

Corporate Law Developments and Capital Markets Update

**Glenis Yee, (Partner)
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- Note: The material set out in this presentation is of a general nature. It is not a substitute for specific legal advice in a given situation and should not be relied on as such. Munro Leys cannot accept responsibility for any such reliance.

Corporate Law Developments

Janice Fong, (Solicitor)

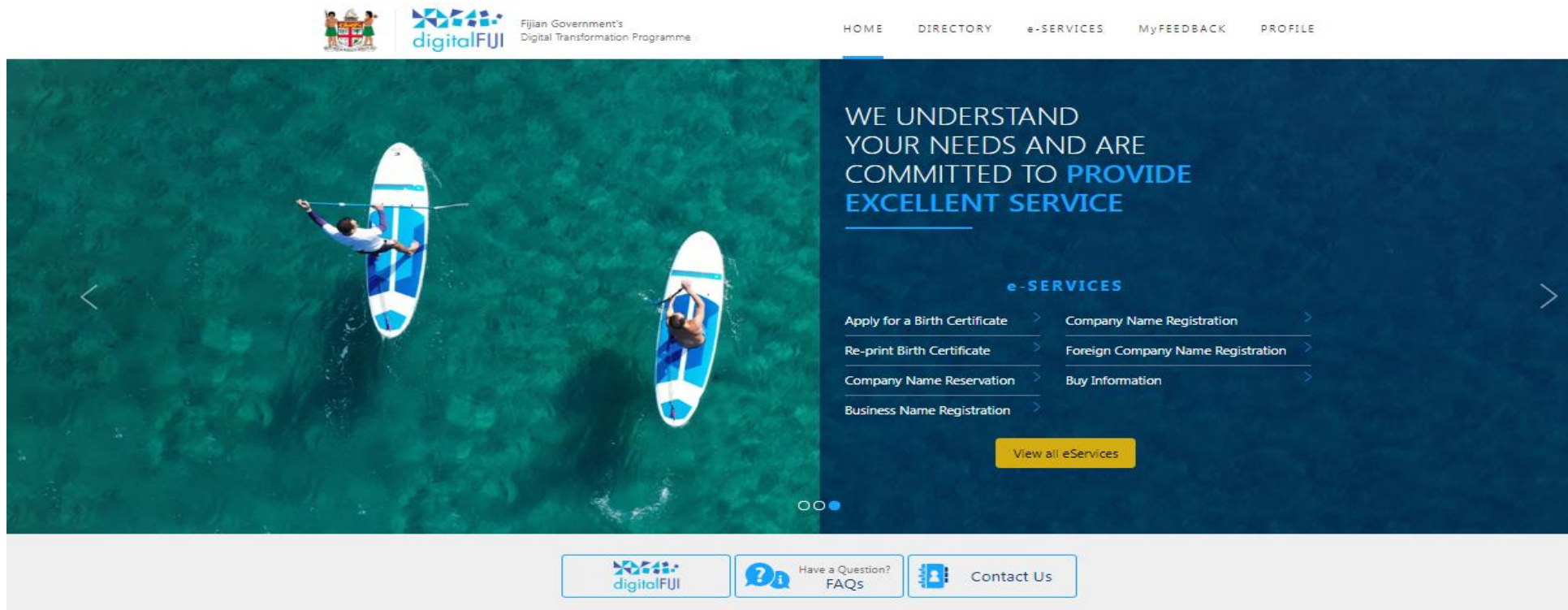
Overview

1. Companies Office, what's new?
2. Re-registration – it's at our doorstep!
3. Personal Property Securities Act 2017
4. Directors and officers liabilities



Companies Office, what's new?

Companies Office, what's new?

- digitalFiji – the Fijian Government's Digital Transformation Programme.

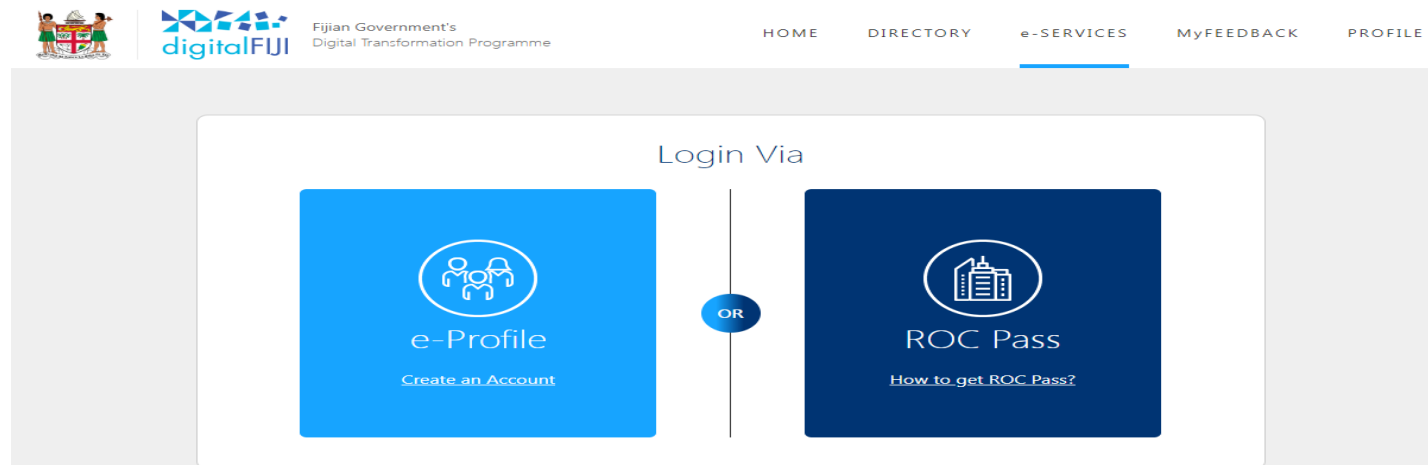


Companies Office, what's new? (cont'd)

Home / eServices	
 Births, Deaths and Marriages ⊖	
Service Name	Service Description
Birth	The section contains all e-Services related to applications for applying of birth certificate and reprint birth certificate.
 Registrar of Companies ⊖	
Service Name	Service Description
Buy Information	The section allows the search of entity records and purchase of entity information.
Business Name	<p>The section contains all e-Services relating to a Business. Business Name is a name under which an individual(s) or entity carries on a business without the legal element. For example: "Grace Kava"</p> <p>When you set up a business and you choose to operate as an individual, firm or a trading name of a company and not as a company, then you have to register on the Registrar of Companies (eROC).</p> <p>There is no need to register, if the business name is operating under you or your partner's, first name and surname.</p> <p>For example: (a) Anoop Lal has a restaurant as his business using "Anoop Lal", he is trading under his own name, so does not need to register. (b) Amani Nalatu has a floral business using "Amani's Blossoms", he is not trading under his own name, he needs to register his business name.</p>
Company	<p>The section contains all e-Services relating to a Local Company. A local company is a company formed and registered under Companies Act 2015. The following type of companies are:</p> <p>(a) Private companies (b) Public companies which include - (i) companies limited by shares (ii) companies limited by shares and guarantee (iii) companies limited by guarantee (iv) unlimited liability companies</p>
Foreign Company	<p>The section contains all e-Services relating to a Foreign Company. A foreign company is a company that is incorporated outside Fiji and establishes a place of business within Fiji.</p>

Companies Office, what's new? (cont'd)

- ROC Pass
 - not only for new business/company owners
 - agents, such as accountants, lawyers, consultants



Re-registration

Re-registration – it's at our doorstep!

Law	Companies (Budget Amendment) Act 2019
What?	New requirement for most companies and business name owners to re-register at the Companies Office.
Who?	Most company and business owners
When?	Was initially slated as 15 October but TBC...watch this space!

Failure to re-register

Companies

- Fiji companies that fail to re-register (or which are refused registration) will be deemed “de-registered”.
- Foreign companies that fail to re-register will also be deemed to be “de-registered.”

Business names

- A business name that has not re-registered as required will also be deemed “struck off”.

Entities not eligible for re-registration:

Where:

- entity number entered into the online application system does not exist in the system.
- entity is registered after June 2019.
- there is an existing re-registration application for the entity number.
- entity has already re-registered.
- re-registration period of entity has expired.
- entity status is not active.

Tips:

Companies, to ensure:

- that annual registration fee payments are up to date
- in the case of a private company that the company has passed a special resolution changing its name to incorporate the word “Pte”
- you have an up to date set of Articles of Association of the company
- that filings of financial statements, or *pro forma* financial statements, are compliant with the Companies Act 2015.

Business name owners, to ensure that:

- any business names which are currently trading are registered
- if any business names registered, that they are registered under the correct (corporate or individual) name.

Supporting documents required

- Business Name Owners

No.	Supporting documents required
1.	Photo ID with date of birth information of all individuals listed in application (Eg. Passport, Voter registration card, Driver License)
2.	TIN card/TIN letter of all individuals listed in the application
3.	Latest registration certificate containing the latest information of the entity (Please visit the Registrar of Companies office if you do not have the certificate.)
4.	Trust deed (For Trust deed as business holder)
5.	Proof of consent containing signature of all business holders (For Firm and agents)
6.	Foreign company registration certificate of foreign company as a business holder
7.	Foreign investment registration certificate (If required)
8.	Any other relevant supporting document

Supporting documents required (cont'd)

- Local Company:

No.	Supporting documents required
1.	Photo ID with date of birth information of all individuals listed in application (Eg. Passport, Voter registration card, Driver License)
2.	TIN card/TIN letter of all individuals listed in the application
3.	Articles of Association (if required)
4.	Trust deed (if required)
5.	Foreign company registration certificate of foreign company as a member
6.	Proof of consent containing signature of an officeholder (For agents)
7.	Latest company registration certificate (Please visit the Registrar of Companies office if you do not have the certificate.)
8.	Latest change of company name certificate (if required)
9.	Foreign investment registration certificate (If required)
10.	Any other relevant supporting document

Supporting documents required (cont'd)

- Foreign Company:

No.	Supporting documents required
1.	Photo ID with date of birth information of all individuals listed in application (Eg. Passport, Voter registration card, Driver License)
2.	TIN card/TIN letter of all individuals listed in the application
3.	A copy of the foreign investment registration certificate granted to the foreign company under the Foreign Investment Act 1999
4.	A statement of all subsisting Charges excluding Charges in relation to Property solely situated outside Fiji
5.	Certified copy (or if a certified copy cannot be obtained, a copy of the instrument and a statutory declaration confirming it is a true and correct copy) of the charter, statutes or memorandum and articles of the foreign company or other instrument constituting or defining the constitution of the foreign company
6.	Proof of consent containing signature of an officeholder (For agents)
7.	Latest foreign company registration certificate (Please visit the Registrar of Companies office if you do not have the certificate.)
8.	Any other relevant supporting document

Personal Property Securities Act 2017

Personal Property Securities Act

Law	Personal Property Securities Act 2017
What?	Regulates the lending of money secured by personal property as collateral
Who?	Everyone with an interest in personal property, either taking or providing it as security.
When?	31 May 2019

Application

Applies to all transactions that have traditionally been used to create security interests, that is:

- bills of sale
- charges
- pledges
- hire purchase
- retention of title

Security interest

- regulates “security interests” over personal property
- security interests are transactions *regardless of form* that grant a legal interest in *personal property* to *secure the payment or performance* of an obligation
 - without regard to:
 - the form of transaction or
 - identity of the person who has title [*nemo dat* no more!]

What is personal property?

Personal property includes:

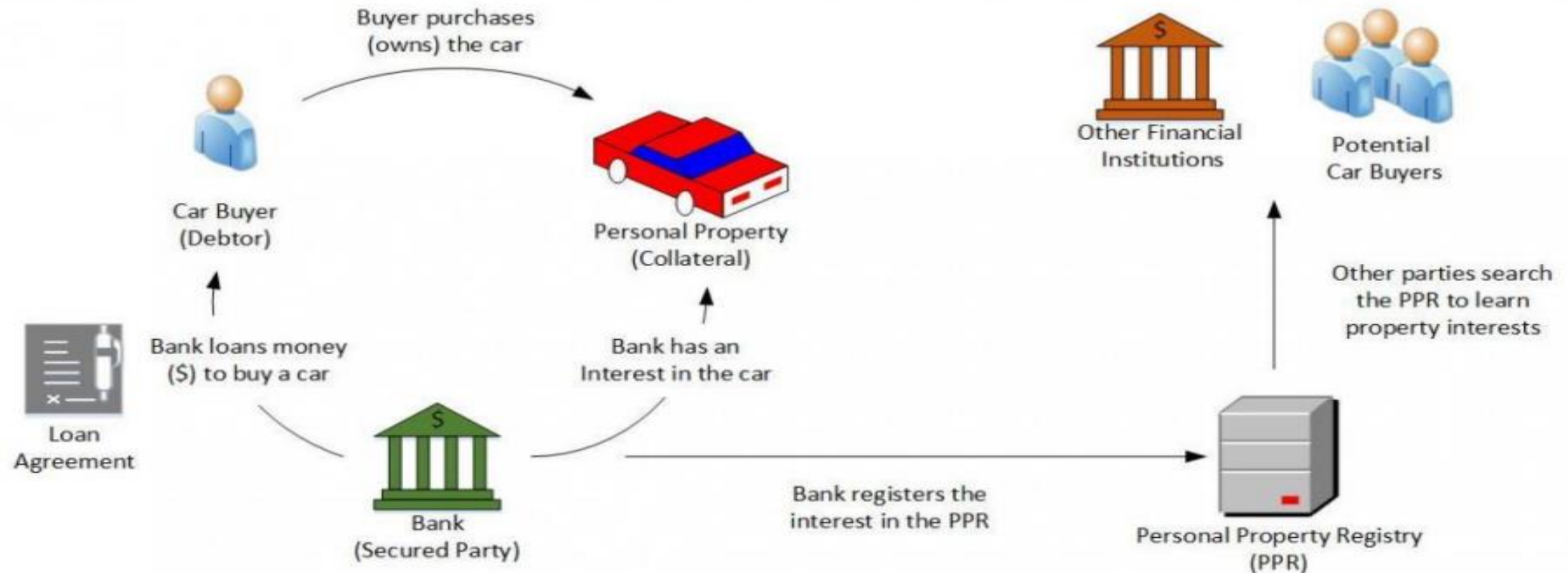
- Goods
- Chattel paper
- Investment property
- Instrument
- Money
- Intangibles

What is personal property? (cont'd)

However, this does not include:

- Interests in present or future wages
- Interest in certain statutory rights
- Interest in land
- Interest in a ship or aircraft
- Sale of accounts receivable as part of the sale of a business

Illustrative Example of How PPR Is Used – A Car Loan



Priorities (s.30)

- Between perfected interests, first in time beats second (who registers first)
- Perfected security interest beats unperfected interests
- Between unperfected security interests, order of attachment to collateral determines priority

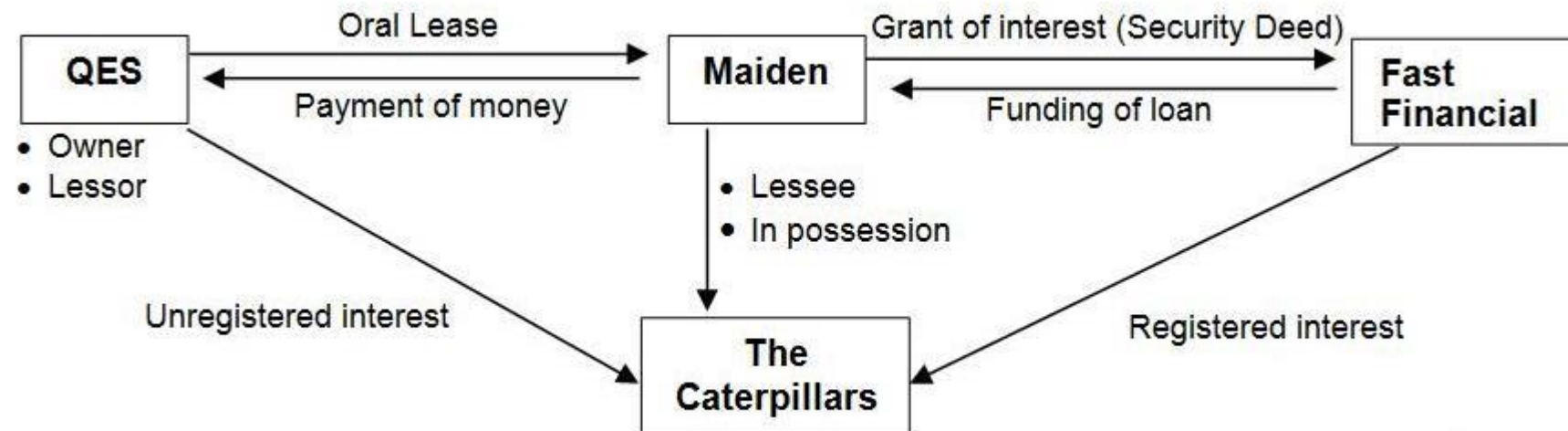
Lessons from NZ

Graham v. Portacom New Zealand Limited (2004) 10 TCLR 983



Lessons from Australia

Re Maiden Civil (P&E) Pty Ltd [2013] NSWSC 852



Purchase Money Security Interest (PMSI)

- security interest to secure purchase price of specific goods
- security interest given to lender who provides value to enable collateral to be acquired
- perfected PMSI interest beats a prior charge by another lender even if prior charge is over all present and future equipment (7 days to register interest)
- existing Fiji common law position: *Credit Corp*

Register (s.69)

- Personal Property Securities Registry
- electronic register, 24 hours, fee payable (as set in Regs)
- searchable in real time for actual or prospective security interests
- allows one to register their own security interests over the personal property of others
- public property and property of the State
- Registrar can refuse to register a notice (user beware)



Fiji Personal Property Securities Registry

Reserve Bank Building, Pratt Street, Suva, Fiji.

Telephone: (679) 331 3611 Facsimile: (679) 330 2094 Email: support@ppsr.gov.fj

[Home](#) [Public Search](#) [Help](#) [How To...](#) [Law And Regulations](#) [Create An Account](#) [Log In](#)

Bula Vinaka & Welcome

To the Fiji Personal Property Securities Registry, Fiji's online site for searching and filing notices of security interest in movable property

Who can search?

Anyone can search the registry to verify whether there are any security interests on movable property. Public searches are free of charge. To access, click [Public Search](#)

How can I file a notice?

If you wish to file a notice of security interest on movable property, you must have an account. If you would like to apply for an Account, click [Create an Account](#).

We can help you!

If you have any queries regarding the use of the registry or encounter technical problems connecting to or while using this site, please contact [Fiji PPSR Support Team](#).



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Notices

- Contents of initial notice include:
 - identify the debtor (include TIN) and provide a physical address
 - identify the secured party or agent + address
 - describe the collateral
- Notice can be filed before security agreement is finalised
- Notices can be amended, renewed, searched or terminated (discharged)
- Offence to register notices with malicious intent

Repeals/Amends various legislation

Repeals	Amends
• Crop Liens Act 1904	• Companies Act 2015
• Bills of Sale Act 1879	• Bankruptcy Act 1944
	• FNPF Act 2011
	• Fiji Development Bank Act 1996
	• Indemnity, Guarantee and Bailment Act 1881
	• Land Transfer Act 1971
	• Land Transport Act 1998
	• Marine Insurance Act 1961
	• Property Law Act 1971
	• Registration Act 1879
	• Sale of Goods Act 1979
	• Stamp Duties Act 1920
	• Sugar Cane Growers Fund Act 1984
	• Tax Administration Act 2009

Offences and Penalties

- Set out in section 112 of the PPSA
- Offences include registering notice with malicious intent or fraudulently and obstructing secured party from lawfully exercising power of possession of collateral
- Fines – not exceeding \$50,000 or imprisonment for 10 years or both.

Transition

- PPSA is live and here!
- security interests arising out of a prior secured transaction takes priority to interests arising after PPSA commences if you file a notice on the Register within the transition period
- Transition period ends **27 November 2019!**

Stamp duty

- All Security Agreements are to be stamped s. 11
- Rate of *ad valorem* duty is 1.75%

Directors and Officers Liability

Background:

- Greater demands to comply with more complex laws – a global trend
- Regulators – make individuals personally responsible for compliance
- In Fiji, you can end up personally in court for your company's (alleged) misdeeds

Directors' liabilities (cont'd)

Background:

In Fiji:

- you can end up in court personally liable for your company's (alleged) misdeeds:
 - even if you're not a director
 - even if you didn't know what your junior staff were doing
 - even if your company hasn't been found guilty (!)
- you can end up prevented from leaving Fiji because:
 - FNPF says your company didn't pay contributions
 - FRCS says your company didn't pay tax

Who is a director or officer?

Companies Act 2015

Who is a Director?

- “director” means *a person occupying or acting in the position of a director by whatever name called and whether or not validly appointed.*
- Unless a company’s Articles say differently, directors
 - are deemed responsible for managing the business of the company and
 - in doing so may exercise all the powers of the company, not required to be exercised in a General Meeting

Companies Act 2015

Who is an Officer?

- “officer” means:
 - ✓ *a director or secretary*
 - ✓ *a person:*
 - *who makes or participates in making decisions that affect the whole of or a substantial part, of the business of the company*
 - *who has the capacity to affect significantly the company’s financial standing*
 - *in accordance with whose instructions or wishes the director of company is accustomed to act*
 - ✓ *a receiver or manager of the property of the company*
 - ✓ *a liquidator of the company, or*
 - ✓ *a trustee or other person administering a compromise or arrangement made between the company and someone else*

Companies Act 2015

Who is an Officer?

- may extend upwards e.g. to shareholders/trustees
- may extend downwards e.g. to senior executives

The duties imposed on directors **extends** to company officers.

Companies Act 2015

Directors & Officers' Duties

Broadly, to protect the interests of stakeholders (including shareholders).

- Duty to act within powers: s.103
- Duty to promote the success of the company: s.104
- Duty to exercise independent judgement: s. 105
- Duty to exercise reasonable care, skill and diligence: s.106
- Duty to avoid conflicts of interest: s.107
- Duty not to accept benefits from third parties: s.108
- Duty to declare interest in proposed transaction or arrangement: s.109
- Duty to avoid insolvent trading
- Duty to notify the Registrar of Companies (various and financial reporting obligations!)

Companies Act 2015

Compliance - Annual Registration Fees

Entity Type	Annual Registration Fee (VEP)
Small private company or company limited by guarantee operating as a not for profit entity	\$10
Public companies or medium/large private companies	\$500
Listed or foreign company	\$1,000

Companies Act 2015

Compliance – Notification Events (Form A19 (foreign) or Form A11 (local))

Change in	Timeframes
<ul style="list-style-type: none">• Registered office• Place of business• Shareholding• Share Structure• Directors/Secretaries	14 days
<ul style="list-style-type: none">• Company name	14 days
<ul style="list-style-type: none">• Share issue• Share cancellation• Share Buyback	28 days

Companies Act 2015

Compliance – Financial Reporting

Entity Type	Requirement
Small private company	None (unless controlled by non-residents or directed by Registrar)
Medium private	Proforma Financial Statement (however if directed it must prepare Financial Statements) – Form A68
Large private companies	Annual Report containing Financial Statements, Directors' Report and an Auditors' Report
Public companies	Annual Report containing Financial Statements, Directors' Report and an Auditors' Report

Companies Act 2015

Compliance – Financial Reporting (cont'd)

- Solvency resolutions (s.403) – within 2 months' of financial year end
- Directors report – Accounts
- Audit has to be independent – and auditors give a declaration to this effect to the directors
- Auditor has power to obtain information for the purposes of the audit



Companies Act 2015

Compliance – Financial Reporting (cont'd)

Failure to lodge financials on time (applies to all Public Companies, Private Companies, MIS and Medium Private Companies)

	Penalty regime
Late lodgment fee	\$5-\$1,000
Fixed penalty	\$300-\$3,000
Maximum penalty	\$6,000/\$30,000

Companies Act 2015

Penalties for Directors & Officers

- Pecuniary Penalties

The Registrar may apply to the Court for a declaration that a person has contravened the provisions of the Act. If the contravention is serious, the Court may order the person to pay a pecuniary penalty to the Registrar of up to **F\$200,000**. In addition, the Court may order the person to **compensate the company for any loss** it has suffered as a result of the contravention. Further, the company may recover from the person any profit they have made because of the contravention.



Companies Act 2015

Penalties for Directors & Officers

- **Criminal Prosecution**

A director or officer of a company who:

- breaches his or her duties under sections 104, 105, 107 and 108 or 109
 - fails to act in good faith in the best interest of company or for a proper purpose
 - dishonestly uses his/her position or any information obtained through his/her position
- commits an offence and is **liable on conviction to be punished by imprisonment** for periods not exceeding **5 years**.

- **Disqualification Orders**

Where the Court is satisfied that a person has contravened the statutory provisions, it may also **disqualify** that person from acting as an officer of any company for periods of **up to 20 years**.

Companies Act 2015

How to protect yourself?

- Understand the company – active inquiry, not passive approval
- Know the company Articles
- Make an effort to attend all board meetings
- Paper trail – minutes of meetings
- Effective supervision of management
- Effective use of professional advisers – lawyers, accountants, auditors, consultants
- Directors and officers (D&O) cover – check the Articles

What about other laws?

Other laws

- Competition laws – regulated industries/restrictive trade practices (misleading and deceptive conduct)
- OHS
- Environment
- FNPF
- Tax
- ACCC

Health and Safety at Work Act 1996 (HS Act)

- imposes liability upon “persons who contravene or fail to comply with the Act”
- “officer”, means –
 - a director, secretary or executive officer of the corporation;
 - any person in accordance with whose directions or instructions the directors of the corporations are accustomed to act; or
 - a person concerned in the management of the corporation
- s.67 Offences by Corporations

Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of, an officer of the corporation or person purporting to act as such an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.
- to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.

Environment Management Act 2005 (EMA)

- enacted for the purpose of protecting national resources and for the control and management of development, waste management and pollution control
- a facility must not discharge any waste or pollution into the environment handle or store any hazardous substances or produce or generate any waste pollutant nor engage in any activity that may have an adverse impact on human health or the environment unless the facility has a permit or is exempted under the *Environment Management (Waste Disposal and Recycling) Regulations 2007*.
- s.51:
If a corporation commits an offence..., a director, officer, employee or agent of the corporation who directed, authorised, assented to, acquiesced in or participated in the commission of the offence also commits the offence, and is liable....., whether or not the corporation has been prosecuted or convicted.

ENVIRONMENT MANAGEMENT (WASTE DISPOSAL AND RECYCLING) REGULATIONS 2007

[EM 8,455] Form: EMA/WDR 2 APPLICATION FOR WASTE DISPOSAL PERMIT

(Regulation 46)

Legal background:

1. A commercial or industrial facility must not dispose of any solid waste, discharge liquid waste, dispose or discharge of livestock waste, or make any emission of gas, smoke, steam or dust to the environment from its premises unless it holds a permit under Part 5 of the Environment Management Act 2005 or is exempted under the Environment Management (Waste Disposal and Recycling) Regulations 2007. A person who without lawful authority or reasonable excuse does any of these things commits an offence and is liable on conviction to a maximum fine of \$250,000 and to imprisonment not exceeding 3 years for a first offence. For a second or subsequent offence the maximum penalty is \$750,000 and 10 years imprisonment. Where a body corporate is the offender, the maximum penalty is 5 times the fine.
2. A person who fails to comply with a condition of a permit commits an offence and is liable on conviction to a maximum fine of \$10,000 and to imprisonment for 2 years.
3. In addition, the WPC Administrator may apply to the court for an order to stop the work or operation.

Fiji National Provident Fund Act 2011 (FNPF Act)

- to secure retirement savings and retirement incomes, and for related purposes
- the onus of complying with the requirements of the Act including the payment of mandated contributions rests with the officers of that company.
- officer” means –
 - in the case of a company, the director, chief executive officer, authorised officer, managing director, company secretary, treasurer or a resident director of, or a person with controlling interest in the company
- s.116(2) Liability of officers for unpaid mandated and additional contributions

Every officer shall be personally liable for the payment of mandated contributions... if, while the amount remains unpaid, the officer alienates, disposes of any monies received... or disposed of or parts with monies received or funds belonging to the employer and in the possession of the officer.

Fiji National Provident Fund Act 2011 (FNPF Act)

- s.116(3) – not personally liable if officer had no knowledge of, or was not aware of the existence of the unpaid contribution
- unless insolvent or being liquidated – s.116A

If a company that becomes insolvent or liquidated owes an amount as mandated contributions... each person who was a director at the time it become insolvent or was liquidated shall be personally liable for such amount.

- s.104(1) Departure Prohibition Orders

If a person is liable to pay an amount... on account of mandated contributions and the amount is due and payable but not yet paid, and the CEO believes it desirable to prevent the person from departing Fiji... the CEO may by written order, prohibit the departure of the person from Fiji.

Fiji National Provident Fund issues departure prohibition order to some overseas companies

5:24 pm GMT+12, 17/06/2018, Fiji

International companies currently operating in the country have been put under the spotlight as the Fiji National Provident Fund (FNPF) monitors their employee's deduction.

The FNPF has revealed a few of these companies have been issued a Departure Prohibition Order after it was discovered they were not deducting their employees FNPF contribution.

FNPF Manager Compliance Ratu Peni Gonelevu has confirmed these companies have ceased operation to enable them to clear their debt.

"For the overseas companies we have a few that businesses have been closed down and they were warned and they have departed but their names have been loaded on the departure prohibition order and if they do come in will get them to pay and clear all the debt."

Gonelevu adds they have introduced a compliance programme to stop this unscrupulous act.

The FNPF is calling on employees to assist in identifying the companies that are not complying.

SOURCE: FBC NEWS/PACNEWS



Tax Administration Act 2011 (TAA)

Liabilities and obligations of representatives

- s.41(5):

Every representative is personally liable for the payment of any tax due by the representative in that capacity if, while the amount remains unpaid, the representative alienates, charges or disposes of any monies received ... in respect of which the tax is payable or disposes of or parts with any monies or funds belonging to the taxpayer that are in the possession of the representative or which come to the representative after the tax is payable....

- “representative” means –

- in the case of a company, the chief executive officer, managing director, company secretary, treasurer, or a resident director of, or a person with controlling interest in, the company

Tax Administration Act 2011 (TAA)

Offences by companies

- s.58(1):

If an offence under a tax law is committed by a company, the offence is treated as having been committed by every person who at the time the offence was committed, was the CEO, authorised officer, company secretary, treasurer or any similar officer...

- s.58(2): If the offence was committed without the person's consent or knowledge and the person exercised reasonable diligence to prevent the commission of the offence, then the provision above does not apply.

Tax Administration Act 2011 (TAA)

Infringement notices

- s.60B/C – infringement notice provisions “fixed penalty orders”, “on spot fine”

Tax Administration (Infringement Notices) Regulations 2018

- If a company receives an infringement notice and does not challenge or pay it, then if it is a company, the Director of Immigration must issue to all directors of the company, a DPO.

Accident Compensation Act 2017 (ACA)

Accident Compensation (Employment Accidents) Regulations 2018

- Employers obligation to report and pay 2/3 weekly wages
- If the employer fails to report or fails to pay or dispute payment, then the employer commits an offence can be liable to pay \$10,000 in the case of an individual and \$100,000 in the case of a body corporate.
- If an employer commits an offence under Part 3 (Occupations Diseases) of the Regulations, then the Permanent Secretary can issue “a fixed penalty notice”.
- If a company receives an infringement notice and does not challenge or pay it, then if it is a company, the Director of Immigration must issue to all directors of the company, a DPO.

What we have learnt so far...

- Understand what you are doing
- Do the right thing for the company
- Keep records of what you decide and do
- Consult
- When in doubt – take professional advice
- Expect the unexpected!

Fiji's Capital Markets and Listing on the SPX

Listing Requirements, Process and Approval

Glenis Yee
(Partner)

With assistance from Kontiki Capital Limited

Fiji's Capital Markets

- Stock Market
 - 21 companies listed with the latest being PDM on 14 August 2019
 - PDM – offer price \$1.31 and now trading at more than \$2
 - SPX listed entities – \$3.6BN
 - ATH (\$1.2B)
 - FHL (\$533M)
 - VIL (\$470M) [13 November]
- RBF June 2019 Quarterly Review: As at 31 March – represented a year to date return of 14.7%
 - Dividend yield at 3.1%
 - Capital gain of 11.6%

Capital Markets Generally

- Unit Trusts Market
 - Fijian Holdings Unit Trust
 - Unit Trust of Fiji
 - As at June – Unit Holder Numbers – 35,898 with individuals, charitable trusts and clubs being the largest
- Bond Market [Listed Debt Equities]
 - Statutory/Government entities – \$4B
 - Hybrid – BSP Convertible Notes Limited (started off 2010)

Why list?

- Tax incentives
 - 10% **corporate tax** rate (vs. 20% standard)
 - No **capital gains tax** on share traded on the SPX
 - No **stamp duty** on share trades
 - No stamp duty on trades / property transfers in preparation for listing
 - 150% tax rebate on expenses incurred in listing process
 - No CGT on corporate reorganisation
- Access to capital for expansion
- Corporate governance and transparency
- Prestige and public image
- Succession planning (exit mechanism) or stakeholder buy-in (supplier, employees)
- **PUBLIC MULTIPLE**

Why not?

- Perceived loss of control
- Increased scrutiny – subject to compliance with SPX Listing Rules
 - A third of the Board must be “independent”
 - Disclosures
 - Market announcements
- Illiquid market: so traded price may not reflect NTA value
- Costs? V. traditional finance [banking system]
- Difficult to transact large tranches without going through the new Takeover Rules in the Companies Act

Demand for Funds

- Traditional reliance on bank debt
- Knowledge of capital markets opportunities
- Transparency / corporate governance
 - Often a significant shift for private / family companies
 - But ultimately a feature of any well-run company
- Management time
 - One-off cost often for new insights into business
- Dilution of control
 - Can maintain control with <50% ownership
- Costs
 - Typically around 4% – 7% of funds raised

Listing Requirements

- Must be a “public” company [not private]
 - At least 50 shareholders
 - No restrictions on buying and selling shares
 - No prohibition on offering shares to the public
 - Suitable for listing in the opinion of SPC
- At least \$1m market capitalization or as allowed by SPX
- Minimum 20% of equity held by the public by at least 50 people
 - Excludes directors, their families, associated parties, significant shareholders, etc
- Minimum 3 years of operating history and have half the same senior management and board
- Going concern with sufficient working capital for next 12 months
- At least 50% of same senior management and board over the last 3 years

Compliance Listing

- Straight listing of existing shares
 - Co. already has 50+ shareholders
 - Co is already compliant with listing requirements
 - No new capital required
- Simpler process
- Theoretically less information required

Public Offering

- Public offer of shares as part of listing
 - New shares; and/or
 - Existing shares
- Purpose
 - Raise new capital
 - Increase number of shareholders as part of transition to public company

Who do you need?

- Investment Advisor
 - Manage overall listing process
 - Prepare **Prospectus/IM**
 - Liaise with regulators and other stakeholders
- Lead Broker
 - Manage **institutional book build**
 - Prepare **valuation model** and **Research Report**
 - Generate demand for shares / raise new capital
 - Coordinate offer with other brokers
- Independent Accountant – Prepare **Independent Accountant's Report**
- Auditor – Audit of **Financial Statements**
- Lawyers – Prepare key documentation and review Document
- Regulators (RBF, SPX) – Approve Offer Document, Listing Application, etc

- **Preparation for Listing:**

- Timing varies depending on company's "readiness"
- Corporate and legal restructuring may be required
- Transfer of assets may be required

- **Structuring and Implementation**

- Typically 3-6 months for valuation, documentation, book-build and regulatory approvals
- Public Offer period (if required) usually 3-4 weeks
- Listing 1 to 2 weeks after Public Offer period closes

- **Fees**

- RBF – Prospectus Registration \$5000
- SPX Listing Fees (Brokerage) [Dependent on capital]

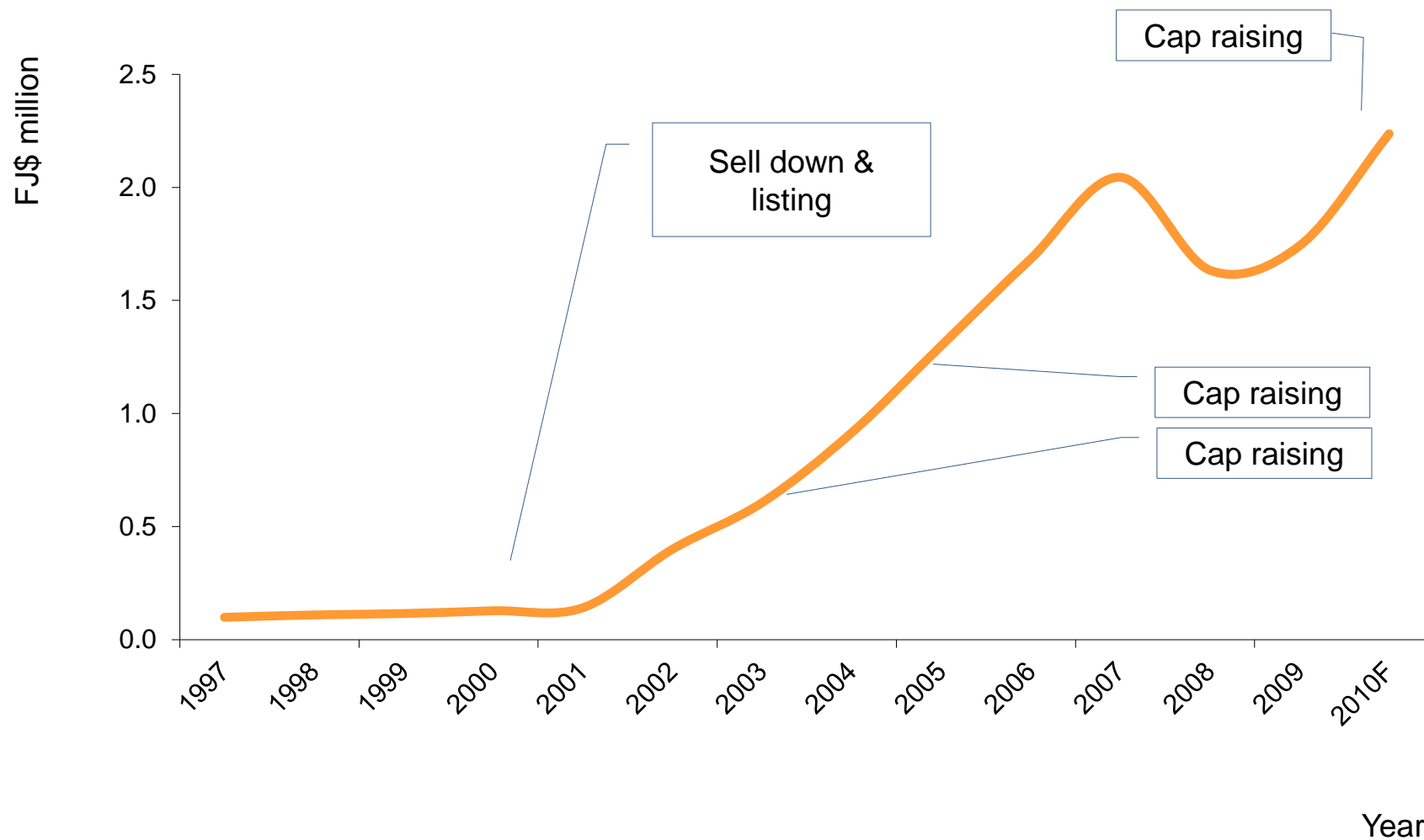
- 3 months timeframe typical although can vary widely
- Good advisers important
 - Brokers, investment adviser, legal, accounting, etc
- Underwriting or firm commitments can be critical
- Listing / marketability important to investors
- Share price doesn't always reflect fundamentals
 - Amount, timing and information critical for share price
- Benefits far outweigh the costs if well managed

VB Holdings Limited

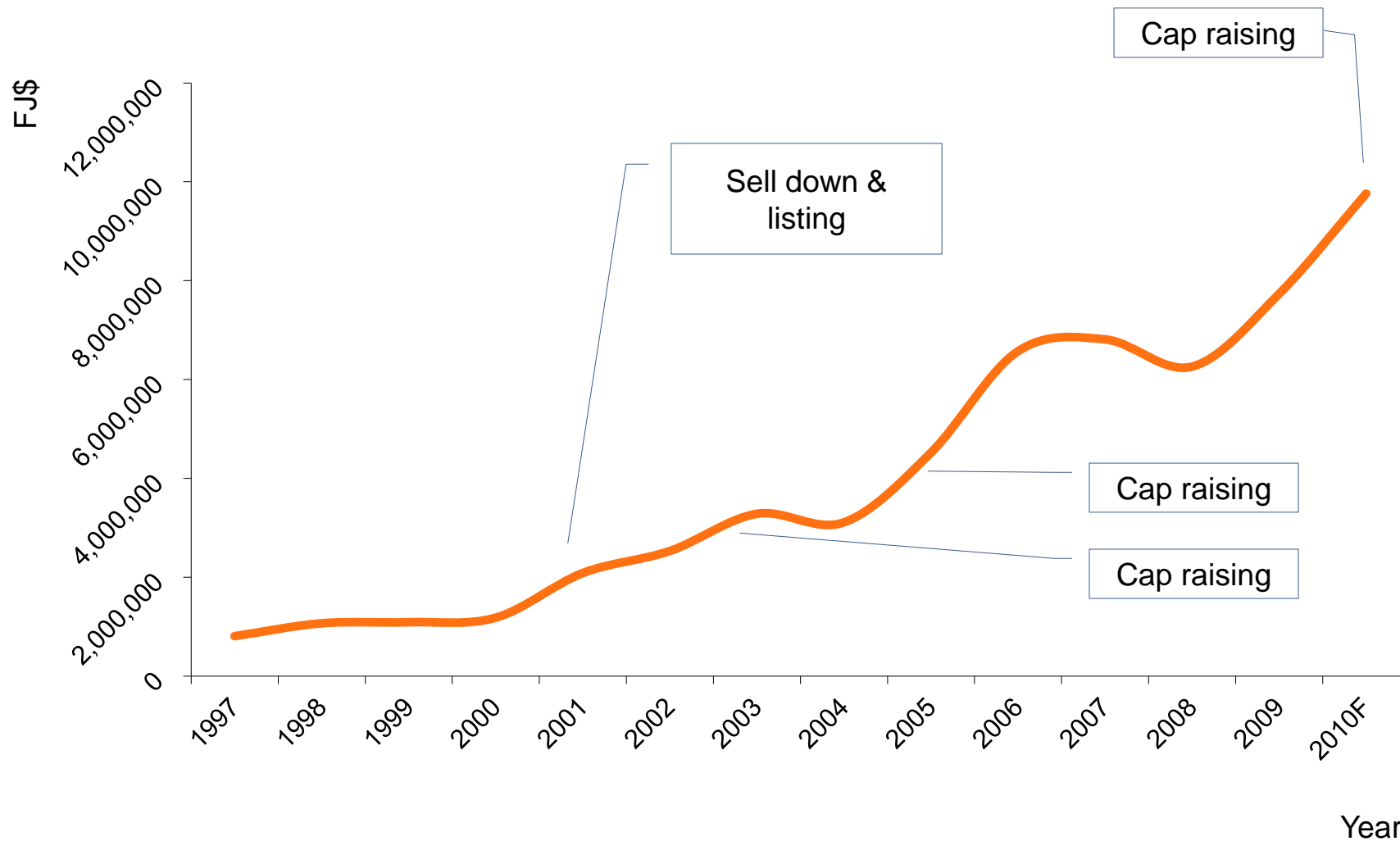
- In 2000
 - Small company focused on property investment
 - \$100k shareholders' funds
 - Shareholders of Indian origin only
 - Lack of public profile hindered expansion plans
 - Stagnant for years
 - Inactive and unsupportive shareholders
 - Lost bank support
- New blood and capital was needed
- Wider community involvement desired

- Committed shareholders took control
- \$750k sell-down to broaden shareholder base
 - Marketing by Kontiki to its wide client base
 - Required research report and offer document
 - Many new shareholders across all ethnicities
- Listed on stock exchange
- Capital raisings raising \$2m
 - Reduce existing debt
 - Provide collateral for fresh expansion loans
- Simple structure – Ordinary shares at a small discount

Revenue

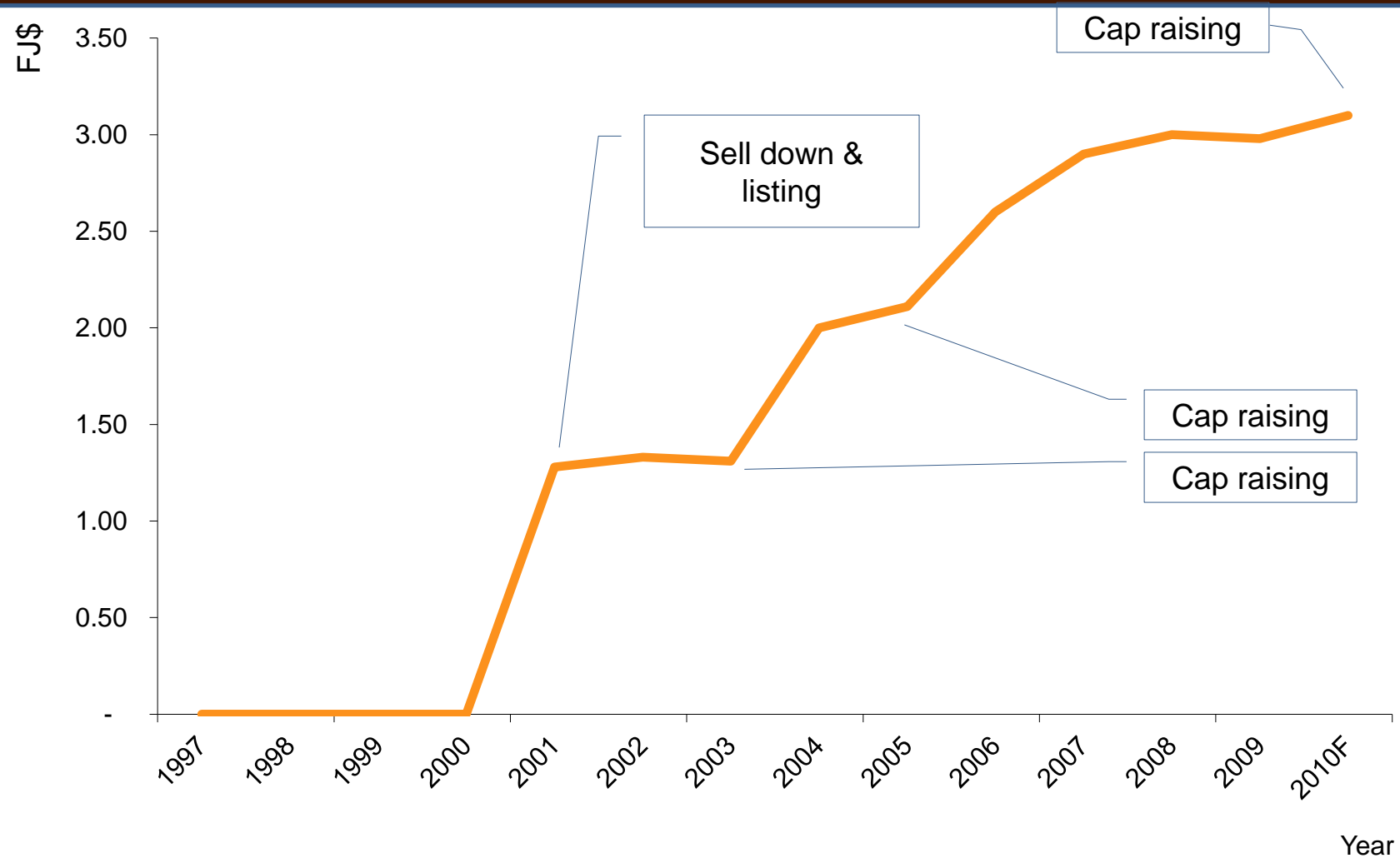


Assets



Share Price

MUNRO LEYS



Overview

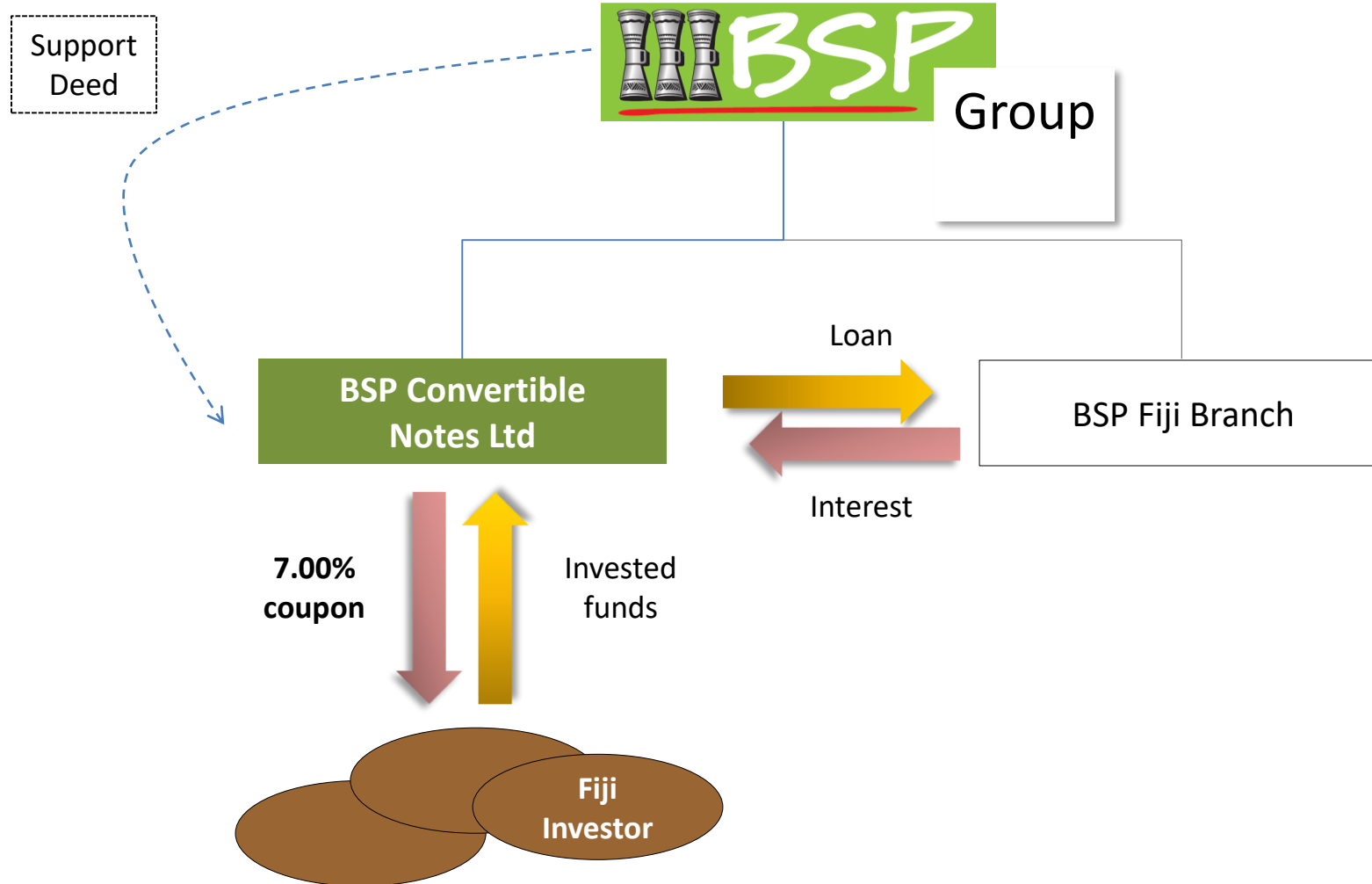
BSP Convertible Notes

- BSP PNG with Fiji branch operation
- Wanted to build capital base
- Raise FJ\$ for BSP's Fiji operations
- But link returns to BSP PNG's strong performance
- “Borrowing” entity required to be Fiji-registered

- BSP Convertible Notes Ltd registered in Fiji
- 2-tier structure
 - First 3 years = Notes paying 7% “interest”
 - Convert after 3 years to *Fiji Class Shares*
- Shares pay same dividend as PNG shares
- BSP PNG “guarantees” interest and dividends
- Listed on stock exchange
- \$16m raised from
 - Institutions and HNWIs
 - BSP staff
- Used IM

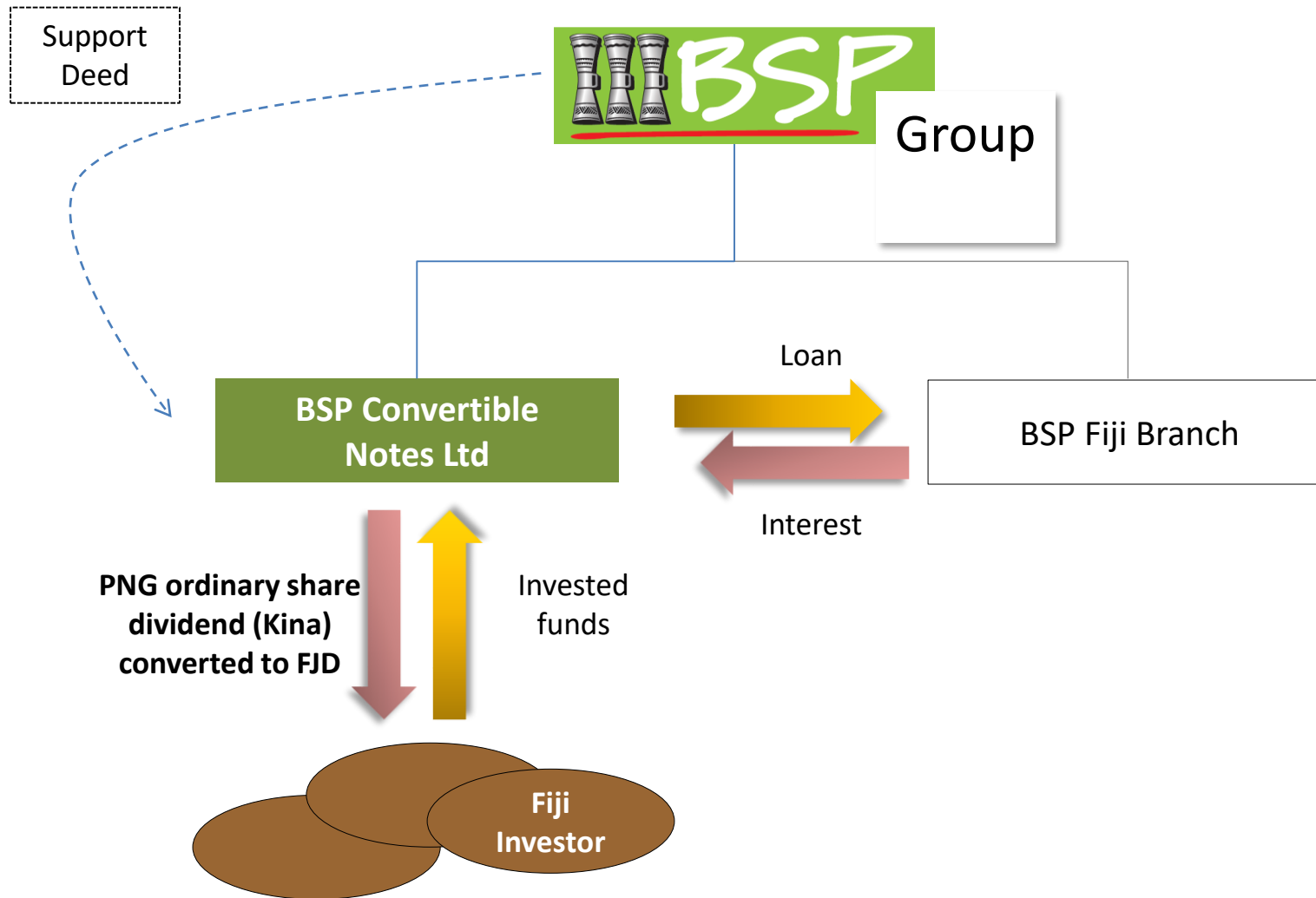
Notes

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After 3rd year: Convert to Shares

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Q & A