



## **THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

### **“Compliance and Corruption: A Fijian Perspective”**

*An Address by the Fijian Director of Public Prosecutions, Mr Christopher Pryde, for the Thirty-Third International Symposium on Economic Crime held at Jesus College, Cambridge, UK - Session VIII on Thursday, 10<sup>th</sup> September 2015.*

Members of this Panel;

Distinguished Guests;

Ladies and Gentlemen;

1. First, my thanks to our hosts Professor Ryder, Professor Nakajima, Mr Froomkin QC, and the various organisers of the Symposium for inviting me to speak to you this morning on the topic “Compliance and Corruption”.
2. This is an important topic and one which has been at the forefront of the Fijian Government’s agenda since 2006 and continues to be a priority not least because of our first-hand experience of the link between corruption and a failed or inadequate compliance framework.

3. For those of you unfamiliar with Fiji, we are an independent republic within the British Commonwealth, some 2,000 km northeast of New Zealand, with a population approaching one million and a developing economy largely dependent on tourism and agriculture. We inherited many of our institutions from Great Britain, as a former colony, and those institutions would be recognisable to many of you from other common law jurisdictions. While Fiji has sometimes struggled since Independence in 1970 to maintain political stability and social cohesion, we celebrated a landmark occasion last year on September the 17<sup>th</sup> when we held Fiji's first ever truly democratic elections which ended racial voting and introduced the concept of one person, one vote.
4. Despite challenges over the past few years Fiji has implemented significant reforms to its laws and procedures in order to strengthen itself in the areas of anti-corruption, anti-money laundering, financial reporting, and public accountability.
5. To put things into context, prior to 1997 Fiji had no anti-money laundering or financial reporting laws and our Penal Code which we inherited largely unchanged from British India was out of date and not fit for purpose. We had half-a-dozen offences for stealing canoes but nothing dealing with financial crime. While abuse of office and bribery and corruption offences existed nominally within Fiji's archaic penal system they were ineffectual and there was little or no political will to enforce them.

6. The lack of any sort of compliance framework coupled with a severe lack of anti-corruption enforcement culminated in Fiji's biggest financial scandal which first came to light in 1995.
7. In 1976 Fiji's first bank, the National Bank of Fiji, was launched to great acclaim and in the hopes that it would create a new level of economic prosperity for Fijians by providing easy access to development loans. Instead, the lack of any proper compliance regime, transparency, or accountability led to the Bank being used as little more than a personal piggy bank for all manner of corrupt politicians and civil servants. At one point it was so bad that loans were being drawn down on the say so of Government Ministers communicating to the bank by way of hand-written notes.
8. Everybody, it seemed, was on the take. Loans were distributed like sweets at a children's birthday party. People in landlocked villages with no access to the coast received loans to purchase boats they could never use whilst others received loans to establish questionable business ventures such as prawn farms and the like. Worse, and perhaps inevitably due to the lack of accountability, many loans were approved in exchange for political support.
9. By mid-1995, the Bank had accumulated bad and doubtful debts of F\$90 million. That figure rose uncurbed to F\$220 million by 1998 – **8 per cent of Fiji's GDP** at the time. In the face of public outrage and

media scrutiny, the Government of the day no doubt fearing the sword of Damocles attempted a policy of damage control. It resisted demands for a public inquiry, and declined to provide police and the Office of the Director of Public Prosecutions with extra resources vitally necessary to support complex investigations and prosecution efforts.

10. Faced with a severe lack of resources and outdated laws, most of the prosecutions resulted in failure and none of the major debts were ever recovered. To date, none of the directors of the Bank nor any of the government ministers were ever called to account and the public ultimately had to shoulder the burden of the losses in sullen silence.
11. The lesson learnt was that the NBF crisis was completely avoidable, its effects severe and its final outcome entirely unsatisfactory – all testimony to the continuing lack of good corporate governance in post-independence Fiji. It was a classic example of a linked system of corruption, nepotism and abuse of office where everybody looked the other way.<sup>1</sup>
12. These themes would resonate, no doubt, with all who have studied the global financial crisis of 2007 and indeed any economic financial crisis before or since.

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<sup>1</sup>The Enquirer, Dec. 1995

13. Thankfully, the compliance landscape in Fiji has changed significantly since the 1990s.
14. Since 1997, Fiji has committed substantial resources to bringing its anti-money laundering system up to international standards and enacted comprehensive anti-money laundering and financial reporting legislation. By 2006 the World Bank concluded that although Fiji had more work to do in areas such as enforcement, it was no longer on the list of countries that had been identified as having strategic anti-money laundering deficiencies.<sup>2</sup>
15. Whilst the compliance regime was substantially in place by 2006, little had been done to enforce a lack of compliance. So, in 2007 Fiji's Government established for the first time an Independent Commission against Corruption, FICAC, based on the Hong Kong ICAC model.
16. The Commission is empowered to investigate and prosecute offences under its own legislation and this legislation has been incorporated into Fiji's Constitution in order to further entrench and ensure its survival as an independent public prosecuting agency against the capricious whim of future governments.

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<sup>2</sup>Report on Observance of Standards and Codes – FTAF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) [2006]

17. The law establishing FICAC criminalises a wide variety of bribery offences and expressly legislates that the giver and acceptor of bribes are guilty notwithstanding that the purpose of the bribe is not ultimately carried out.
18. Like the *Bribery Act of 2010* here in the United Kingdom, Fiji's 2007 *Prevention of Bribery Promulgation* criminalises the offering of a bribe to a civil servant and criminalises the receiving of a bribe by a civil servant both at home and abroad.<sup>3</sup>
19. In addition, since 2003 Fiji has had a well-functioning Financial Intelligence Unit (FIU) which was significantly strengthened in 2004 by the enactment of Fiji's key "know your customer law", the Financial Transactions Reporting (FTR) Act. This Act provides for the specific overriding of secrecy for disclosures of information to the FIU which not only includes bank-customer secrecy but also includes solicitor-client privilege.
20. By far and away the majority of Fiji's successful money laundering, and fraud related prosecutions since 2006 have been as a result of either *Suspicious Transaction Reports* submitted to the FIU, which they then share with the Police, or intelligence sharing between Fiji's FIU and the Police following complaints received by the Police directly from persons and corporations.

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<sup>3</sup>Section 4 (1) and (2) of the *Prevention of Bribery Promulgation of 2007*.

21. Fiji's FTR Act contains an extremely wide definition of financial institution and includes everything from banks, fund managers and insurers to money dealers, travel agencies, legal practitioners and accountants. Under the Act, financial institutions in Fiji must know their customers and obtain verification of the customer's identity. In addition, they must know the persons and entities they engage with across borders and obtain verification of their identity. If the identification requirements set out in the Act are not met, the financial institution must immediately cease all transactions and report the matter to the Financial Intelligence Unit.
  
22. The third major weapon in Fiji's compliance and anti-corruption armoury is the *Proceeds of Crime (Amendment) Decree of 2012* which allows the Director of Public Prosecutions to apply to the High Court for an unexplained wealth declaration in respect of any person who maintains a standard of living above that which is commensurate with his or her present or past lawful emoluments or in respect of any pecuniary resources or property disproportionate to a person's present or past lawful emoluments.
  
23. If the Court is satisfied that a person's total wealth is greater than his or her lawfully acquired wealth, the Court may grant the application and the "unexplained wealth" will be restrained and ultimately forfeited to the State. This wonderful weapon in our enforcement

armoury is however yet to be tested but it is likely, as a matter of policy, to be used only in conjunction with an existing criminal proceeding rather than as a stand-alone application.

24. Finally, with the enactment of a new Constitution in 2013, Fiji established for the first time an Accountability and Transparency Commission whose members are appointed by the newly constituted Judicial Services Commission and public figures such as politicians can be investigated if, for example, the income returns they are obliged to file each year with the Elections Office differ significantly from their parliamentary approved salary.
25. It remains to be seen how this Commission will work in practice since the operating law has not yet been enacted but it is a step in the right direction and the message is clear; politicians will no longer be able to consider themselves above the law.
26. Other laws, such as that establishing the Auditor-General's Office and this year's Companies Act that provides for greatly increased penalties that can potentially be imposed on directors who fail in their fiduciary duties to the companies they control also go a long way in enforcing compliance and an equal playing field.

## **CONCLUSION**

27. While most of us believe in open markets and free trade, open markets need level playing fields and this is only possible with effective compliance and anti-corruption frameworks in place backed up with strong, modern laws, and an even stronger political will.
  
28. No one single law is likely to be effective. What Fiji has done in response to the “linked system of corruption, nepotism and abuse of office” that was so clearly demonstrated in the National Bank of Fiji crisis is to create a comparable network of laws that, hopefully, will have better success at enforcing compliance in the future.

I thank you for listening to me.

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