

MUNRO LEYS

HOT TOPICS 2016

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TAX UPDATE

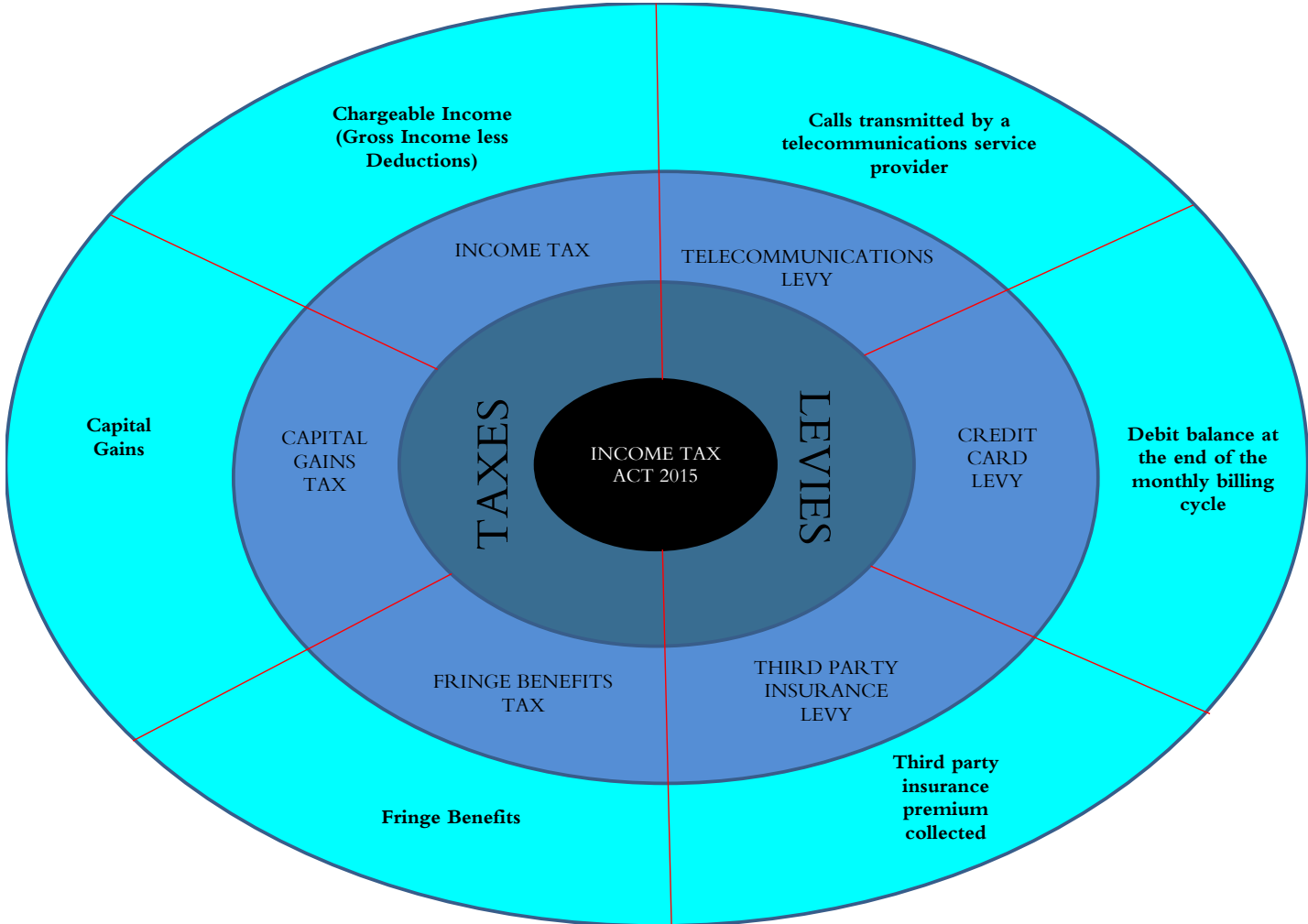


Rajnil Krishna
Senior Associate

WHAT WE WILL COVER

- ITA 2015
 - tax rates
 - provisional tax
 - tax on dividends
 - thin capitalisation
 - changes to Capital Gains Tax rules
- Update on tax cases
- What's hot at FRCA
 - tax compliance certificate
 - vat Infringement Notices

ITA 2015 – OVERVIEW



ITA 2015 – TAX RATES

- Tax charged at *rate or rates prescribed by Regulations ...*
- Income Tax (Rates of Tax and Levies) Regulations 2016 not available until last week of January
- What this means

ITA 2015 – PROVISIONAL TAX

The law:

- ITA 2015

- ‘ ... a person ... making a payment under a **contract of services** ... must withhold tax ...’ (s. 114(2))

- Income Tax (Collection of Provisional Tax)

Regulations 2016:

- ‘ ... there shall be deducted from any payment under any **contract for services** ...’

ITA 2015 – PROVISIONAL TAX (2)

- From what payments should provisional tax be deducted?

FRCA's response: *We will issue a Practice Statement ...*

- (Draft) Practice Statement:

‘... applicable to ... payment under a **formal** contract for services ...’

‘Formal contracts or formal service agreements include written agreements, but does not include letter of engagement issued by professionals to their clients e.g. Lawyers and Accountants.’

ITA 2015 – PROVISIONAL TAX (3)

- From what payments should Provisional Tax be deducted?
 - our advice
 - time for payments

- Credit for tax withheld



ITA 2015 – TAX ON DIVIDENDS

The law (in its current form):

Withholding tax -

- residents : 3%
- non-residents: 9% (after-tax earnings of a PE paid or credited in favour of the head office is treated as dividend)

Transitional tax -

- on ‘any part of the net profit after tax commencing on 1 January 2014... not ... distributed as a dividend prior to 1 January 2015’

ITA 2015 – TAX ON DIVIDENDS (2)

What FRCA intends:

- pre-1 January 2014 profits: Dividend Regulations apply
- 2014 and 2015 profits: 1% Transitional tax applies (including branches)
- post-1 January 2016 profits: new regime applies

ITA 2015 – THIN CAPITALISATION

- applies to “foreign-controlled resident company”
- interest on that part of the debt exceeding the debt-to-equity ratio of 2 to 1 is disallowed as a deduction
- exemptions



ITA 2015 – CGT Changes

- A “capital asset” does not include a “depreciable asset” (tangible personal property or structural improvement to real property)
- Disposal of “depreciable asset” – if the consideration exceeds the written down value then the amount of excess is included in the gross income.

ITA 2015 – THINGS TO REMEMBER

- Provisions of a Double Tax Agreement prevail over the ITA 2015 (this is now clear)
- The provisions of the Tax Administration Decree (timelines for objecting/appealing) also apply to the ITA 2015

RECENT TAX DECISIONS

RELEVANT TAX DECISIONS

- Fewer decisions delivered by the Tax Tribunal
 - Zero-rating
 - *A Freight Services Company*
 - *Company M*

- A number of Tax Court decisions on:
 - revenue or capital (s.11 (a) Income Tax Act)
 - Zero-rating
 - *Waqavuka Developments*
 - *Chandulal's Pharmacy*

A FREIGHT SERVICES COMPANY

- VAT on the mark-up on freight earned from local customers
 - taxpayer zero-rated the actual international freight component as well as its margin
 - Tribunal decided:
 - the mark-up on the cost of transport services is **not** part of the value of the service and
 - the actual cost of the transport service is the only component that is zero-rated.
 - where supplies included zero-rated supplies, the Second Schedule may not extend to the re-sale!
- Matter is currently on appeal



COMPANY M

- supply of security and transportation services for transport of money and gold from and to Nadi International Airport
- FRCA disallowed zero rating
- Tribunal found:
 - taxpayer involved in providing some “ancillary services” relating to international transportation – zero-rating for some services permitted



WAQAVUKA DEVELOPMENTS

Operator of the transit café at Nadi Airport

- assessed to VAT on the supply of food and drink to transit passengers in Dec 2006
- relied on FRCA letter of 28 Feb 2002 that sales zero-rated



WAQAVUKA DEVELOPMENTS

Court applied Court of Appeal decision in *Punja v CIR* (2006) that:

Commissioner cannot be encumbered by any previous position which he has taken up. He must be free to exercise his judgment and discharge his statutory functions as and when he thinks proper.

Lesson:

Do not rely on a
FRCA letter or
assurance or
Practice Statement!

[Note: under the Income Tax
Act 2015 there is no provision
for binding rulings]



CHANDULAL'S PHARMACY

- taxpayer assessed to VAT on supply of pharmaceutical goods by post to overseas purchasers.
- it claimed zero-rated supply for export



COMPANY R

- non-resident dividend withholding tax – use of pre-2001 tax credits
- Tax Court judgment April 2016 – now on appeal
- future implications for taxpayers (i.e. distribution of pre-2014 earnings)
 - Dividend Regulations apply (however only 2001 – 2013 (?) credits available)
 - before now, your pre-2001 credits may have not mattered (because you could build up enough as you went)
 - now (with no more credits accumulating), your pre-2001 credits become important

WHAT'S HOT AT FRCA?

TAX
COMPLIANCE

WHAT'S HOT AT FRCA?

How ?

Tax Compliance Certificate

What?

proof that the person is compliant with the lodgement of tax returns and payment of taxes

WHAT'S HOT AT FRCA?

When ?

A Tax Compliance Certificate must be submitted with:

- an EoI or tender for a public sector contract or
- Application for a registration, permit or licence from a ministry, including:
 - professional membership
 - business/exporter/importer/broker licence
 - vehicle registration/renewal

WHAT'S HOT AT FRCA? (2)

VAT infringement notices

For failing to displace the onus that prices of good and services supplied after 1 January 2016 reflected the *actual percentage VAT decrease*.



Companies Act 2015

Overview

Glenis Yee and Emily King

Topics

- Background
- Key features
- Action Items

Background

- 2012 review
- Minter Ellison
- Largely Australian based

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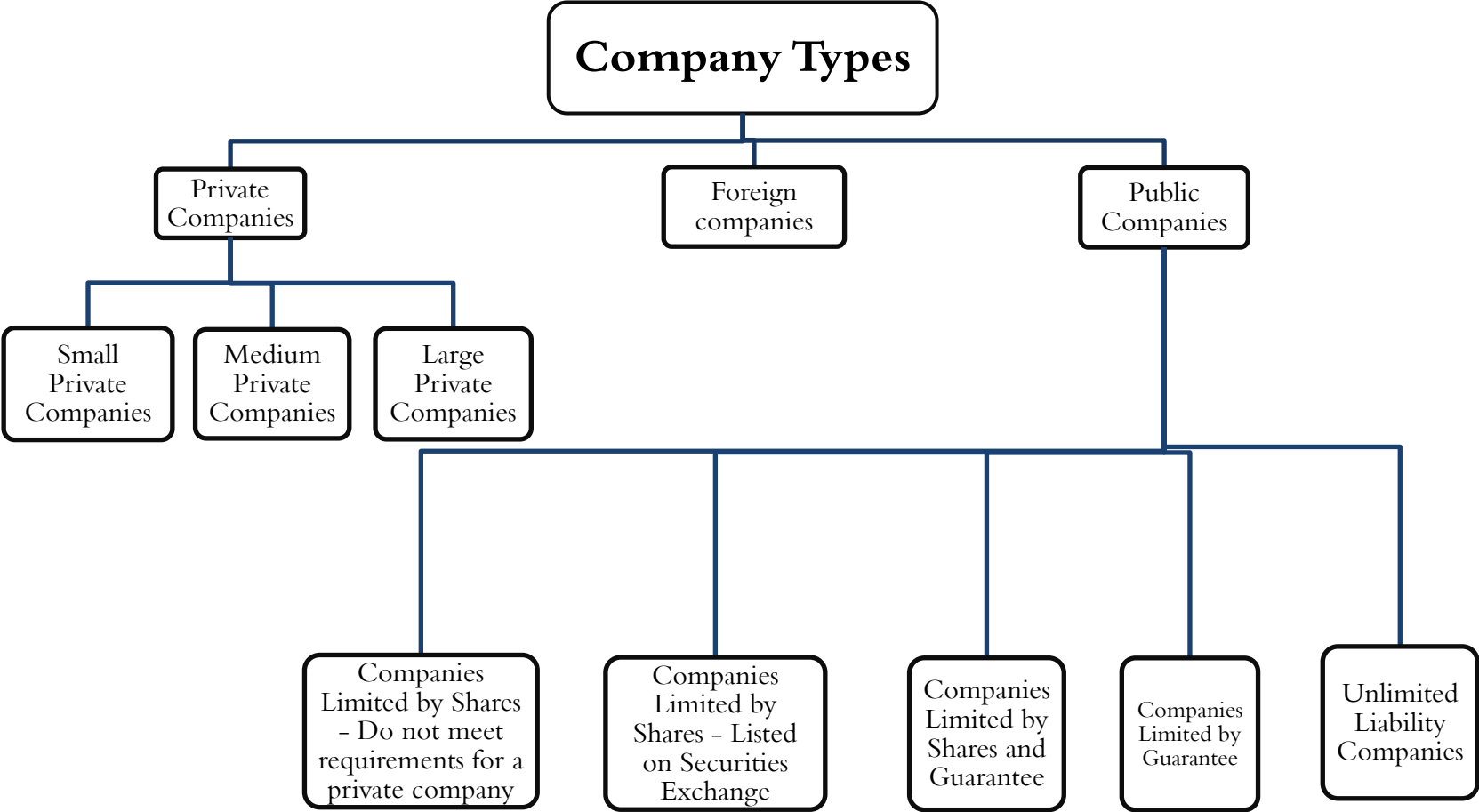


Companies Act 2015

- 29 May 2015 – Companies Bill passed
- 30 Dec 2015 – made effective from 1 Jan
- 26 Jan 2016 – Regulations/Rectifications issued
- 2 Feb 2016 – Companies Amendment Act passed (made effective from 1 Jan)
- 26 Feb 2016 – Companies (Amendment) Regulations

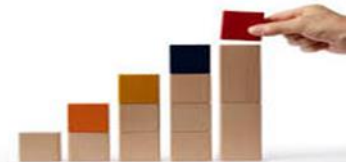
Companies Act 2015

- Regulations/Rectifications issued:
 - LN 105/2015 – Companies Act 2015: Commencement Notice
 - LN 106/2015 – Interpretation Act: Rectification of Errors Orders 2015 (Companies Act, VAT Decree and Income Tax 2015)
 - LN 107/2015 – Companies Regulations 2015
 - LN 108/2015 – Companies (Penalties) Regulations 2015
 - LN 109/2015 – Companies (Transitional) Regulations 2015 [since **repealed**]
 - LN 110/2015 – Companies (Winding Up) Rules 2015
 - LN 111/2015 – Companies (High Court) Rules 2015
 - LN 112/2015 – Companies (Securities Exchanges and Licensing) Regulations 2015
 - LN 113/2015 – Reserve Bank of Fiji (Capital Markets and Securities Industry) Regulations 2015



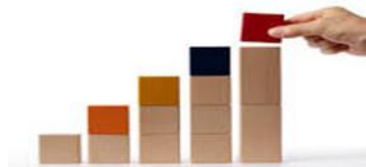
Constituent Documents

- Articles of Association
- Standard form articles provided
- Public listed companies – Listing Rules



Management

New Act	Private Company	Public Company
Shareholders	1	1
Directors	1 – 1 resident	3 – 2 resident



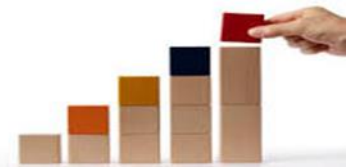
Share Capital Rules

- No authorised capital limit
- Abolition of the par value concept
- No share premium



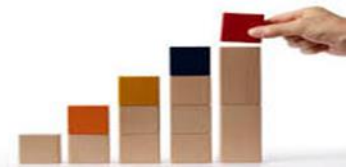
Share Capital Rules

- Modifies share capital rules
 - Permits:
 - share capital reductions
 - share buy-backs, and
 - giving financial assistance for share purchase
- under regulated conditions



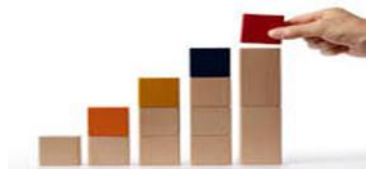
Takeover Provisions

- Threshold: 30%
- Applies to:
 - Listed companies
 - Public companies with more than 30 members
 - Large private companies with more than 30 members



Directors Duties

- Codified (ss. 103–109/Division 3 of Part 10)
- Extends to officers
- Focus on Corporate Governance



Breach

- Courts can make a declaration of contravention
 - be prohibited from managing a company (20 years max.)
 - pecuniary penalty orders - \$200,000
 - compensation orders
- Criminal penalties may also apply
- The Company or Registrar can apply for this declaration no later than 5 years after the contravention date



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

Notification events



- Form A6/A11:

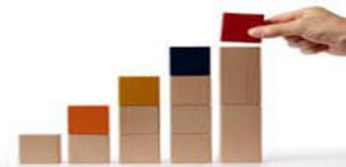
Change in	Timeframes
<ul style="list-style-type: none"> • Registered office • Place of business • Shareholding • Share Structure • Directors/Secretaries 	14 days
<ul style="list-style-type: none"> • Company name 	14 days
<ul style="list-style-type: none"> • Share issue • Share cancellation • Share Buyback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

Financial Reporting

Entity Type	Requirement
Small private company	None (unless controlled by non-residents or directed)
Medium private	Proforma Financial Statement (however if directed it must prepare Financial Statements).
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

Financial Reporting (cont'd)

- Solvency resolutions (s.403)
- Directors declarations
- 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



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

Enforcement

- Late Lodgement Fees
- Penalty Notices: Schedule 2 (Penalties Regs)
- Maximum Penalties – previously Schedule 6 of the Act, now Schedule 1 (Penalties Regs)



Action Items

- Review qualification criteria for directors/secretary (s.93)
- Ensure filings under repealed Act are up to date (s.742)
- Review compliance plans



Action Items

- Consider a Corporate Governance Policy – RBF has a standard policy (start)
- Ensure that resolutions and reasoning for Board decisions are properly recorded
- Review internal policies - Conflicts of Interest or Gift Policies



Action Items

- Review Delegated Levels of Authority
- Review Directors terms of engagement and D&O Insurance Cover
- Review Articles to take advantage of changing requirements in the Act



Action Items

- Consider transfer of nominee shares
- Review existing Interest Disclosures
- Obtain copies of new forms – some forms still need to be filed in legal bond paper!

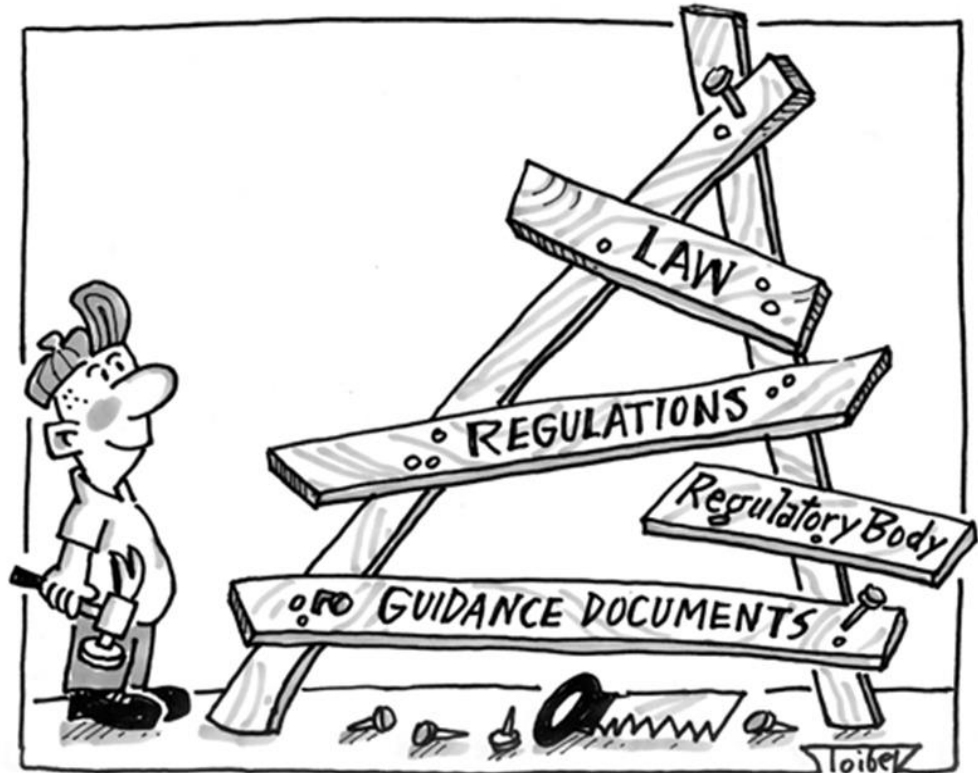


**EMPLOYMENT LAW
RECENT DEVELOPMENTS**

**Jon Apted
Partner**

NEW LAWS

- Wages Regulations
- Workmen's Compensation (Amendment) Act 2015
- Employment Relations (Amendment) Act 2015
- Employment Relations (Amendment) Act 2016



RECENT EMPLOYMENT COURT DECISIONS

Employment Relations Tribunal – Limits:

National Union of Factory and Commercial Workers v FMF Foods Limited – ERCA 13 of 2013

ENI Decree:

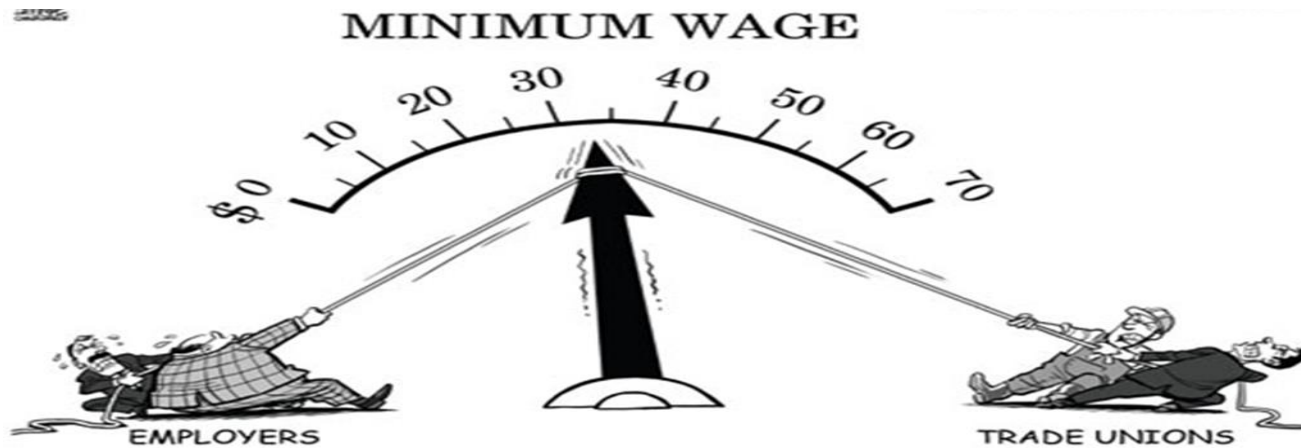
Vinod v Fiji National Provident Fund [2016] FJCA 23

SOCIAL MEDIA UPDATE

Wages Regulations

- eleven new “Regulations” governing wages (including the new National Minimum Wage) were published in the Gazette
- stated to come into effect, on 1 July 2015

- LN 51 of 2015 – Employment Relations (National Minimum Wage) Regulations 2015



A series of separate Wages “Regulations” for 10 specific sectors as follows:

- Building and Civil and Electrical Engineering Trades
- Hotel and Catering Trades
- Manufacturing Industry Regulations
- Mining and Quarrying Regulations
- Printing Trades
- Sawmilling and Logging Industry
- Security Services
- Wholesale and Retail Trades
- Garment Industry
- Road Transport

- increased minimum wages in the 10 sectors by between 2.3% - 4.5% over 2012 level

National Minimum Wage Regulations

- increased national minimum wage from \$2.00 to \$2.32 per hour
- applies even if worker is not paid on hourly-basis
- maximum penalty of \$20,000 or 2 years in prison or both for breach
- applies to employer “or any other person authorised by or acting on behalf of employer”

Requirement to Display

- employers must display written notice in workplace to workers of “any national minimum wage affecting them”
- maximum penalty of \$20,000/2 years in prison/both

Fixed Penalty Notice

- may be issued by Labour Inspector for non-compliance
- allows you to pay, failing which will be contested in Court
- if you pay, “deemed to be a conviction”
- employer who pays fixed penalty is required by the regulations to pay arrears of the difference
- legitimacy doubtful as ERP only allows Fixed Penalty Notices for specified offences under the ERP

The Legal Issues

All the Regulations seem to be *ultra vires* (literally, “outside the law”), they appear not to have been validly made under the Employment Relations Promulgation (ERP).



National Minimum Wage Regulations

- expressed to be made under s 264 of the ERP.
- section gives the Minister the power to make regulations over wages and salary criteria and guidelines for workplaces
- it does not give him the power:
 - a) to prescribe a national minimum wage rate, or
 - b) to provide that contracts are deemed to be amended to conform with the Regulations.

Wages Regulations

- the Wages Regulations purport to repeal and replace existing Wages Regulation Orders (WROs)
- are expressed to be made by the Minister under section 264(w) of the ERP
- that section does not provide for the fixing of remuneration; nor does it allow the Minister to revoke the existing WROs

- the power to regulate the matters covered by these new Regulations (other than possibly hours of work) lies exclusively in sections 50 to 56 of the ERP which require WROs to be made after following the procedure set out in those sections
- under sections 50 to 56, the Minister may only make a WRO if it is submitted to him by a Wages Council - after the Council has advertised its proposal for public feedback and it has considered that feedback
- this process has not been carried out



Further legal issue - all the Regulations

- section 264 of the ERP also requires the Minister to act on the advice of the Employment Relations Advisory Board (ERAB) when making any regulations
- understand that ERAB was not consulted about either the National Minimum Wage Regulations or any of the other Wages Regulations, and has not advised the Minister to make any of them

Constitutional issues



- further appears that all of the new Regulations might have been made in breach of the new Constitution
- section 50 of the Constitution requires that a person making regulations must so far as practicable provide a reasonable opportunity for public participation in the making of the regulations
- no such opportunity was given before the making of any of the Regulations

Workmen's Compensation (Amendment) Act 2015

- was tabled, debated and passed by Parliament all on the same day – 8 July 2015.
- came into force on 17 July 2015, the date it was officially published in the Gazette

Under the Workmen's Compensation Act –

- an employer is liable to pay compensation to a 'workman' (or in the case of death, his or her dependants)
- for any personal injury or death by accident
- that arises out of or in the course of employment
- regardless of fault
- compensation entitlements were last increased in 1994





"We're denying this claim of a paper cut from a game of 'Rock, Paper, Scissors' played in the employee lounge."

Among other things, the Amendment Act –

- extends compensation eligibility to *de facto* partners
- increases the compensation payable to a worker's dependants upon the worker's death from \$24,000 to \$50,000
- increases the compensation for permanent total incapacity from \$32,000 to \$67,000 (and consequentially increases the compensation payable for lesser degrees of permanent incapacity, which are assessed as a percentage of total incapacity)

The Amendment Act –

- allows a Labour Inspector to issue a fixed penalty notice where an employer fails to report an injury to/death of a workman and then fails to comply with a demand to make a report
- the penalties range from \$500 to \$10,000 depending on the employer's "consolidated revenue in a financial year"
- makes it an offence punishable by a maximum fine of \$50,000 if an employer "does not pay the fixed penalty in accordance with the notice"
- also makes it an offence punishable by a maximum fine of \$50,000 if an employer does not comply with a Labour Inspector's directive to provide documentation on the employer's consolidated revenue for the previous year

SCHEDULE 2—FIXED PENALTY NOTICE (Section 14(3B))

WORKMEN'S COMPENSATION FIXED PENALTY NOTICE

PART A Notice No.: _____

To: _____ of _____

Place of Offence: _____

Date of Offence: _____ Time of Offence: _____

It is alleged that you have been found committing an offence in contravention of section _____ of the Workmen's Compensation Act (Cap. 94).

Statement/Particulars of Offence: _____

- If you do not wish for the matter to be determined in a court hearing, you may complete Part B attached to this notice and forward that form together with the prescribed penalty to the Ministry of Employment, Productivity and Industrial Relations within 21 days.
- The fixed penalty for the alleged offence is \$ _____
- **You have the right to decline to proceed in the manner described above and to allow the matter to be determined in a court hearing—**
 - (i) if you wish to contest whether the offence alleged was actually committed;
 - (ii) if you wish to submit to the court matters in extenuation of the penalty; or
 - (iii) for any other reason, in which event you need not reply or take further action in respect of this notice, and in such case proceedings will be instituted against you in due course.
- As well as paying the fixed penalty for the specified offence, you are required to remedy your non-compliance with the relevant provisions of the Workmen's Compensation Act (Cap. 94) by _____

Signed: _____ Name: _____
Labour Inspector

Date: _____

*see back of form for Affidavit of Service

SCHEDULE 2—FIXED PENALTY NOTICE Continued

PART B Notice No.: _____

I, _____ of _____
being the person named above hereby enter a plea of guilty to the offence specified.

I, attach a cheque (not negotiable) or cash of \$ _____

Signed: _____ Name: _____

Date: _____

(NOTE: Penalty must be paid directly to the Headquarters of the Ministry of Employment, Productivity and Industrial Relations or to the District or Divisional Office of the Ministry of Employment, Productivity and Industrial Relations nearest to you)

AFFIDAVIT OF SERVICE
(To be completed in all cases)

I, _____, the Labour Inspector whose signature appears at the foot of the Workmen's Compensation Fixed Penalty Notice above, make oath and say that on the _____ day of _____ 20____ at _____ I did serve the person specified therein,

OR

affix in a conspicuous position, on the _____
the Workmen's Compensation Fixed Penalty Notice.

Sworn by the above named Labour Inspector on this _____ day of _____ 20____.

Before: _____
Magistrate or Justice of Peace or Labour Inspector
Commissioner for Oaths

New offence of failing to pay fixed penalty –

- appears to contradict terms of fixed penalty notice which as is usual gives you the right not to pay the fixed penalty and have the matter go to Court
- if it does take away the right to dispute the notice, the notice would breach sections 15 and 16 of the Constitution which gives accused persons right to be presumed innocent until found guilty by a Court and the right to a fair trial



"Good point, Wilcox — dislocating your jaw yawning during my lecture on work related injuries is NOT a work related injury!"

Employment Relations (Amendment) Act 2015

- a Employment Relations Promulgation (Amendment) Act 2015 was passed by the Fijian Parliament and published in the Gazette in September 2015
- bill went to Parliamentary Committee which received submissions
- some changes were made by the Committee



- the Amendment Act made a few changes to the Employment Relations Promulgation 2007 (“**ERP**”) which apply generally,
- but its main purpose is to repeal and replace the controversial
 - Essential National Industries (Employment) Decree 2011 (“**ENI Decree**”)
 - the Employment Relations (Amendment) Decree 2011
 - the Public Service (Amendment) Decree 2011
- in response to pressure from trade unions and the International Labour Organisation (“**ILO**”)

- the Decrees removed public servants and employees of “designated corporations” within “essential national industries” from the scope of the Employment Relations Promulgation 2007 and from the employment dispute and grievance resolution mechanisms under the Promulgation
- the ENI Decree also outlawed trade unions, within the “designated corporations” and terminated all pre-existing collective agreements as well as all pending employment-related disputes, grievances and litigation

ESSENTIAL NATIONAL INDUSTRY	DESIGNATED CORPORATIONS
1. Financial Industry	i. Australia & New Zealand Banking Group ii. Bank of Baroda iii. Bank of South Pacific iv. Westpac Banking Corporation v. Fiji Revenue & Customs Authority vi. BRED Bank (Fiji) Limited
2. Telecommunications Industry	i. Fiji International Telecommunications Limited ii. Telecom Fiji Limited iii. Fiji Broadcasting Corporation Limited
3. Civil Aviation Industry	i. Fiji Airways Limited
4. Public Utilities Industry	i. Fiji Electricity Authority ii. Water Authority of Fiji

Background

- Unions complained to the ILO that the Decrees breached fundamental labour standards to the ILO by Fiji trade unions
- After a delay, an ILO group came and investigated and found breaches of labour standards
- ILO was to consider commission of inquiry at February 2015 meeting but tripartite compromise reached to extend time
- Fiji was given further time to bring its employment laws into conformity with ILO fundamental principles
- Unions not satisfied with Employment Relations (Amendment) Act 2015
- Compromise in early 2016 resulting in Employment Relations (Amendment) Act 2016

Employment Relations (Amendment) Act 2015 5

General Provisions

The general changes introduced by the 2015 Amendment which apply to all employers and workers include –

- a slight relaxation of the rules against discrimination in rates of remuneration to permit different rates of pay to similarly situated workers based on productivity, work-quality, performance and years of service
- extension of system to review instruments with discriminatory pay rates

- a provision allowing the Permanent Secretary to reject the report of an employment dispute between a union and employer –
 - where he considers it vexatious or frivolous or
 - where internal procedures have not been exhausted or
 - more than 3 months has elapsed since the dispute arose

- a default provision deeming a report of an employment dispute to have been accepted if the Permanent Secretary does not reject it within 30 days

Essential National Services and Industries

The most significant changes brought about by the 2015 Amendment Act were contained in a new Part 19 which the Amendment inserted into the ERP.

The new Part 19, among other things –

- defines “essential services and industries” to mean a service listed in Schedule 7 and includes those essential national industries declared and designated corporations or designated companies designated under the Decree, and for **the avoidance of doubt**, shall also include
 - (a) the Government;
 - (b) a statutory authority;
 - (c) a local authority, including a city council, town council or rural authority;

- (d)* Government commercial company, as prescribed under the Public Enterprise Act 1996;
- (e)* **a duly authorised agent or manager of an employer; and**
- (f)* **a person who owns, or is carrying on, or for the time being responsible for the management or control of a profession, business, trade or work in which a worker is engaged;”**

Schedule 7 Essential Services

- a) Air/Sea Rescue Services;
- b) Air Traffic Control Services;
- c) Civil Aviation Telecommunication Services;
- d) Electricity Services;
- e) Emergency Services in times of national disaster;

Schedule 7 continued

- f) Fire Services;
- g) Health Services;
- h) Hospital Services;
- i) Light House Services;
- j) Meteorological Services;
- k) Mine Pumping, Ventilation and Winding;

Schedule 7 continued

- l) Sanitary Services;
- m) Supply and distribution of fuel, petrol, oil, power and light essential to the maintenance of the Services in this Schedule;
- n) Telecommunications;
- o) Transport Services necessary for the operation of any Services in this Schedule; and
- p) Water Services

- effect of references to Government and state-owned enterprises unclear
- “for avoidance of doubt” implies that it covers only those within the earlier words
- effect of references to authorised agents, managers and persons who own or carry on or are responsible etc – also unclear

- re-applies ERP basic standards to essential national industries and public servants
- restored trade union rights to workers in designated corporations although, bargaining units and the right of workers to form them were also been retained
- workers of designated corporations and public servants once again allowed to report employment grievances to Mediation Services and to the Employment Relations Tribunal

Part 19 provides –

- a new system for collective bargaining and employer-union dispute resolution for the essential services and industries but general rule in Part 16 of the ERP (good faith etc) also applies
- how collective bargaining is to be initiated
- how “trade disputes” are to be reported and apprehended
- for conciliation and mediation of trade disputes

Meanwhile. Jameson, the mediator, uses his last remaining negotiating tool in an effort to break the stalemate.



New Arbitration Court

- a new Arbitration Court has been established to supervise collective bargaining and decide employer-union trade disputes in essential services and industries (and it appears Government, statutory bodies and companies)
- these disputes appear to be limited to “disputes of interest” i.e. terms and conditions of employment

- the new Court is a tripartite one and will be made up of a Chairperson and Deputy Chairs appointed by the President on the advice of the Prime Minister after consultation with the Chief Justice and employer and worker panels appointed by the Minister after consulting representative bodies
- 20 members on each panel
- a “worker” cannot be on employer’s panel – even management?
- an “employer or company director” cannot be on worker’s panel
- the trade unions and employers who are the parties to a trade dispute may nominate someone from the worker or employer panel as appropriate to hear their dispute with the Chair or Deputy Chair

- Arbitration Court is to review and certify all collective agreements between parties who fall within the new Part 19
- Collective agreements must be sent to Arbitration Court within 1 week
- offence punishable by maximum fine of \$20,000 to fail to deliver a collective agreement to the Arbitration Court or to deliver an incomplete collective agreement
- Court can require collective agreement to be amended failing which Court can amend it

- originally parties could not be represented by lawyers during collective bargaining or before the Arbitration Court
- collective agreements must be for 2-3 years

Collective Agreements binding on –

- parties to collective agreement
- any successor to or any transferee, assignee or transferee of the undertaking of the employer
- any successor to the trade union



“We finally agreed to disagree about agreeing to the agreement that we disagreed about before we agreed we would agree, prior to disagreeing to change the part that we agreed not to disagree on when we agreed to the disagreeable part of the agreement. But they want it in writing.”

- members of the Court are not judges but have the rights and privileges of a judge of the High Court and must take the judicial oath
- the Court is to determine trade disputes by “arbitration”
- Court may have regard to interests of community and country
- not limited to relief claimed
- decisions are by majority or by Chair if no majority
- Court may interpret, vary and set aside awards for ambiguity

- an award of the Arbitration Court cannot be appealed or taken on judicial review
- the compatibility of the new Arbitration Court with separation of powers and judicial independence guaranteed in the new Constitution is yet to be tested.

Offence to make a contract contrary to award (i.e. registered collective agreement or award made by Court). Maximum penalty \$20,000.

Offence to breach award –

- unions/employers – maximum fine – \$50,000
- trade union officials – \$20,000
- in any other case – \$10,000 – who?

Strikes

- require secret ballot
- originally 28 days notice

Lockouts

- must be lawful
- require 28 days notice



Implementation of the Part 19 must await the setting up of the new Court and its mechanisms.

Employment Relations (Amendment) Act 2016

- deleted provisions relating to “bargaining units”
- introduced “enterprise unions”
- reduced strike notice period to 14 days
- allowed lawyers to represent party
- reinstated grievances which had been terminated under the Essential National Industries Decree
- allowed those dismissed while under the ENI Decree to apply to the Court for compensation “without 28 days of commencement of the section”
- extended deadline by announcement
- compensation not to exceed \$25,000

Recent Case – Employment Court

Confirmation of ERT Limits

National Union of Factory and Commercial Workers v FMF Foods Limited – ERCA 13 of 2013

- concerned an employment dispute reported by union against employer over log of claims
- ERT like magistrates court has jurisdictional limit of \$40,000
- ERC in *Tabua v Fiji Rugby Union* [2012] FJHC 144 ruled that ERT cannot even consider any claim that exceeds \$40,000 and must strike it out
- FMF argued that some of the claims would cost more than \$40,000 so outside of jurisdiction and should be struck out

- Tribunal agreed and decide that limits applied to both grievances and disputes
- ERC has now upheld that decision
- now means that ERT will not be able to determine most employment disputes over pay claims
- doubtful that ERC can adjudicate over employment disputes

- Be careful what you wish for!



- No 3rd party resolution of employment problems
- Effect on workplace relations
- Makes strikes more likely

Vinod v Fiji National Provident Fund [2016] FJCA 23

- The ENI Decree makes grievances by employees of corporations designated by regulations, non justiciable.
- The employer was added as a designated corporation after the grievance was lodged, and it was terminated by the Chief Registrar in accordance with the ENI Decree.
- The employee appealed to the Court of Appeal saying that the regulation making the employer a designated corporation cannot have retrospective effect.
- Court of Appeal dismissed the appeal and said that the regulation is deemed to have commenced from the date of ENI's commencement.

SOCIAL MEDIA & THE WORKPLACE



- Last year we discussed:
 - defamation cases arising out of social media
 - how the use of social media can give rise to workplace issues
 - how contracts can be established through social media
 - ways in which use of social media can breach intellectual property rights

- There were approximately 370,000 Facebook users in Fiji in November 2015.



**“I love reading. I read about 3 hours a day.
My favorite book is Facebook.”**

- *Gill v SAS Ground Services UK Limited*
- Gill was a customer service rep for SAS Ground Services. In her spare time, she pursued interests in acting and modeling. Gill took paid sick leave from work due to a medical condition. Gill's communications with her employer about her progress and return date were inconsistent and unclear.

- Gill was sacked when:
 - Facebook showed her attending London Fashion week & modelling on the catwalk while on paid sick leave
- Held: Dismissal was Fair – nothing really unusual in the decision. It was a breach of trust case – said she was sick she wasn't – but its where the evidence came from which is interesting.

- we advise on Employment disputes and quite frequently we settle them with a deed containing a confidentiality clause.
- usually very difficult to enforce confidentiality breaches because of the difficulty in obtaining evidence.

- *Bidvest New Zealand Ltd v Vivian* (New Zealand)
- The case involved a Settlement Agreement between Bidvest and a former employee, Vivian. The Settlement Agreement recorded Vivian's resignation from Bidvest and acknowledged that he would be paid out his notice period.
- The Settlement Agreement also had a confidentiality provision.

- Several months after entering into the agreement, Vivian sent a Facebook message to a Bidvest employee, saying among other things that he got paid a lot of money to leave Bidvest.
- Bidvest sued Vivian and sought an order requiring Vivian to comply with the confidentiality provision of the Settlement Agreement.

- The Employment Relations Authority (“**Authority**”) ordered Vivian to pay a penalty of NZ\$3,000 to Bidvest. The Authority also issued a compliance order to Vivian.
- Again – its not the outcome that’s interesting but the fact that Social Media provided the evidence.

- *British Waterways Board v Smith* (UK)
- Smith's employment with British Waterways Board was terminated after he posted comments on Facebook stating that he was consuming alcohol while on standby duty.
- The Employment Appeal Tribunal (“**EAT**”) held that the termination was not unfair.
- The decision of the EAT indicates that comments on social media outside of the workplace (and even outside of working hours) can still breach an employer's policies and lead to disciplinary actions/sanctions.

Tips:

- **Have a clear policy in place** regulating employees' actions on social media that impact the business

- **Employees**

- beware of what you say or put on Facebook particularly if you're pulling a sickie.

- **Employers**

- while we don't recommend a regular trawl of Facebook or Social Media it is legitimate evidence.
- Have a social media policy in place.

LITIGATION UPDATE



Lawrence Fung
Solicitor

Overview

- Insurance case law – “an accident or a series of accidents” – interpreting insurance (and other) contracts
- Personal injury
 - damages update
 - limitation update (intentional assault)
- Social media, defamation and the internet – fast-moving law

MV insurance – one accident or a series?

- *Soli v Raiwaqa Bus Limited & Ors* – Nadroga bus fire 2008, 13 passengers killed. Multiple claims against Raiwaqa Bus Limited (“RBL”).
- RBL claimed against its insurer (New India) for indemnity
- **The problem:**
the aggregate liability of the New India... shall be limited to the amount stated in the said Schedule (\$100,000) in respect of all claims... arising out of any one accident or series of accidents arising out of the one event.
- Was this one event (insurer pays out \$100,000) or 13 events? (insurer pays out \$1.3m?)

MV insurance – one accident or a series?

- Court's decision (relying on an earlier bus accident case):
 - Policy wording was ambiguous
 - (following common law) where wording is ambiguous policy will be interpreted against insurer
 - *contra proferentem* rule – ambiguous words are interpreted against the intention of the person who drafted the words
 - policy covered passenger claims up to \$100,000 per claim (\$1.3m)

MV insurance – one accident or a series?

The learning:

- *contra proferentem* rule is alive and well in Fiji – insurers beware
- ambiguity usually goes against insurers (usually their policy wording – and courts make insurers pay)
- *contra proferentem* rule applies to other standard form contracts (eg utilities, large suppliers)
- If you are a “taker of terms” – *contra proferentem* rule is your friend
- If you are a “maker of terms” (ie deal with others on terms you set), make sure your terms are clear

- But – just because one side might be confused by the wording doesn't mean it is ambiguous. That is still for a court to decide

Personal injury litigation trends

- Fewer claims but bigger awards
- Lawyers are now limited to 10% fee on contingency cases
- This means:
 - lawyers aren't motivated to bring small claims
 - but when they bring a claim, it will be a big one!

Back injuries

Case	Injury	Award
<i>Amin v Chand and Courts (Fiji) Limited</i> [2015]	Slipped disc and compressed nerves in the spine. Assessed at 18% permanent disability.	\$80,000
<i>Singh v Valebasoga Tropic Board Limited</i> [2007]	Fractured index finger, leg, wrist and spine.	\$55,000
<i>Lawanisavi v Kapieni</i> [1999]	Fractured spine	\$25,000

...involving arm injuries

Case	Details of injury	Award
<i>Tamanibici v Prakash</i> [2015]	Fractured right femur, fractured left forearm, and fractured right collarbone	\$52,000 (reduced from \$80,000 for contributory negligence)
<i>Lata v Kumar</i> [2014]	Fracture to the right ankle, and fractured left wrist resulting in permanent deformity.	\$40,000
<i>Prasad v Kumar</i> [2013]	Fractured forearm and laceration to the left index finger	\$30,000
<i>BW Holdings Ltd v Vuli</i> [2010]	Fractured forearm	\$20,000
<i>Chand v Prasad</i> [2005]	Laceration to the left forearm	\$10,000

***Khan v Ali* – intentional assault is a tort, not a personal injury**

- General rule:
 - personal injury – 3 years to issue proceedings and
 - contract or tort claims – 6 years to issue proceedings.
- Ali assaulted Khan and injured Khan in 2008. Khan sued Ali in 2013 for the assault. Master: “out of time”
- High Court on appeal: where the personal injury arises from example – intentional physical assault/battery, that’s a tort – 6-year limitation – case therefore filed in time
- Opens the door for personal injury claims to be brought later (if injury can be linked to a relevant tort – not all torts are covered)

SOCIAL MEDIA & DEFAMATION



Social media and defamation - 1

- a defamatory statement attacks another's reputation
- corporations can be defamed (if they can show defamation caused them economic loss)
- defamation occurs when something is “published” (ie A tells B something bad about Person C)
- defamation law is complex:
 - proving “defamatory meanings”
 - where did publication occur (“libel tourism” and the age of the internet)
 - what loss did the defamation cause?
 - what about defendant's rights of free speech?

Social media and defamation - 2

- But what is publication?
 - one Facebook post or many?
 - a re-tweet?
 - sending a link

- *Wishart v Murray (NZ)*
 - investigative reporter's "true crime" book –
 - family member objects and sets up anti-book Facebook page calling for boycott
 - author sues Facebook page owner for defamation

Social media and defamation 3:

Court has ruled:

- *multiple posts by one person = single publication* (one post might not defame Person X – when linked with another one, it might)
- *multiple posts by one or more people on a single thread = a single publication by one person* (eg Facebook page owner) (posts all read together may defame someone)
- *individual contributors to a thread can be sued for their posts* (lawyers love this, they can sue everyone = more money)

Remember - your business could be sued for what your employees say on your Facebook page

Social media and defamation 4

Posting a hyperlink (with defamatory content when opened)

- in Canada merely posting the hyperlink isn't defamatory (*Newton v Crooks*)
- in New South Wales, it is (*Visscher v Maritime Union*)

Your Fiji location doesn't matter. It's the location of the person suing you! (more libel tourists?)

Social media and defamation - 5

Fiji

- *Oceanic Communications Limited v Fiji Visitors Bureau and Webmedia (Fiji) Limited*: Posts on a blog about a competitor can be defamatory.
- *Fiji Fashion Week v Emosi Radrodro*: (Fashionistas fighting over Fiji Fashion Week on Facebook).
Pending

Social media and defamation – 6

The lessons:

- Be mindful of what you post on social media
- Beware of the discussions you contribute to
- One comment in one thread can be defamatory
- Your comment linked to another's can be defamatory.
- Think before you link – it might not be your post you are linking to but you might be accused of publishing it

Employers or website owners

- should monitor and moderate discussions they host on social media pages and websites
- need a social media policy to discipline employees who act inappropriately on social media.

Cybersquatting – protecting your brand and domain names!

- Cybersquatting – where someone registers a domain name in bad faith e.g. to create a domain name identical or similar to your brand.
- With new suffixes – “.biz” , “.blog” , “.fashion” , “.villas” , “.porn”(?) this risks becomes more prevalent



Cybersquatting 2

Cybersquatting

- includes registering a domain name with the intent to:
 - sell or rent the name to its rightful owner; or
 - make a profit from the rightful owner

Is it legal?

- Fiji does not have specific legislation prohibiting cybersquatting.

Cybersquatting 3

What can you do against a cybersquatter?

- Communicate with the Internet Corporation for Assigned Names and Numbers (**ICANN**) under the Uniform Domain Name Dispute Resolution Policy (**UDRP**).
- UDRP – similar to arbitration (except administrative panel decisions cannot be registered or enforced – they are international, do not belong to a specific jurisdiction).

Cybersquatting 4

How to deal with a cybersquatter

- complain to an approved dispute resolution service
(largest and most commonly used is World Intellectual Property Organisation (**WIPO**))
- cases go to an Administrative Panel – it must deliver a decision to WIPO within 14 days of appointment (if it has all the submissions,)
- within 3 days of decision, WIPO tells the parties and domain name registrars (in Fiji, USP). Administrative Panel can order the domain name to be cancelled or transferred to the complainant
- registrars (may be more than one country) have 10 working days to implement the Administrative Panel's decision

Cybersquatting 5

Why use UDRP?

- cheaper and faster
- can cross borders – you can deal with complaints against offshore cybersquatters without cumbersome court process
- while complaint is pending WIPO will prevent transfer of domain name to any other party until process is complete

Finally – “the right to be forgotten”

- internet content is forever – it does not leave
- negative content may cause disproportionate reputational damage
- to delete content requires co-operation from people and organisations too busy or unwilling to do it (and it can multiply across many sites)
- does the law have a solution?

“The right to be forgotten” – 2

Google Spain v Costeja (European Court of Justice, 2014)

- Costeja’s home was advertised in a forced sale situation in 1998
- In 2009 Costeja contacted the newspaper and asked for the ad to be removed – “11 years later, it is not relevant”
- Newspaper declined – said it was a Government advertisement
- Costeja asked Google to remove the links. Google declined
- Costeja sued in the European Court of Justice
- ECJ upheld the complaint and ordered Google to remove the links

“The right to be forgotten” – 3

Before we all go running to Google...

- Case is very “Europe-specific” and relies on specific EU legislation/directives
- Ruling has to balance rights to privacy and data protection in Europe with rights of public to access information
- Google has online form for EU citizens to apply to delete data which is *“inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed”*
- Google also announced 2015 it would remove links to “non-consensual pornography “revenge porn” on request

No guarantee that all countries/courts would rule the same way. **Watch this space...**

HOT LEFTOVERS

**New rankings, new laws and other
things we could trip over**

**Richard Naidu
Partner**

Where this talk is going

- Business environment – how we rate
- New laws
- New(ish) VAT traps
- Looking ahead (for lawyers and all of us)

Business environment – how we rate (/189)

www.doingbusiness.org

Topics	DB 2016 Rank	DB 2015 Rank	Change in Rank
EASE OF DOING BUSINESS	88	86	-2
<u>Starting a Business</u>	167	156	-11
<u>Dealing with Construction Permits</u>	111	109	-2
<u>Registering Property</u>	55	54	-1
<u>Getting Credit</u>	79	71	-8
<u>Protecting Minority Investors</u>	111	109	-2
<u>Paying Taxes</u>	108	107	-1
<u>Trading Across Borders</u>	73	72	-1
<u>Enforcing Contracts</u>	88	88	No change
<u>Resolving Insolvency</u>	89	89	No change

Table 2.1: Starting a Business in 2014, Fiji and Comparator Countries

	Country	Rank (out of 189 countries)	Procedures (number)	Time (days)	Cost (% of income per capita)	Paid-In Minimum Capital (% of income per capita)
	Fiji	160	11	59	22.5	0
Pacific	Kiribati	122	7	31	20.5	19.5
	Marshall Islands	70	5	17	12.8	0
	FSM	151	7	16	141.2	0
	Samoa	33	4	9	9.4	0
	Solomon Islands	93	7	9	35.5	0
	Tonga	51	4	16	7.6	0
	Vanuatu	137	8	35	46.2	0
	PNG	130	6	53	19.4	0
	Timor-Leste	96	5	10	0.3	127.5
Indian Ocean	Maldives	50	5	9	6.2	2.3
	Mauritius	29	5	6	2.1	0
Caribbean	Dominica	63	5	12	15.7	0
	Grenada	80	6	15	18.4	0
	VCT	80	7	10	16.7	0
Benchmark countries	Korea, Republic of	17	3	4	14.6	0
	Malaysia	13	3	5.5	7.2	0
	Singapore	6	3	2.5	0.6	0
	Thailand	75	4	27.5	6.6	0
	Frontier		1	0.5	0	0

FSM = Federated States of Micronesia, PNG = Papua New Guinea, VCT = Saint Vincent and the Grenadines.
 Source: World Bank. Doing Business. <http://www.doingbusiness.org> (accessed December 2014).

Table 2.3: Tax Rates and Administrative Burden in 2014, Fiji and Comparator Countries

Country	Rank (out of 189 countries)	All Taxes			Select Taxes		
		Total Tax Rate (% profit)	Payments (number per year)	Time (hours per year)	Payments (number per year)	Time (hours per year)	
Fiji	107	31.1	38	195	21	127	
Kiribati	14	32.7	7	120	5	48	
Marshall Islands	128	64.8	21	128	4	32	
FSM	114	60.5	21	128	16	32	
Samoa	96	18.4	37	224	11	128	
Solomon Islands	58	32.0	34	80	17	50	
Tonga	73	30.1	29	200	13	152	
Vanuatu	48	8.5	31	120	12	96	
PNG	110	39.3	32	207	13	199	
Timor-Leste	55	11.0	18	276	5	132	
Indian Ocean	Maldives	134	31.5	30	413	15	325
	Mauritius	13	24.5	8	152	2	104
Caribbean	Dominica	94	37.0	37	117	17	69
	Grenada	106	45.3	30	140	13	68
	VCT	93	38.6	36	108	16	59
Benchmark countries	Korea, Republic of	25	32.4	10	187	3	107
	Malaysia	32	39.2	13	133	7	56
	Singapore	5	18.4	5	82	2	72
	Thailand	62	26.9	22	264	3	216
Frontier		26.1	3	49			

“Tax administration remains a weak link”

- At 31.1% Fiji’s total tax rate is one of the lowest among the comparators...
- However Fiji does not fare well against comparators when it comes to effort needed to being tax compliant. It takes 38 payments and 195 hours to meet Fiji’s various tax requirements – higher than most comparator countries...
- [other than Gold Card taxpayers]...for the rest of the businesses in the country, paying taxes remains a time-consuming and arduous process.

- ADB: Fiji Country Diagnostic Study November 2015

2015 - 32 new laws

- boxing
- the military
- chemists (“you must join Govt’s Free Medicine Programme or we can fine you \$100,000 plus \$5,000 a day”)
- **companies** (ask Glenis and Emily)
- **income tax** (ask Nehla and Rajnil)
- **employment laws** (ask Jon and Nick)
- **Customs** (“don’t pat a Customs dog; don’t kill a Customs dog”)
- **media** (“foreign-owned pay TV cos can’t show local news, can’t show political party/NGO/foreign govt ads”)

2015 - 32 new laws (2)

- **Stamp duty** – (FRCA can now waive or refund stamp duty up to \$10,000, Minister of Finance can waive the rest)
- **“protecting” the new Fiji flag and coat of arms** (“you must respect the flag – if we say you didn’t, guilty till proven otherwise – fine up to \$5,000 or 3 years in prison”)
- **sugar industry** (removing elected Growers Councillors, providing for Govt-appointed ones)
- **(and the usual Budget amendments)**

2015 – 32 new laws (3)

Section 72A, VAT Decree

Prices to reflect VAT decrease

(1) “If the percentage of VAT decreases, a registered person must sell goods and services at a price which reflects the actual percentage VAT decrease.”

- **Guilty until proven otherwise. Burden of proof on taxpayer.**
- **Fixed penalties based on turnover – F\$10-50,000.** Your fine depends on how big you are (not how bad you were)

2016 law changes (1)

27 Acts and Bills (so far)

- *Employment Relations (Amendment) Act*
(“OK ILO, whatever”)
- *Companies (Amendment Act 2016)*
(16 pages of afterthoughts and corrections, less than a year after passing the Act)
- *Civil Aviation (Montreal Convention 1999) Act*
(adopting new international rules for air travel, including increased limits for injury and cargo claims)

2016 law changes (2)

- *Revised Edition of the Laws (Amendment) Act 2016*
(consolidates and updates all laws, not done since 1985)
- *Diplomatic Missions and International Organisations Act 2016*
(PM given right to give tax breaks to diplomats and international organisations)
- *False Information Act 2016* (aka “Vinaka FNPF” Act)

2016 law changes (3)

Registration of Skilled Professionals Act

- An Act to “evaluate the need for professionals in Fiji and to provide for special registration of the professionals”
- Who are “professionals”? Regulations will tell us (one day)
- “Any individual” may apply to PM’s “Skilled Professionals Evaluation Committee” for permit and registration
- The SPEC may approve the application and direct:
 - any professional body to register the applicant
 - Director of Immigration to issue a work permit
- If governing council of professional body (or Director of Immigration) do not co-operate - \$20,000 fine or 2 years’ jail for everybody.

????!!

2016 law changes (4)

Fair Reporting of Credit Act

- An Act to “make provision for the regulation, administration and licensing of credit reporting agencies and for related matters”
- Fiji’s very own “right to be forgotten”!
- on commencement of Act, credit reporting agencies (Data Bureau) must discontinue ops, hand all their data to RBF and RBF must “confiscate” it
- then Data Bureau must start again under new rules (except there are no new rules yet)

If you use the services of Data Bureau:

- a lender or supplier of goods cannot use any credit information previously provided by Data Bureau to determine a loan or credit application. Penalty is a maximum fine of \$50,000 or imprisonment for 5 years or both.

2016 law changes - (5) – Bill stage

- **Aquaculture Bill** (to regulate *cultivation, propagation or farming of aquatic organisms* - establishing Aquaculture Advisory Council, licensing committee, scientific committee, regime for authorisation and licensing of aquaculture activities, offences)
- **Kava Bill** (to regulate and administer the kava industry, register growers, processors, importers and exporters, licensing import and export of kava, labelling for export of Fiji kava)
- **Forest Bill** (replacing Forest Decree 1992 – implementing Fiji Forest Policy 2007, licensing import, export, forest management, wood processing, regulating royalty payments, forest certification, forest carbon trading, endangered species)

2016 law changes - (6) – Bill stage

- **Heritage Bill** (to establish a Fiji Heritage Register, nominate Fiji World Heritage Places, report periodically to UNESCO, manage heritage areas, etc)
- **Adoption Bill** (to regulate adoption process, implement Hague Convention on Intercountry Adoption, maintain birth parent register and regulate disclosure of birth parents...)
- **Rights of Persons with Disabilities Bill** (creates National Council for Persons with Disabilities, and 22 “rights” of persons with disabilities in accordance with UN Convention)

2016 law changes - (6) – Bill stage

- **Code of Conduct Bill** (long-promised law establishing codes of conduct for , Accountability and Transparency Commission, disclosure of assets/liabilities (to Commission). Separate Codes for Ministers, MPs, judicial officers, public servants – avoid conflicts, don't solicit gifts, respect for others...)
- **Financial Management Bill** (amending Financial Management Act to create new August-July fiscal year)
- **Public Order (Amendment) Bill** (law to regulate meetings, processions and marches now regulates foreign terrorist fighters, movement of nuclear materials and plastic explosives)

2016 law changes - (6) – Bill stage

Reform of Sugar Cane Industry Bill

- largely maintains existing structure (Master Award, Industry Tribunal, Growers Council, Mill Area Committees, etc etc)
- then:

s.84 All shares in FSC held by people other than Govt must be transferred to Govt at a value derived from the most recent independent valuation of FSC immediately before the commencement of this Act

???

VAT traps 1: ceasing VAT registration

VAT Decree s.3 (4):

(4) Where a person ceases to be a registered person, any goods and services then forming part of the assets of a taxable activity carried on by that registered person shall be deemed to be supplied by that registered person in the course of that taxable activity immediately before that person ceases to be a registered person, unless the taxable activity is carried on by another person who, pursuant to Section 28 of this Decree, is deemed to be a registered person.

- Consider the implications of ceasing to be registered for VAT. It might be an unexpected VAT assessment!

VAT traps 2: insurance indemnity payments

s.3(8), VAT Decree

(8) ...if a registered person receives a payment under a contract of insurance, *whether or not the person is a party to the contract of insurance*, the payment is, to the extent that it relates to a loss incurred in the course or furtherance of the registered person's taxable activity, deemed to be consideration received for the supply of services performed by the registered person

- **Starting point: if you are registered for VAT, you may have to pay 9/109 of your indemnity payment to FRCA**
- Consider in terms of:
 - material damage payments
 - business interruption payments
- Manage your risks correctly – ensure that your policy has an additional cover for VAT on the indemnity payment



Disruption, AI, blockchains, the Internet of Things - and other scary stuff

[HTTPS://WWW.YOUTUBE.COM/WATCH?V=JOTTDMULESU](https://www.youtube.com/watch?v=JOTTDMULESU)

The Internet of Things

- Internet has connected people since 1989
- Now come the Things – devices, cars, buildings, all connected, collecting and exchanging data
- By 2020:
 - typical family home (First World) may have 500 networked devices
 - 70% of the world will have a smartphone
 - there will be 50 billion connected devices

So what does it mean?

- Your fridge can tell your smartphone to replace the milk
- Your car can tell your house to turn on the a/c when you're 10 minutes away
- Your house can sense what's breaking/what needs repair

This can now be “monetised”

- Your car can tell your insurer if you are a good driver (and if you are maybe your premium will go down)
- Your house can tell FEA how you use power (so it can tailor a better package to your needs)
- Your house can tell Vinod Patel what maintenance is needed (so they can make you a great offer (!))

Disruption is the buzzword

The sharing economy

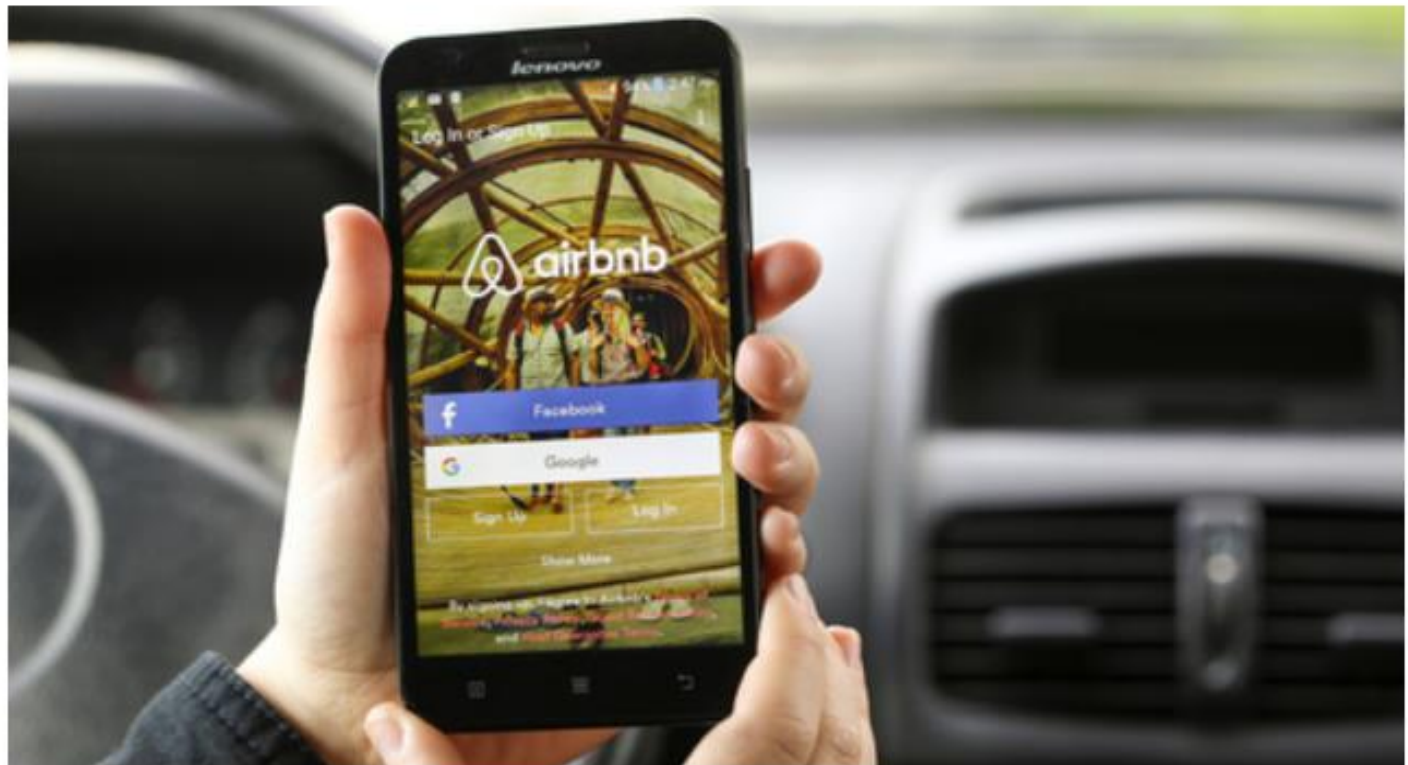
- **Uber and Lyft** find “freelance” taxi drivers quicker and cheaper than taxis (Uber now worth USD50billion)
- **Airbnb** finds a room in someone’s house or apartment cheaper than a hotel (now worth USD25billion))
- **Zipcar** finds you a car that someone isn’t using while he’s at his office desk for the next 8 hours (bought by Avis for USD500m)

It’s no longer who’s got the assets

It’s who’s got the information

US tourist: New Zealand Airbnb host stole my husband

Sunday, 01 May 2016



A tourist has warned of the perils of Airbnb after her husband had an affair with a Kiwi host. Photo / iStock

By Tess Nichol

Welcome to the blockchain

“a distributed database that maintains a continuously-growing list of data records hardened against tampering and revision. Data structure blocks hold batches of individual transactions, time-stamped and linked to a previous block”

- The basis of Bitcoin (and a whole lot more)

▪ **Who needs a bank to move your money?**

“The idea of the bank as a central trusted entity in the middle of a payment scheme is disappearing. Technology will make it possible to have trustworthy payment systems without needing multiple institutions.”

- Dutch banking lawyer

▪ **Who needs a lawyer to deal with your property?**

Honduras and Greece are exploring blockchain-based land registries. No central land registry required!

What are the legal implications?

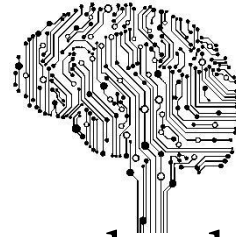
The “new economy” means “cheaper, better, faster” but

- more personal and commercial data in the hands of more people, and more things – how will they use it? How hackable are they?
- potential privacy breaches and resulting loss
- cross-border issues – fewer employees, more contractors, maybe not even in your country
- personal safety in “sharing” situations

Who will be accountable?

**WHAT DOES THIS MEAN FOR
YOU AND YOUR LAWYERS?**

Artificial intelligence



- www.rossintelligence.com's virtual legal research virtual assistant is promoted as an “artificially intelligent attorney”.
- www.lawgeex.com and www.kirasystems.com are developing systems AI systems for reviewing contracts
- maybe the Fiji land registry will be a blockchain in 10 years?

MUNRO LEYS



TODAY'S LAWYER

MUNRO LEYS



TOMORROW'S LAWYER

@munroleys

Where is the Off Switch?

Harry Small

Head of Global Technology, Baker & McKenzie

The idea of permanent connectivity will be with us – there will be no blackspots. It will be an always–on culture. The concept of going to work and going home will be obsolescent. People’s lives will merge between work, home and other interests. The Blackberry started it, but smartphones and universal connectivity will finish it. The issue will be how the hell do you switch it off?

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.