

The Nexus Between Anti-Corruption and Anti-Money Laundering Systems in Fiji

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Background: Corruption & Money Laundering

Corruption

- Generally committed for the purpose of obtaining a private gain.
- Corrupt funds are generated from bribery, extortion, self-dealing, misappropriation, embezzlement, etc.
- Proceeds must be laundered.
- Why? To enjoy it without fear of detection and confiscation.
- Need to disguise their identity and the source of funds.
- Why? To place funds into the financial system and use it without suspicion.



Background: Corruption & Money Laundering

Corruption

- 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.



Background: Corruption & Money Laundering

Corruption

- Prevention of Bribery Promulgation (S.4(1) & Crimes Decree (S.134) creates an offence on part of the private sector first and an offence on part of the public official second.
- 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.



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Background: Corruption & Money Laundering

Money Laundering

- Simply, *the way* these corrupt parties would receive, possess, convert, transfer, conceal, use or dispose their ill-gotten proceeds.
- ML offence also includes a person who:
 - renders assistance;
 - engages in a transaction that involves corrupt proceeds.
- To convict: Acknowledge or ought to have reasonable known that the money was derived or realized from some form of unlawful activity.
- Not predicated on proof of the commission of a corrupt practice or related offences.



Background: Corruption & Money Laundering

The FIU

- Role of FIU during pre-investigative and intelligence gathering stage. Acts as an interface between:
 - Private sector financial institutions; and
 - Law enforcement authorities, FICAC.
- assists with the flow of relevant financial information.
- AML = tool for combating corruption.
- 20 requests from FICAC: 73 individuals and 32 business entities (2012).
- 20 requests from FICAC: 39 individuals and 5 business entities (Jan – May 2013).



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National Coordination and Cooperation

- The National AML Council established under the FTR Act;
- 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).
 - **FICAC.**



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National Coordination and Cooperation

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 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



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National Coordination and Cooperation

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



Preventative Measures & Financial Institutions

- Corruption also requires access to the financial institutions.
- Firstly, to facilitate the corrupt transaction;
- Secondly to launder and use corrupt proceeds.
- FTR Act covers the following types of institutions defined as a financial institution:
 - commercial banks, foreign exchange dealers, money remitters, insurance companies and finance companies; AND lawyers, accountants and real estate agents.
 - Undertake preventative measures (CDD, monitoring of transactions)



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Establishing Source of Funds/Income

- FIs 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.
- Increases transparency and make it difficult for the corrupt parties to operate behind other people or business entities and trusts.



Politically Exposed Persons

- PEP: a person who is or has been entrusted with a prominent public function:
 - 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: a person entrusted with a prominent function by an international organisation.
- Currently enhanced due diligence on all foreign PEPs.
- Establish the source of wealth/funds.
- Conduct enhanced ongoing monitoring.
- of the business relationship with the PEP.
- New FATF Standards = all domestic PEPs.
- Requirements also apply to family members and close associates of PEPs.



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PEPS and the Draft Constitution of Fiji

- The proposed establishment of an Accountability and Transparency Commission under the Draft Constitution;
- Article 141 of the Draft Constitution: proposed Accountability and Transparency Commission and a Code of Conduct law;
- Annual declaration by certain public officers of their assets and liabilities and financial interests.
- PEP = somewhat similar to definition of public officers
- The Bill of Rights, Article 25: the right of access to information that is held by any public office.
- 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 Disclosure Decree.



Record Keeping

- Record keeping requirement under the FTR Act = 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;
- Records of all transactions, correspondences and a person's identity are also to be kept for a minimum period of 7 years.
- Transaction records to be kept 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..



Wire Transfers

- Commercial banks and money remitters 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.



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Wire Transfers

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



Confiscation of Corrupt Proceeds

- The Proceeds of Crime Act and the FTR Act = tools for asset tracing, freezing and confiscation of proceeds of corruption and bribery offences;
- Non-conviction based forfeiture of tainted property.
- DPP makes applications under the POC Act;
- Recommendation made by the UNCAC implementation review group in June 2012 report: FICAC may also be given this authority to restrain and confiscate assets tainted with corrupt proceeds.



Confiscation of 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.



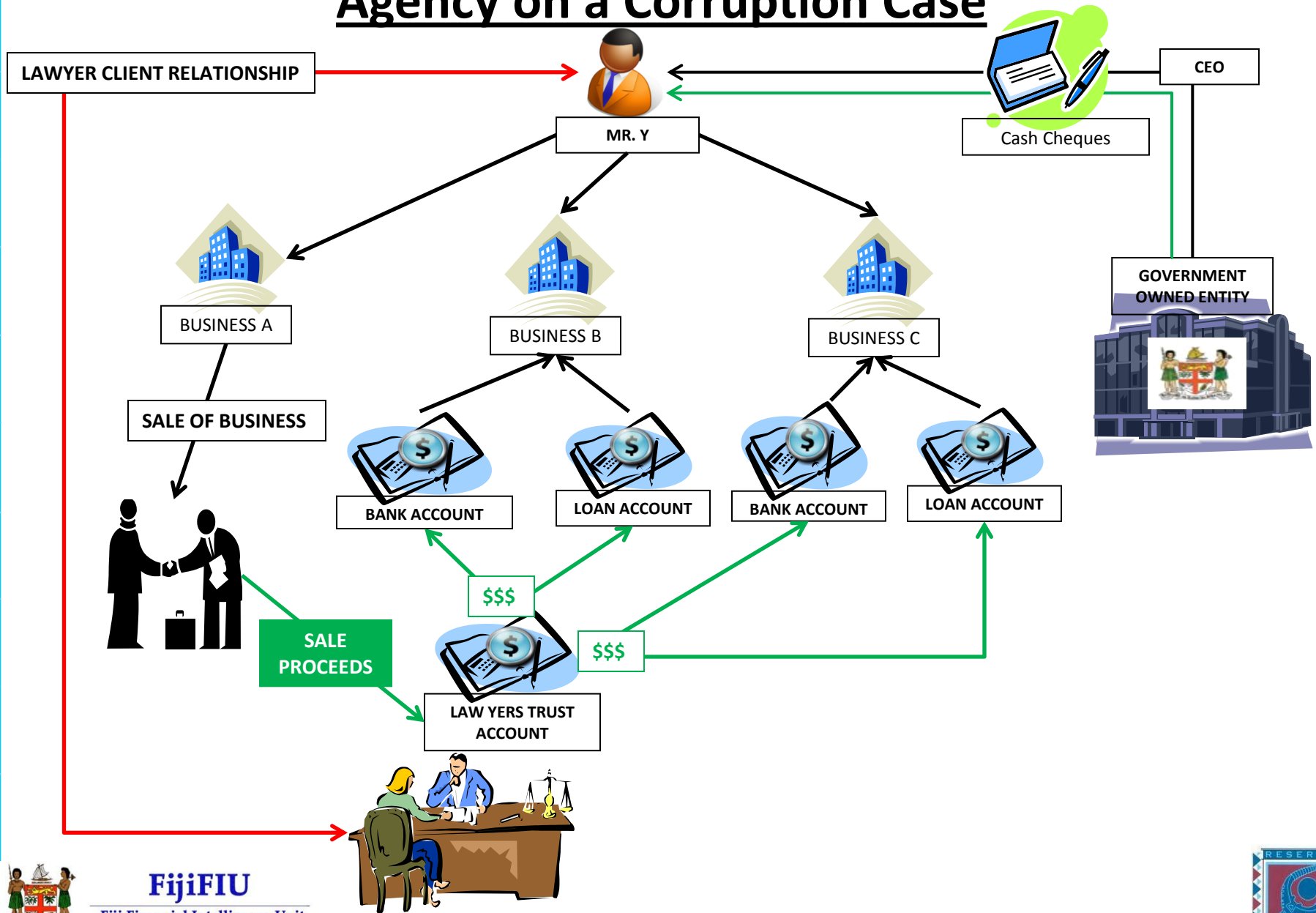
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FIU's Asset Tracing Assistance to Law Enforcement

Agency on a Corruption Case



Money Laundering Offence

- Money laundering is criminalized under the Proceeds of Crime Act and applies to all serious offences, including corruption and bribery.
- 20 years maximum imprisonment or \$120,000 maximum fine if the offender is a natural person.
- A maximum fine of \$600,000 for a body corporate.



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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



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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.



Suspicious Transaction Reports

- **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.

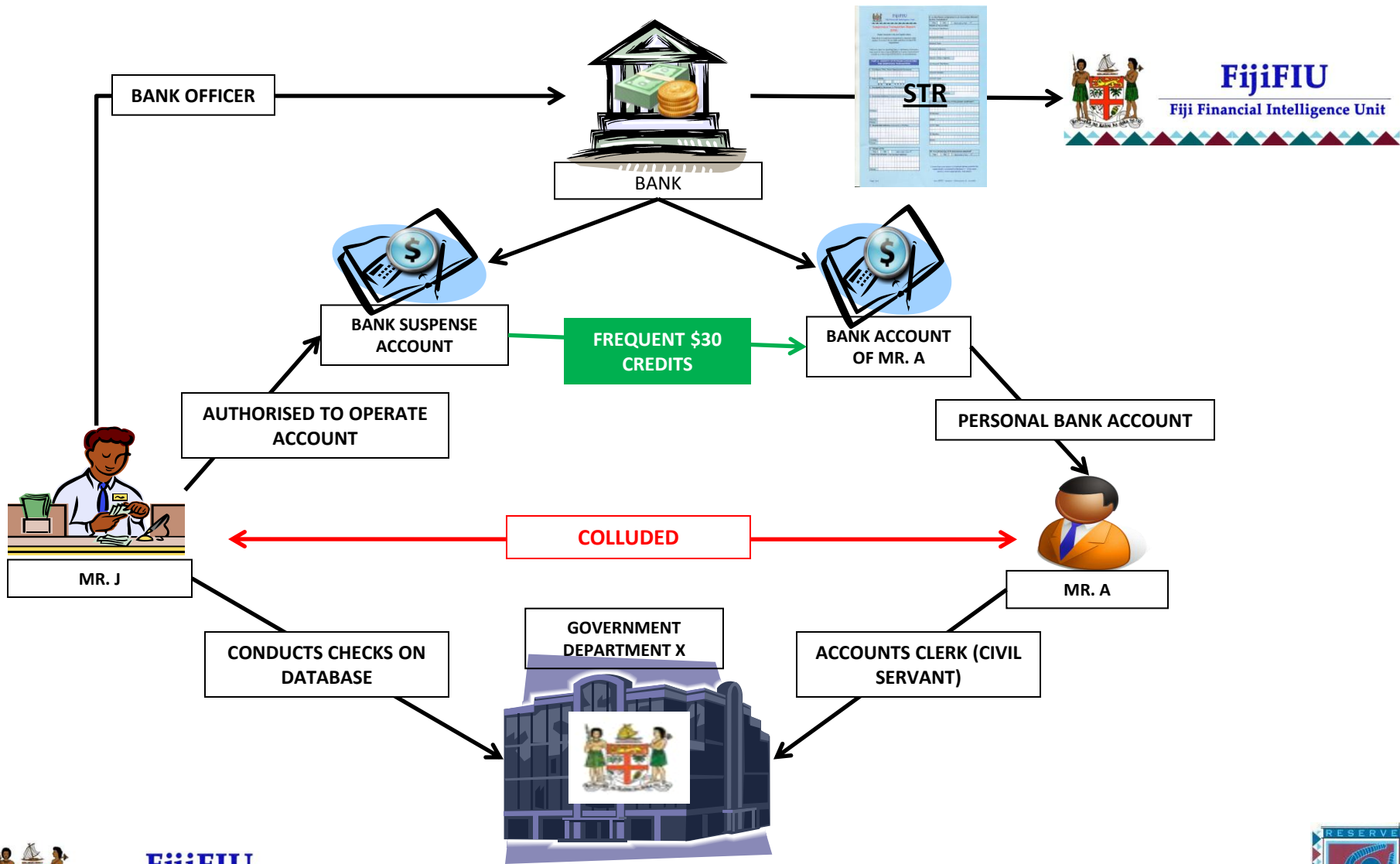


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Corruption Case – Collusion with a Bank Officer



The Financial Intelligence Unit

- The FIU plays a central role in Fiji's anti-money laundering operational and intelligence network.

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



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- **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.

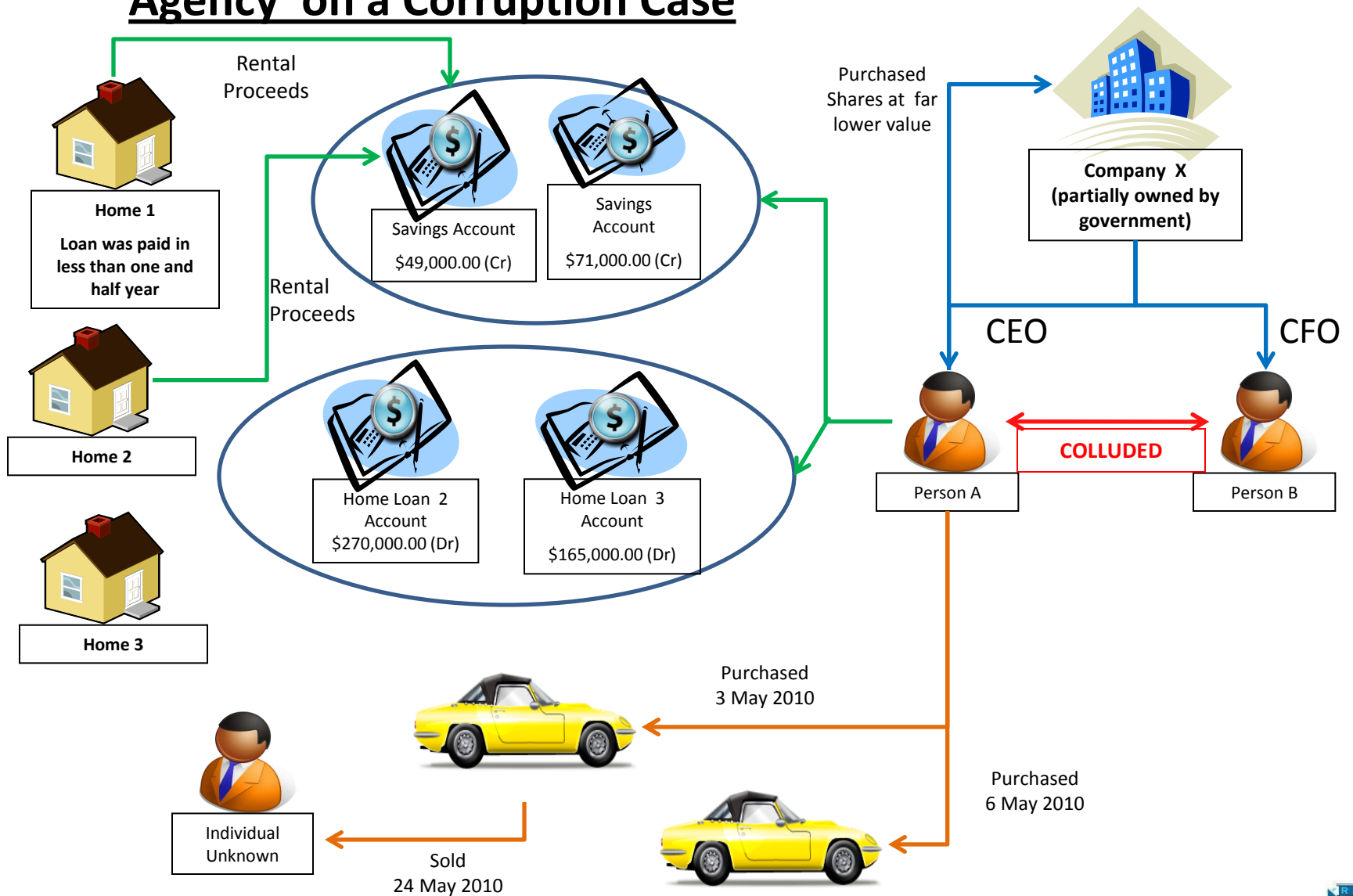


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Assistance Provided by the FIU to Law Enforcement Agency on a Corruption Case



Unexplained wealth

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



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Unexplained wealth

- 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.



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Conclusion

- **Conclusion**
- AML –AC Measures;
- Role of financial institutions;
- PEPS;
- Role of FIU;
- Role of LEAs and FICAC;
- New Measures and Further Steps



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Thank you and Vinaka Vakalevu



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