



FijiFIU

Fiji Financial Intelligence Unit



Address by Mr. Razim Buksh, Director of Financial Intelligence Unit at the Fiji Institute of Bankers Workshop

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Money Laundering & Proceeds of Crime

A. Introduction

Ladies and Gentlemen, Bula Vinaka and Good Afternoon.

I am indeed very pleased to be invited as a speaker and to be part of this workshop that is based on the theme “*The Fiji Banking Industry – Serving Paradise*”. I would like to thank the Fiji Institute of Bankers (FIB) for organizing this workshop that is



being held in close collaboration with NCR Corporation. Thank you ANZ Bank for providing the workshop venue.

The idea of having this workshop is to provide awareness and networking for local banking professionals and practitioners on assessing threats and risks on ATM, EFTPOS and electronic banking platforms, understanding the security environment and improve security and the issue of money laundering in Fiji.

Conducting financial transactions are becoming easier, convenient and faster by-the-day in Fiji primarily due to technological advancements. Financial transactions are executed even from the comfort of our home using a portable device. Fiji is witnessing a rapid expansion of “on-line” and electronic services that is changing our business and banking dynamics. We are managing our daily lives, including payment transactions, using pocket-sized devices. We want to be connected 24/7 with others, our friends and relatives, international partners, and those that we do business with.

At the same time, access to internet and the World Wide Web has become the gateway for criminals to prey on the vulnerable. Criminals and their syndicates are thoroughly organized and resourced to orchestrate their

criminal activities with maximum complexity and sophistication that is sometimes beyond the reach of the law enforcement authorities. Fiji is part of the globalized economy, and as such, Fiji is a global and committed partner in the fight against organized crime.

B. Money Laundering

Let me explain what is money laundering in simple terms. Money laundering is a process of making illegally acquired wealth appear legitimate. Or more simply, it is just the way criminals use their money.

In the laundering process, the criminal or his or her syndicate would conduct one or a series of financial and commercial transactions that might appear legitimate. Money is laundered to hide the true origin of the assets. Money laundering makes detection of proceeds of crime by law enforcement agencies difficult.

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. Therefore, all countries including Fiji are required to have effective measures and systems for preventing and addressing these crimes. These measures include:

- criminal justice and regulatory systems;
- preventive measures to be taken by financial institutions and designated non-financial businesses and professions (DNFBPs);
- transparency on the ownership of legal persons & arrangements;
- FIUs and competent authorities with appropriate functions and powers;
- mechanism for domestic cooperation; and
- arrangements to cooperate with other countries.

Money laundering is criminalized under the Proceeds of Crime Act and the penalty is:

- 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.

A person shall be taken to engage in money laundering if the person engages in a transaction that involves money or property that is proceeds of crime.

Any person who receives, possesses, conceals or uses, money or property that is proceeds of crime also commits money laundering offence.

If a person simply disposes money or property that is proceeds of crime also commits money laundering offence.

A person who brings into Fiji any money or other property that is proceeds of crime also commits money laundering offence.

These acts of laundering can be seen as simple actions of receiving, possessing, concealing, using or disposing. These acts are simple because the launderer need not do anything else, such as to create layers or to integrate the money to make it clean or to make it look clean.

However, for more complex laundering transactions, pursuant to section 69(3)(c) of the Proceeds of Crime Act, the launderer needs to have a purpose for converting or transferring money that is derived from a serious offence. That purpose or aim is “concealing or disguising the illicit origin of that money”.

The offence of money laundering also includes the concealment of “the true nature, origin, location, disposition, movement or ownership of the money” that is derived from a serious offence.

To convict a person for money laundering, that person either knew or ought to have reasonably known that the money was derived or realized from some form of unlawful activity. The offence of money laundering is not predicated on proof of the commission of a serious offence.

C. Proceeds of crime

Proceeds of crime means property or benefit that is derived or realized by a person from the commission of a serious offence.

It also means property or benefit that is derived or realized from a disposal or other dealing with proceeds of a serious offence.

Proceeds of crime also means property or benefit that is acquired proceeds of a serious offence.

D. Money Laundering Cases in Fiji

Fiji has a successful record of prosecution and conviction of money laundering offence for the past 10 years.

Fiji has 21 money laundering conviction cases from 2007 to 2017.

29 individuals have been convicted for money laundering. 2 are foreign nationals and 27 are Fijians.

Their age at the time the offence was committed range from 23 years to 46 years.

These launderers received imprisonment sentences ranging from 8 months to 13 years.

The Fijian money launderers come from diverse backgrounds, namely, accountant, owner of a grocery shop and his wife, senior bank officer, unemployed friend of launderer, bank teller, unemployed/housewife, bank settlement officer, owner of jewelry business, bank treasury officer, tax assessor and his wife, contractor, another accountant, former police officer, government employee, and three university students (one of whom pursuing CPA).

A few cases of money laundering are currently before the Fijian Court.

The total amount involved in the money laundering cases is approximately \$25.2 million.

E. Fiji's Financial System V/s Money Laundering Risk

I think it is important that I put a few things into perspective and context.

Firstly, the size and composition of Fiji's financial and non-financial industry.

We have the traditional financial service providers comprising 6 commercial banks with 70 branches and 95 agencies and agent banking centres throughout Fiji as at December 2016. There are 12 credit institutions out of which 4 are licensed by the RBF. There are 7 general insurers, 2 life insurers and 4 insurance brokers and 526 insurance agents. There are 9 licensed FX dealers and 2 money changers. There are other players in the capital markets industry such as our securities exchange, unit trusts, investment advisors, stock brokers, dealers, managed fund representatives, stock broker representatives, and investment advisor representatives.

Then we have non-traditional financial institutions, commonly referred to as designated non-financial businesses and professions (or the DNFBP sector) comprising lawyers, accountants and real estate agents.

As at December 2016, commercial banks had a total of 326 ATMs machines and 6,081 EFTPOS machines in Fiji.

Secondly, the size and value of financial transactions that were conducted in 2016 using electronic platform in Fiji are as follows:

- ✓ **20.8million ATM transactions were conducted exceeding a total value of \$2.7billion.**
- ✓ **3.9million EFTPOS transactions were conducted with a total value of almost \$1billion.**

- ✓ **459,633 credit card transactions were conducted totaling some \$120million.**
- ✓ **1.4million internet banking transactions were conducted totaling some \$700million.**

In 2016, 12million paper based transactions were conducted with a total value of more than \$12billion.

In 2016, almost 900,000 inward remittance transactions and 300,000 outward remittance transactions were conducted by commercial banks and remittance service providers.

Thirdly, the gross assets of the Fijian financial system in 2016 was more than \$17billion. This excludes assets of the RBF and assets of the DNFBP sector.

The FIU estimates that approximately \$100 million flows in and through Fiji's financial system annually that are suspected to be illicit proceeds available for laundering. These are proceeds linked to tax evasion, corruption, fraud and other financial crimes.

The top crimes in Fiji which generate proceeds that are available for laundering in and through Fiji's financial system are:

- drug trafficking;
- tax evasion/fraud;
- deception and fraud;
- corruption; and
- cybercrime.

Some of you would already know that the Financial Intelligence Unit is one of the most advanced Fijian Government institutions that was set up to deal with combating complex crimes such as money laundering and terrorist financing.

We have put in measures at national and institutional level to ensure the protection of the Fijian financial system, businesses, and Fijian people from abuse by criminals and money launderers.

The FIU has issued numerous disseminations to law enforcement agencies to investigate money laundering and proceeds of crime. There also have been numerous requests from law enforcement agencies for financial background checks and tracing of proceeds of crime linked to ongoing money laundering, proceeds of crime and fraud investigations. As a result of FIU's collaboration with law enforcement agencies, we have seen many cases

which have been successfully investigated and prosecuted, including money laundering, fraud, corruption, human and drug trafficking, theft and tax evasion.

The FIU’s investigation and profiling in 2016 involved:

	No. of cases	No. of Individuals	No. of Entities
FIU’s Proactive Analysis	494	426	62
Investigative Support to LEAs	213	500	246
Due Diligence Checks	41	109	80
TOTAL	748	1,035	388

In 2016, the FIU provided 95 intelligence case reports totaling \$128million to the Fiji Revenue & Customs Services. These cases involved several hundred financial transactions and bank accounts for possible tax evasion. 58 intelligence case reports involving \$81.3million were provided to the Fiji Police Force for possible money laundering, unexplained wealth, fraud and other predicate offence cases.

F. Fiji’s First Money Laundering Case

Timothy Aaron O’Keefe was an Australian national who came to Fiji using a false identity in 2005. He had set-up a bogus loan company called Asia Pacific Finance together with a local person. Through this bogus company, O’Keefe conducted an advance fee fraud. The fraudulent business activity was conducted through advertisements placed in Australian newspapers.

More than 200 potential victims are believed to have responded to the advertisements. Most did not pursue it any further but 51 ultimately agreed to enter into a loan agreement with O’Keefe and the local person. They were promised that loan finance would be made available to them conditional on payment of an advance fee described in the correspondence as a fee for the payment of transfer costs, insurance and exchange rate fluctuations. Following payment, all contact ceased.

O’Keefe and the local person used the money for their own purposes. A total of \$90,930.78 was received into the bank account of the loan company

within 2 months. It can be said that the fraudulent scheme was a well conducted and potentially a very lucrative fraud.

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 and only \$1,500 was recovered. The “ultimate beneficiary” behind the bogus company was O’Keefe and the local person. The sole intention to register this entity in Fiji was to disguise it as a legitimate business under the fraudulent scheme.

O’Keefe was charged with one count of obtaining registration by false pretences, two counts of forgery and one of obtaining money by false pretences and money laundering.

O’Keefe pleaded guilty in the Magistrates’ Court and was sentenced as charged for the four offence. O’Keefe filed an appeal on his sentence in the High Court but the appeal was dismissed. He then appealed in the Fiji Court of Appeal.

I would like to quote the Resident Magistrate John Semisi in his ruling on 5 January 2006:

"The accused who is an Australian expatriate obviously studied our banking system carefully before using the said system to facilitate and perpetrate his dishonest and criminal activities. The accused also clearly used this scheme to lure unsuspecting innocent victims to part with their hard-earned money. ... There has been a long standing suspicion by the law enforcement agencies that the offence of money laundering is already taking place in Fiji, and this case confirms their suspicion beyond any doubt now. Therefore, our financial institutions need to exercise more care to avoid being used as conduits of "white collar crime". The sophisticated fraudulent scheme used by the first accused was evidently to profit from the earnings of innocent victims and fortunately the scheme was uncovered quickly thereby stopping even larger sums being taken. In the outcome and without doubt, a profound deterrent sentence is warranted to reflect the seriousness of the offences and to be a strong warning to expatriates and like minded persons that the courts will come down hard for such offences. ... It is very clear to the court that the first accused is the mastermind behind this fraudulent scheme. The gravity of the offences is also depicted by the lengthy tariffs legislated by Parliament, for example, count five carries a maximum sentence of 20 years."

In the appeal matter before the High Court in Suva on 25 August 2006, Justice Gerard Winter dismissed the appeal and upheld the sentencing of O’Keefe as determined by the Magistrates Court.

In his ruling, Justice Winter said that:

*“It is precisely **that type of money laundering activity that attracts the need for a stern and deterrent sentence.** I keep in mind this was not drug related offending and **no arithmetical relationship between the sums involved and***

sentence should be attempted but I do observe that in my view the sentence within the available tariff range was lenient”.

The Fiji Court of Appeal on 25 June 2007 upheld the conviction including money laundering conviction, however, the jail term for money laundering offence was reduced from 5 years to 3 ½ years.

The Court of Appeal noted in its ruling that:

“When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts of the person to be sentenced. Money laundering is clearly potentially a very serious offence. It can be, and is, used to disguise the true nature of money derived from criminal activity and so make it available for legitimate use. It is essentially for large criminal organizations, if they are able to maximize the proceeds of their unlawful activities. Of necessity, it is an international problem and undoubtedly smaller jurisdictions may be seen as useful and unsuspecting conduits. That is why Parliaments imposed the heavy penalties under the Proceeds of Crime Act”

Subsequent money laundering cases, particularly in 2015 to 2017, the Courts have imposed severe penalties, as high as 13 years imprisonment, which reflect the seriousness and gravity of money laundering offence in Fiji.

G. The “Turtle Island” Money Laundering Case

The case involved fraudulent activities conducted by Mr. Anand Kumar Prasad, accountant of Turtle Island Resort in Fiji from May 2006 to May 2007. Mr. Prasad altered the resort’s cheques which were written and authorised for payment of goods and services to the resorts’ creditors.

This case involved 84 cheque payments totalling \$840,000, was reported in two Suspicious Transaction Reports (STRs) submitted by two commercial banks.

The first STR was raised on the grounds that Mr. Anand Kumar Prasad, “a self-employed individual” was depositing large amounts of cash into his personal bank account and it was believed to be sourced from his business. This STR was initially analysed for possible tax evasion-related activities.

The second STR was raised on the grounds that a fraudulent scheme involving the alteration of business cheques was detected. This STR was categorised as high priority.

Commercial Bank A had conducted their own investigations and detected a fraud conducted on one of their customer's bank accounts (Spor (Fiji) Limited T/A Turtle Island Resort) and the involvement of the bank's staff member, Ms Shirley Sangeeta Chand.

The FIU conducted its profiling, analysis and investigations and within three days of receiving the STR, the FIU disseminated its intelligence case report to the Anti-Money Laundering and Proceeds of Crime Unit of the Fiji Police Force. The FIU also played a key role in coordinating meetings between the reporting financial institution and the Fiji Police to quickly discuss and progress the case.

During the analysis of the STR, the FIU requested the other commercial banks to search for personal bank accounts maintained by the main suspects in this case and others.

The FIU was able to establish that additional stolen cheques with the forged signature of the owner of the resort were deposited into Mr. Prasad and others' bank accounts maintained at other commercial banks.

A temporary freezing order was issued by the Fiji FIU to restrict any transactions conducted in one of the main suspect's wife's personal bank account. This bank account was maintained at commercial bank B and had a significant account balance of \$17,000.

In concealing the funds fraudulently converted in this case, a shell company was established and incorporated on 6 February 2007. The shell company opened its bank account on 24 December 2007. Nine of the 84 cheques that were fraudulently converted were altered and deposited into the bank account of the shell company.

The other 75 cheques were issued to the other family members and associates of Mr. Prasad, bearing the forged signature of the owner of the resort.

The proceeds laundered from this crime were used to purchase six motor vehicles, a residential property and cash. The vehicles were registered under

Mr. Prasad and others' names whereas the property was registered under Mr. Prasad's mother, Mrs. Bhagwati Prasad and was later transferred to one of his associates.

Criminal charges were laid against Mr. Prasad, his family members that were involved and his associates. A restraining order for the six vehicles, the private property, and cash was successfully obtained from the High Court of Fiji. A civil forfeiture (non-conviction based) order on these assets was successfully obtained and the assets were forfeited to the State.

Mr. Prasad, his family members, and his associates were convicted for conspiracy to defraud, forgery, uttering, obtaining on forged documents.

Mr. Anand Kumar Prasad was sentenced for a term of 6 years for each money laundering offence to be served concurrently with the conspiracy sentence.

Only three of the six suspects were charged for money laundering while there were other parties who also aided and assisted in this fraudulently converted cheques scheme.

The intention of Fiji's AML/CFT framework is not only to convict the criminals, it is to also deprive them of the enjoyment of their illicit wealth.

Mr. Anand Kumar Prasad and his family and associates were sent to jail and their tainted wealth was forfeited.

H. No Conviction V/s Forfeiture

In December 2009, Sachin Deo was charged for unlawful cultivation and possession of illicit drugs.

In November 2010, the Director of Public Prosecutions has filed an application in the Suva High Court for a civil forfeiture order of \$46,000 cash as tainted property.

Detective Sergeant Simione Ravouvou in his affidavit stated that on 30th December 2009, based upon information provided to police, a search

warrant was executed at the residence of Sachin Deo. During the search police found \$46,000.00 and over a kilogram of cannabis sativa (marijuana) and some half a kilogram of marijuana plants.

In his caution interview statement, Sachin Deo had already admitted that this amount of \$46,000.00 was from the sale of drugs and that he kept this money for his operation. During court hearing, Sachin Deo claimed (but not substantiated) that the money was his mother's savings.

Since this application was filed as a civil forfeiture application, Justice Priyantha Fernando of the Suva High Court in his ruling said on the balance of probabilities that Sachin Deo failed satisfy to Court of the ownership and acquisition of the money, ordered that \$46,000 is forfeited

Later, in the criminal matter for the predicate offences, in August 2011, Justice Priyantha Fernando of the Suva High Court acquitted Sachin Deo of the two criminal charges.

I. Facebook Romance, Internet Banking Fraud and Money Laundering

Natasha Nilma Singh was 20 years old in 2013. She resided at Lot 70 Biau Drive, Cunningham, Stage 2, Nasinu. She lived with her mother Indra Devi Singh aged 43 years who was unemployed at the time.

In 2012, Indra Devi Singh got in an online romantic relationship with Steven Ham whom Natasha Nilma Singh and Indra Devi Singh had never met.

Natasha Nimla Singh was a FNU student in the year 2012 and had internet excess at home and at FNU.

Natasha Nilma Singh managed her mother's Facebook account and communicated with Steven Ham on a regular basis.

Natasha Nilma Singh referred Steven Ham her Dad, Step-father and father.

Steven Ham had reportedly promised Natasha Singh and her mother that he would marry Indra Singh (mother) and they would settle in the United States of America.

After eight months of chatting, Natasha Singh received \$72,128.74 into her bank account. Two transactions were received from an Australian company. The second transaction was recalled by the bank and the funds were frozen. Natasha Singh claimed that the funds were sent by her soon-to-be step-father for purchase of a house in Fiji.

The bank in Fiji referred the matter to the FIU and the Fiji Police Force and investigations revealed that the Australian company had not sent the funds to Natasha Singh. The funds were transferred from Australia to Fiji through internet banking fraud.

She transferred funds to her mother's bank account. She withdrew funds and remitted funds to different beneficiaries in South Africa upon instructions from Steven Ham. She also used her mother and her friends to send funds to these beneficiaries in South Africa. Natasha Singh also used her boyfriend to seek approval to send funds.

Natasha Singh stated that she was blackmailed by Ham that the funds which she was sending overseas to different beneficiaries was for the treatment of his son who was dying. His son was reportedly residing in South Africa. There were telephone conversations exchanged between Steven Ham, his son and Natasha Singh. She was also asked to remit funds to beneficiaries in South Africa as he claimed that he had a business in South Africa and some funds were for payment of his workers.

Natasha Singh spent a portion of the funds received to buy groceries.

On 4 November 2016, Natasha Singh was convicted for one count of "Possession of Property suspected of being proceeds of crime". Natasha Singh was sentenced to 8 months imprisonment suspended for 2 years.

J. Challenges

Agencies are faced with challenges in terms of the changing and evolving domestic and global crime landscape and risks. Criminals are getting more sophisticated in their modus operandi (method of operation). There is increasing use of the internet and technology to carry out their criminal activities.

As a result there is an increasing demand for FIU intelligence from law enforcement authorities such as the Fiji Police Force, Fiji Revenue and

Customs Services, and FICAC. Given the constantly changing crime types, there is also demand for the FIU to provide accurate and complete intelligence as soon as possible. This is sometimes difficult in the view of the many competing functions of the FIU and its set resources. Another challenge is the need to continuously build capacity and technical knowledge across agencies especially law enforcement agencies to be able to keep up with the changing criminal environment.

The challenges faced by prosecution are putting across a charge where there was no predicate offence together with the money laundering charges. It sometimes becomes difficult for prosecutors to prove the elements of serious offence because the offence had not orchestrated in Fiji and therefore the Prosecutors could not charge for the serious offence itself. Due to the precedence set in the 1st ML conviction, the sentences delivered for the money laundering cases recently appear non-commensurate with the nature, scale and value of offending.

There is also a challenge in building and maintaining partnerships with foreign FIUs and law enforcement agencies. Transnational crime occurs across multiple jurisdictions and therefore efforts of law enforcement agencies from various jurisdictions is required in order to successfully investigate and prosecute these transactional crimes.

Thank you for listening and Vinaka Vakalevu.

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