel for official meetings
- Overseas travelling allowance - UNDP subsistence allowance plus 50 per cent together with \$250 per day incidental allowance

Aiyaz Sayed-Khaiyum

\$235,000

MINISTER FOR FINANCE

- Free furnished residence with all services and staff
- Official car with driver
- At official residence - completely free fixed telephone and official mobile phone
- Internet connection at residence
- FNPF contribution
- 4 weeks leave per annum, which must be compensated if not used
- Free accommodation and meals for all local travel
- Overseas travel - first class travel and may be accompanied by spouse
- Overseas travelling allowance - UNDP subsistence allowance plus 50 per cent together with \$300 per day incidental allowance
- All medical costs to be reimbursed for local or overseas treatment as required



Voreqe Bainimarama

\$328,750

PRIME MINISTER

- Official car with driver
- Official mobile phone
- Internet connection at residence
- FNPF contribution
- 4 weeks leave per annum, which must be compensated if not used
- Free accommodation and meals for all official local travel
- Overseas travel - business class travel for official meetings
- Overseas travelling allowance - UNDP subsistence allowance plus 50 per cent together with \$150 per day incidental allowance

Dr Jiko Luveni

\$150,000

SPEAKER OF THE HOUSE



Parliament opening on Tuesday. Photo: DEPTFO NEWS

- Official car with driver
- Official mobile phone
- Internet connection at residence
- FNPF contribution
- 4 weeks leave per annum, which must be compensated if not used
- Free accommodation and meals for all official local travel
- Overseas travel - business class travel for official meetings
- Overseas travelling allowance - UNDP subsistence allowance plus 50 per cent together with \$150 per day incidental allowance

Ro Teimumu Kepa

\$120,000

LEADER OF THE OPPOSITION



- Free furnished residence with all services and staff
- Official car with driver
- At official residence - completely free fixed telephone and official mobile phone
- Internet connection at residence
- FNPF contribution
- 4 weeks leave per annum, which must be compensated if not used
- Free accommodation and meals for all local travel
- Overseas travel - first class travel and may be accompanied by spouse
- Overseas travelling allowance - UNDP subsistence allowance plus 50 per cent together with \$300 per day incidental allowance
- All medical costs to be reimbursed for local or overseas treatment as required

Ratu Epeli Nailatikau

\$130,000

PRESIDENT NON TAXABLE

MINISTERS FOR: HEALTH, EDUCATION, INFRASTRUCTURE, TRANSPORT
\$200,000

OTHER MINISTERS:
\$185,000

CABINET MINISTERS: BENEFITS

- Official car with driver
- Official mobile phone
- Internet connection at residence
- FNPF contribution
- 4 weeks leave per annum, which must be compensated if not used
- Free accommodation and meals for all official local

- travel
- Business class travel for official meetings
- Overseas travelling allowance - UNDP subsistence allowance plus 50 per cent together with \$250 per day incidental allowance

ASSISTANT MINISTERS:

\$90,000

OTHER MPs:

\$50,000

PERKS: PAGE 3

How They Tip The
Pay Scale

Section 5 : Beneficial Owners

Beneficial Owners

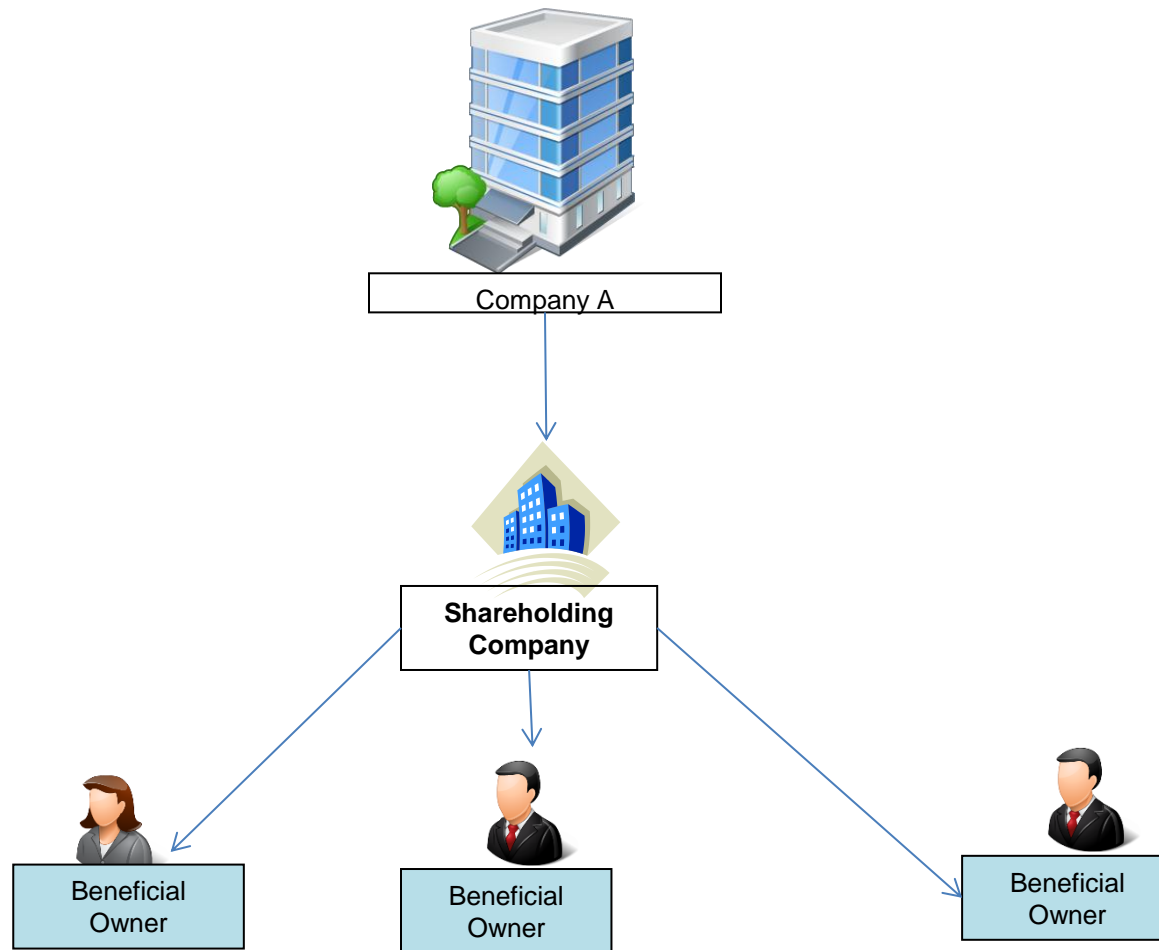
- FATF Recommendation 10 requires increased transparency on beneficial owners of legal entities and trusts.

- **Beneficial Owners:**

refers to the natural person(s) or persons who ultimately owns or controls a customer.

It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Beneficial Owners



Beneficial Owners

- Financial institutions and accounting firms are required under FTR Act to conduct CDD on beneficial owners of legal entities and trusts.
- FTR Act s4(2) ; FTR Regulation s10

Beneficial Owners

- **Why the Scrutiny on Beneficial Owners?**
- To prevent the unlawful use of legal persons and arrangements, by gaining a sufficient understanding of the client to be able to properly assess the potential money laundering and terrorist financing risks associated with the business relationship;
- Take appropriate steps to mitigate the risks.

Beneficial Owners

- Thus when dealing with clients who are legal entities or trusts, financial institutions and accounting firms required to identify and verify their client and the beneficial owners.
- FTR Act s4(2) ;
- Understand the nature of the customer's business and its ownership and control structure.

Beneficial Owners- Identify and Verify:

For clients that are legal persons or legal arrangements, the financial institution are required to identify the client and verify its identity through the following information:

- ✓ **name, legal form and proof of existence;**
- ✓ **the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement;**
- ✓ **the address of the registered office and, if different, a principal place of business.**

Beneficial Owners of Legal Persons



Company A

A. natural person(s) (if any) who ultimately has a controlling ownership interest.

B. If doubts exist over (A) or if NIL-natural person(s) (if any) exercising control of the legal person or arrangement through other means; and

C. where no natural person is identified under (A) or (B) above, the identity of the relevant natural person who holds the position of senior managing official.

Beneficial Owners of Trusts

beneficiaries or class of
beneficiaries

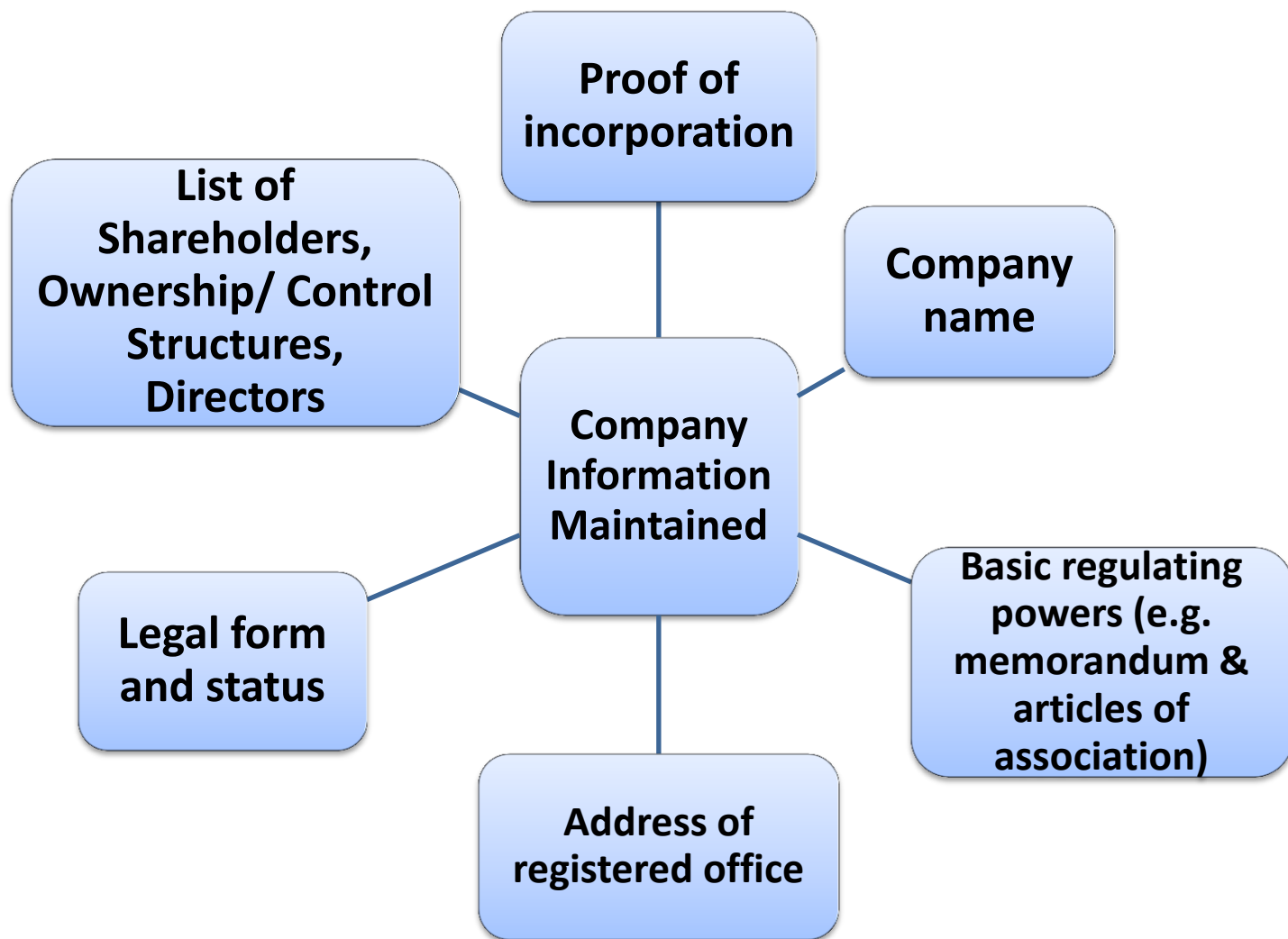


settlor

trustee

any other natural person
exercising ultimate effective
control over the trust
(including through a chain of
control/ownership);

Company Registry



Section 6 : Risk-Based Approach



Risk Based Approach on Due Diligence of Clients

- Financial institutions and accounting firms should take appropriate steps to identify, assess, and understand their ML/TF risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels).
- Thus, where lower risks have been identified, simplified AML measures can be applied.

Risk Based Approach on Due Diligence of Clients

Identify, assess & understand money laundering and terrorist financing risks (customers, countries or geographic areas; and products, services, transactions or delivery channels).



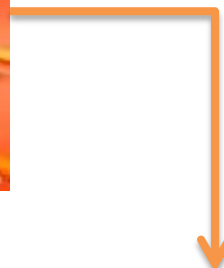
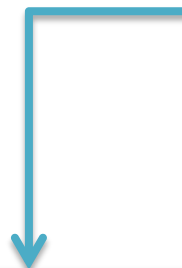
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UNDERSTAND

Risk Based Approach on Due Diligence of Clients



**Lower risk
customer,
products, service ;
simplified AML
measures can be
applied.**

**Higher risk
customer,
product, service
require enhanced
AML measures**

Risk Based Approach on Due Diligence of Clients

- FTR Act and Regulations may be applied on a risk-based approach.

FTR Regulations s3

- Thus, simplified customer due diligence procedures may be applied by financial institution or accounting firm if:
 - a) The risk of money laundering and terrorist financing for the client is assessed as low;
 - b) Information on the identity of the customer and beneficial owners of the a customer is publicly available; or
 - c) Adequate checks and controls exist in Fiji.

FTR Regulations s21

Risk Based Approach on Due Diligence of Clients

Example of low risk customers include

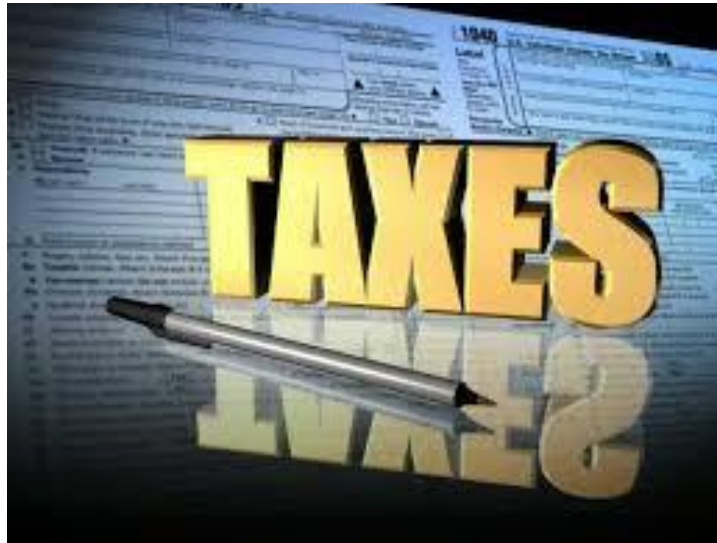
- minors;
- certain sole trader businesses (such as rural micro-finance sole trader businesses; neighborhood shop or canteen businesses);
- students;
- rural farmers;
- rural dwellers;
- casual employees.

Risk Based Approach on Due Diligence of Clients

Enhanced customer due diligence procedures must be applied if:

- a) The client has a high risk for ML/TF;
- b) When dealing with foreign PEPs;
- c) When dealing with domestic and international organisation PEPs whose business relationship has been assessed as having a high risk for ML/TF.

Section 7 : Tax Crimes



Tax Crimes- Predicate for Money Laundering Offence

Money Laundering is *the way* a person/entity would receive, possess, convert, transfer, conceal, use or dispose their ill-gotten proceeds.

- ML offence also includes a person who:
 - Persons who provides/renderers assistance;
 - engages in a transaction that involves suspected tainted proceeds.
- To convict: Acknowledge or ought to have reasonably known that the money was derived or realized from some form of unlawful activity.
- Not predicated on proof of the commission of a serious offence.



Tax Crimes- Predicate for Money Laundering Offence

- Money laundering is criminalized under the Proceeds of Crime Act.
- 20 years maximum imprisonment or \$120,000 maximum fine or both if the offender is a natural person.
- A maximum fine of \$600,000 for a body corporate.



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Tax Crimes- Predicate for Money Laundering Offence

FATF Recommendations now includes tax crime as a predicate offence for money laundering

- Therefore, any person or entity that receives, possesses, converts, transfers, conceals, uses or disposes proceeds derived from a tax crime scheme can be charged for money laundering.
- Accounting professions providing tax services for clients need to be vigilant.

Tax Administration Decree 2009

Offence for Failure to File a Tax Return

49. – A taxpayer who, without reasonable excuse, fails –
- (a) to file a tax return by the due date, or within such further time as the CEO may allow under section 5; or
 - (b) to comply with section 3(3),
- commits an offence and is liable for a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months or to both a fine and imprisonment.

Tax Administration Decree 2009

Offence for Making False or Misleading Statement

53. – (1) A person who knowingly or recklessly –

(a) Makes a statement to a tax officer that is false or misleading in a material particular; or

(b) Omits from a statement made to a tax officer any matter or thing without which the statement is false or misleading in a material particular,

commits an offence and is liable to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 24 months or both a fine and imprisonment.

Section 8 : Powers of Law Enforcement Agencies

Powers of Law Enforcement Agencies

FATF Recommendations further expanded the responsibilities and powers of LEA and IAs to enable more effective and efficient investigation and prosecution of ML, TF and associate predicate offences.

Responsibilities of Law Enforcement Agencies & Investigative Authorities

- LEA to investigate ML, predicate offences and TF
 - ✓ in the context of national AML/CFT policies;
- Requirement for LEA to conduct pro-active parallel Financial investigations on ML, predicate offences and TF;
 - ✓ includes offences committed outside the jurisdiction;
- LEA can use procedures such as controlled deliveries and undercover operations in ML/TF investigations;

Responsibilities of Law Enforcement Agencies & Investigative Authorities

Fiji laws include:

- Crimes Decree
- Police Act
- Criminal Code
- Evidence Act
- PPC Act
- Etc.



Responsibilities of Law Enforcement Agencies & Investigative Authorities

- Responsibility to designate competent authority (broader than LEA) to expeditiously identify, trace and initiate actions to freeze and seize proceeds of crime
- Use of multi-disciplinary investigative group
- LEA and prosecutorial authorities should be adequately resourced (financial, technical, human), maintain high professional standards (integrity and skills)

Powers of Law Enforcement Agencies & Investigative Authorities

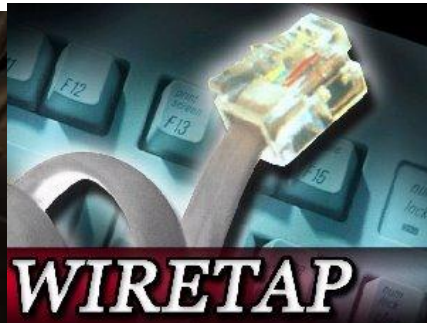
- Basic powers: obtain access to all necessary documents and information when conducting investigations (including documents or information held with financial institutions) ; take witness statements; seize and obtain evidence.



Powers of Law Enforcement Agencies & Investigative Authorities

- Should have powers to undertake a wide range of investigative techniques for ML/TF investigations:
 - Intercepting communications
 - controlled delivery
 - undercover investigation
 - wire tapping
 - accessing computer systems

Cellular Intercept



Powers of Law Enforcement Agencies & Investigative Authorities

- Effective mechanisms enabling competent authorities:
 - ✓ to identify owner / controller of accounts;
 - ✓ Identify assets without prior notification to the owner;
- Competent authorities should be able to ask for information from the FIU during investigations of ML/TF or associated predicate offences.

Powers of Law Enforcement Agencies & Investigative Authorities

ILLICIT DRUGS CONTROL ACT 2004 PART 3 - INVESTIGATION, SEARCH AND SEIZURE

Division 1-Powers of police officers and customs officers

Interception warrants

12.-(1) A High Court Judge may, upon written application-

(a) from a police officer of or above the rank of inspector

(b) from a customs officer of or above senior customs officer,

if satisfied that there are reasonable grounds for that suspicion or belief, issue a warrant authorising the **covert monitoring and recording, by any means, of the conduct and communications, including telecommunications,** of the person.

Section 9 : Case Studies

Case Study 1: VAT Refund Fraud (State v Manoj Khera)

Trading As



Mr. Manoj Khera

Money Laundering



Personal Bank Account

06/05/2004 - \$9,000
25/06/2004 - \$2,000
05/07/2004 - \$16,000
08/07/2004 - \$15,000

TOTAL WITHDRAWAL = \$42,000



Cash



Shivam Imports & Exports

False purchases

Suppliers

VAT tax refunds

\$15,000 Apr 2004
\$11,800 Mar 2004
\$8,200 Feb 2004
\$9,611.82 Jan 2004

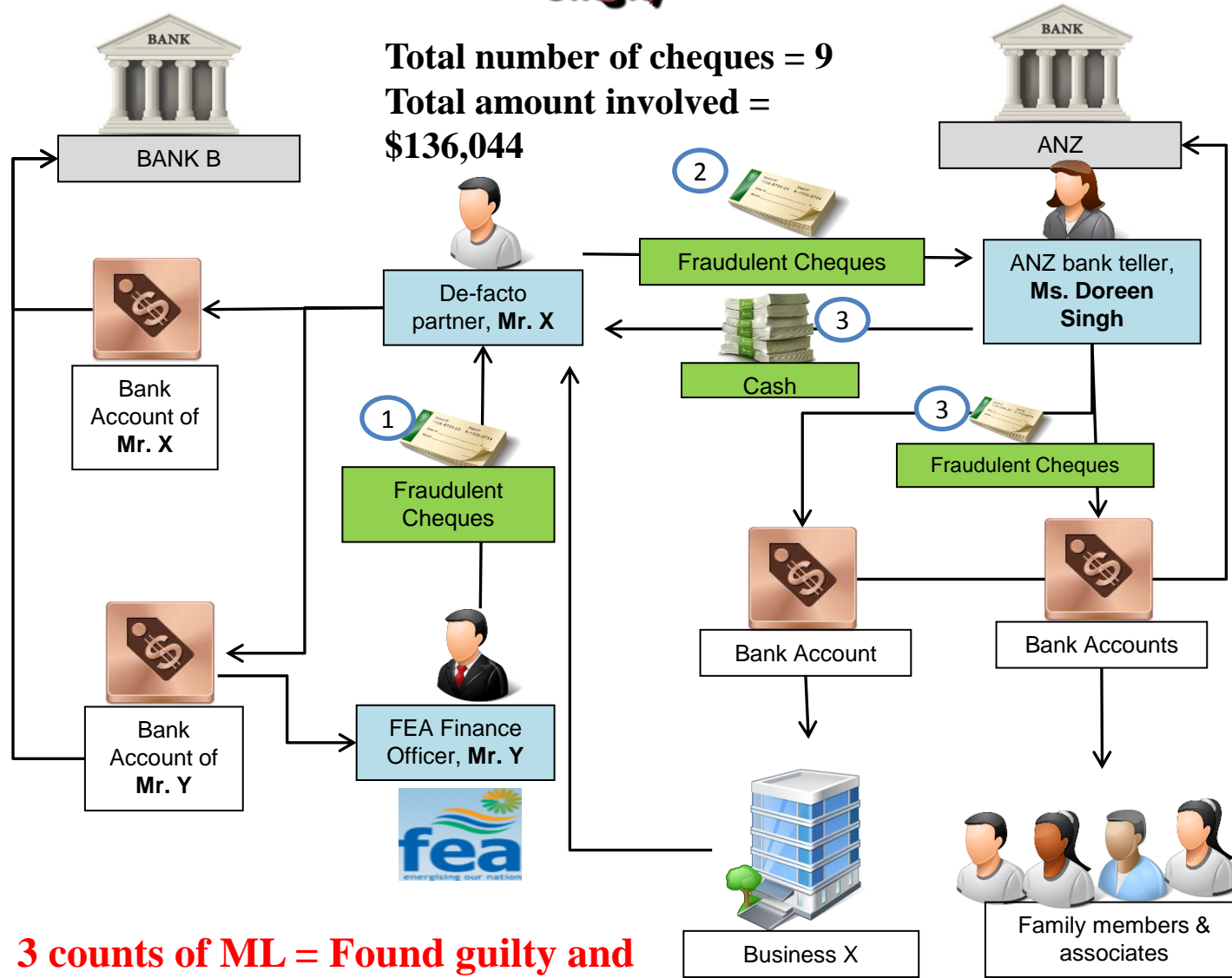
TOTAL = \$44,611.82

Predicate Offence:
False Pretences



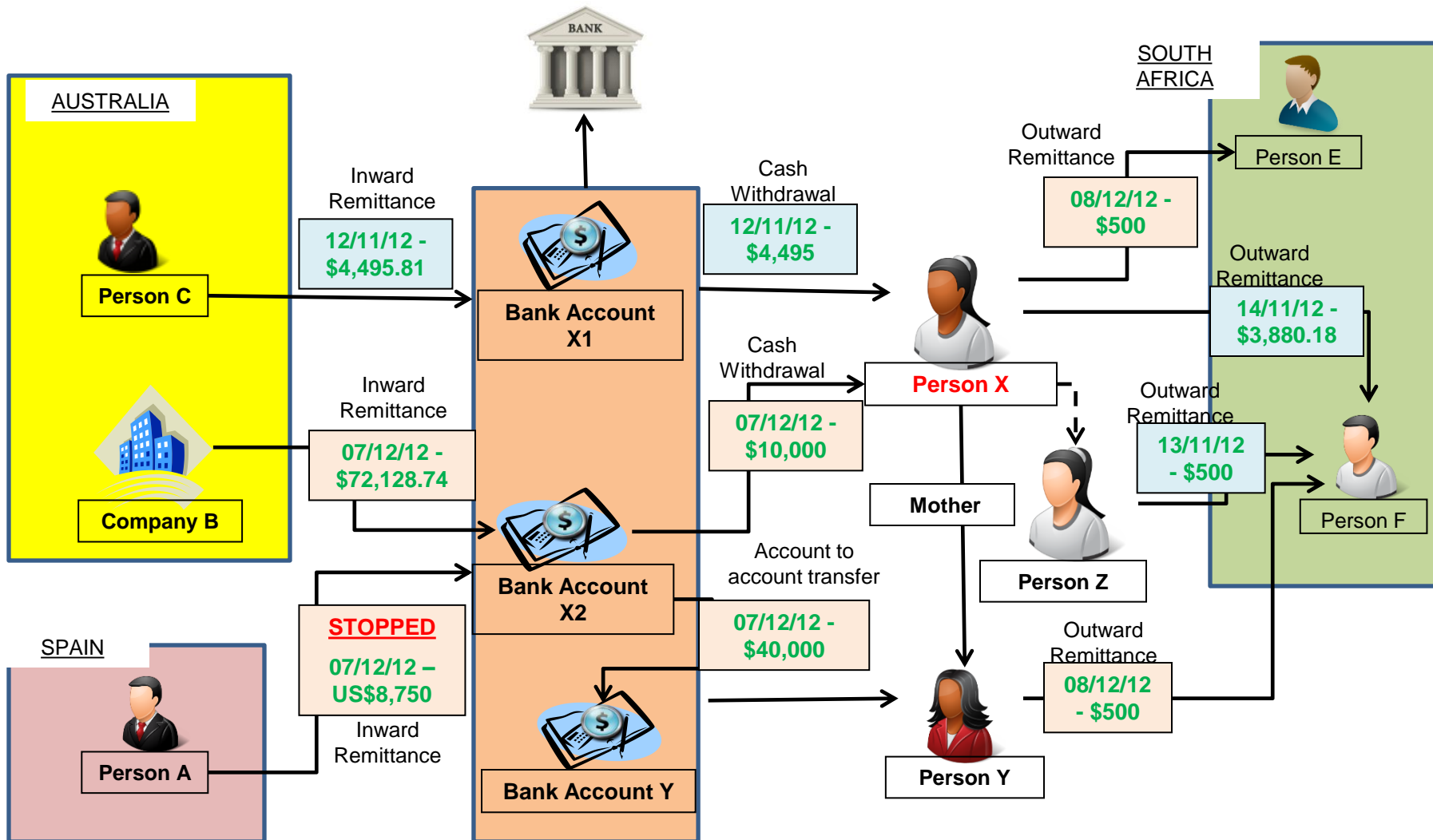
4 counts of "False Pretences" and 1 count of ML = Found guilty and sentenced to 4 years imprisonment

Case Study 2: Corporate Fraud (State v Doreen Singh)



3 counts of ML = Found guilty and sentenced to 6 years imprisonment

Case Study 3: Cybercrime



Person X has been charged for “Possession of property suspected to be proceeds of crime” under POC Act.

Next Steps

National Risk Assessment Mutual Evaluation Recommendations

Conclusion

- International Standards require increased scrutiny by accountants and other providers of financial services.
- PEPs, beneficial owners of legal entities and trusts.
- Increased focus on responsibilities and powers of law enforcement agencies to investigate and prosecute ML, TF and other predicate crimes.
- Ultimate goal of above requirements, deprive criminals of the criminal/illegitimate/unexplained wealth.