



STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Review Report on the National Payment System Bill 2020 (Bill No. 48 of 2020)



**Parliament of the Republic of Fiji
Parliamentary Paper No. 05 of 2021**

FEBRUARY 2021

Published and Printed by the Department of Legislature, Parliament House, SUVA.

TABLE OF CONTENTS

1	
CHAIRPERSON’S FOREWORD.....	3
Committee Composition AND REMIT	5
1.0 INTRODUCTION.....	7
<i>Background.....</i>	<i>7</i>
<i>Procedure and Program.....</i>	<i>7</i>
<i>National Payment System Bill 2020 (Bill No. 48 of 2020).....</i>	<i>8</i>
2.0 COMMITTEE’S DELIBERATION AND ANALYSIS OF THE BILL	8
<i>2.1 Initial Reading of the Bill and Analysis by the Committee</i>	<i>8</i>
<i>2.2 Evidence received via public consultation</i>	<i>8</i>
<i>2.3 Research into other jurisdictions</i>	<i>12</i>
<i>2.4 Sustainable Development Goals/National Development Plan Impact Analysis ...</i>	<i>12</i>
3.0 Outcome of Review.....	13
4.0 CONCLUSION.....	14

CHAIRPERSON'S FOREWORD

The Fijian Government had put in place an ambitious 5 year development plan, which includes placing emphasis on improving financial literacy, financial inclusion, improving access to finance, integrated digital-payment systems, and overall improvement of the financial sector.

The *National Payment System Bill 2020* aims to bring into fruition the Fijian Government development plan. The Fijian Parliament has referred the *National Payment System Bill 2020* to the Parliament Standing Committee on Justice, Law and Human Rights, for review.

For the review, the Committee conducted public consultation, by inviting the public to provide written submissions and also allowing for verbal consultations with key stakeholders and interested individuals in various key locations around Viti Levu.

In the initial stage of the review, the Committee noted a few key points, which are follows:

- that according to the Explanatory Note to the Bill; the Bill is part of the reforms by the Reserve Bank of Fiji towards ensuring a sound financial structure for Fiji;
- that the Bill serves as a blanket legal framework for all payment systems operating in Fiji;
- that the Reserve Bank of Fiji will have adequate regulatory powers and oversight functions over the payment industry in Fiji;
- that payment and securities systems will have a sound legal basis; and
- that the Bill will enable the regulation of electronic transfers and also provide rules for payments systems, which are aimed at protecting customers.

During the later stages of the review, the Committee identified the following salient issues:

- majority of the public advised that there was little to no awareness on the Bill;
- that certain terms and phrases used in the Bill, be given appropriate interpretation provisions; and
- that certain provisions in the Bill raise concerns in that they provide excessive power to the Reserve Bank of Fiji and the Governor of the Reserve Bank of Fiji;

Consideration was also given to the impact of the Bill on the sustainable development goals and the national development plan. It was encouraging to note that the Bill was introduced for the purpose of improving the financial sector and the payment systems in Fiji, which can be directly linked to socio, economic and political development of the country. Additionally, the objective of the Bill is as such that it applies equally to all persons, irrespective of gender.

The Committee consulted the initiating Ministry and also sort legal clarifications pertaining to the issues noted from the Bill. This ensured that the primary objective of the Bill is preserved.

At the conclusion of the review, the Committee acknowledges that there were numerous issues as identified above. In addressing the issues, the Committee noted that the Bill aligns to international best practices and that it has provisions, which are similar to legislation in other jurisdictions.

The Committee also noted that the proposed law would bring about a uniform regulatory framework for payment systems in Fiji. As we start implementing this law, this would be an opportune moment to gauge the implications of the Bill on Fiji's financial system. Therefore, the Committee believes that the Bill is sufficient as it is and that no amendments are needed.

I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input; Hon. Alvick Maharaj (Hon. Chairperson), Hon. Dr. Salik Govind, Hon. Ratu Suliano Matanitobua; and Hon. Mosese Bulitavu, with over a decade of legal research and management. I would also like to acknowledge the staff of the Research Unit and Committee Secretariat, the entities who accepted the invitation of the Committee and made themselves available to make submissions and the members of the public for taking an interest in the proceedings of the Committee and Parliament.

The Committee would like to give a special recognition to the contribution of the late Mr. Sesah Reddy of Sigatoka, who contributed immensely to the public submission on the National Payment System Bill during the public consultation in Sigatoka. It is with great sadness that the Committee had learnt of the passing of Mr. Reddy and his wife soon after the public consultation. The Committee takes this opportunity to give its condolences to the family and loved ones of the late Mr. and Mrs. Reddy.

I, on behalf of the Committee, through this Report, commend the *National Payment System Bill 2020* to Parliament.



Hon. Rohit Ritesh Sharma
Deputy Chairperson

COMMITTEE COMPOSITION AND REMIT

The Committee is made up of Members of both the Government and Opposition Members. The Committee is mandated by Parliament Standing Order 109 (2)(f) and 110 (1) to look into matters relating to justice, law and human rights. This mandate has led to the Parliament through a resolution under Standing Order 51 to refer the *Cybercrime Bill 2020* to the Committee. The Members of the Committee are as follows:



Hon. Alvick A. Maharaj (Chairperson)

- *Assistant Minister of Employment, Productivity, Industry Relations, Youth and Sports*
- *Chairperson of Public Accounts Committee*
- *Government Whip*
- *Pharmacist*



Hon. Rohit Sharma (Deputy Chairperson)

- *Former Civil Servant – Education Sector*
- *Deputy Chairperson of the Standing Committee on Justice, Law and Human Rights*
- *Deputy Government Whip*



Hon. Ratu Suliano Matanitobua (Member)

- *Shadow Minister for Youth and Sports*
- *Former State Minister of Fijian Affairs*
- *Former Military Territorial Officer*



Hon. Dr. Salik Govind (Member)

- *Public Health Specialist – United Nations (World Health Organisation)*
- *Deputy Chairperson of the Standing Committee on Foreign Affairs and Defence Committee*



Hon. Mosese Bilitavu (Member)

- *Shadow Minister for Defense, National Security, Immigration and Correction Services*
- *Former Opposition Whip*
- *Business Consultant/Farmer*
- *Territorial Military Officer – Republic of Fiji Military Forces*
- *Law Graduate and Researcher*

Committee Secretariat Team

Supporting the Committee in its work is a group of dedicated Parliament Officers who make-up the Committee Secretariat, and are appointed and delegated by the Secretary-General to Parliament pursuant to Standing Order 15 (3)(i). The Secretariat team is made of the following Parliament officers:

- Mr. Ira Komaisavai – Senior Committee Clerk
- Mr. Jackson Cakacaka – Deputy Committee Clerk
- Ms. Darolin Vinisha – Committee Assistant

1.0 INTRODUCTION

Background

The Standing Committee on Justice, Law and Human Rights, hereinafter referred to as the Committee, was referred the *National Payment System Bill 2020* for review on 11 December 2020. The Bill was referred to the Committee pursuant to Standing Order 51 of the Standing Orders of the Parliament of Fiji, whereby the Committee was tasked with scrutinising the Bill and to report back on the Bill in the February 2021 Parliament Sitting.

Procedure and Program

i.) Initial Reading of the Bill

The Committee commenced its review by reading through the Bill and conducting its own deliberation of the Clauses in the Bill. An in-depth deliberation of the Bill was conducted by the Committee, whereby pertinent issues were identified.

ii.) Public consultation (written submissions and verbal submissions)

The Committee is also committed to upholding public trust in Parliament, by ensuring that there is public participation and that all such participation is given due consideration. The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during such deliberations and discussions to develop and finalise the Committee's observations and this Report.

The Committee called for written submissions from the public and other interested stakeholders by placing an advertisement through the Parliament website and Parliament social media pages on social media platforms, Facebook, Twitter and Instagram.

The Committee received written submissions on the Bill from relevant stakeholders. A summary of these submissions is provided in a later part of this report, under the heading '*Committee's Deliberation and Analysis of the Bill*' and copies of the written submissions can be obtained from the online Appendices of this report, which can be accessed from the Parliament website: www.parliament.gov.fj.

The Committee also conducted face to face public consultation in various key locations around Viti Levu. A list of the areas visited by the Committee is appended to the Appendices of this Report. All the face-to-face submissions conducted during the public consultation were recorded and open to the public and the media.

iii.) Legal clarification

To maintain due diligence, the Committee also relies on legal clarification on technical issues identified from the Bill, which is obtained from the Office of the Solicitor-General. These clarifications also assist the Committee in deliberating on these pertinent issues and in deciding whether there would be recommendations for any changes to the Bill.

National Payment System Bill 2020 (Bill No. 48 of 2020)

The National Payment System Bill aims to bring about a more sound financial structure and system in Fiji. In achieving a sound financial structure and system, this leads to an efficient and stable economy which brings about economic growth.

The Bill will put in place a blanket legal framework for payment systems in Fiji.

2.0 COMMITTEE'S DELIBERATION AND ANALYSIS OF THE BILL

2.1 Initial Reading of the Bill and Analysis by the Committee

The Committee commenced its analysis of the Bill, reading through it, Clause by Clause. From this initial reading, it was noted that the Bill provides for the establishment of a national payment system, which will be overseen by the Reserve Bank of Fiji (“**RBF**”).

The Committee had extensive discussions on the provisions of the Bill and identified a few issues, which were considered priority issues to be further discussed and deliberated on. Some of the main issues noted from these discussions are as follows:

- that the Bill is part of the reforms by the Reserve Bank of Fiji towards ensuring a sound financial structure for Fiji;
- that the Bill serves as a blanket legal framework for all payment systems operating in Fiji;
- that the Reserve Bank of Fiji will have adequate regulatory powers and oversight functions over the payment industry in Fiji;
- that payment and securities systems will have a sound legal basis; and
- that the Bill will enable the regulation of electronic transfers and also provide rules for payments systems, which are aimed at protecting customers.

2.2 Evidence received via public consultation

As part of the review, the Committee conducted public consultation on the Bill, in around various key locations in Viti Levu. This consultation ensured that the public participated in the legislative process, which is fundamental to democracy. All the submissions received were considered and deliberated on extensively. The main points and issues noted from the submissions are summarised below.

Submissions received provided a range of comments and suggestions, which cover various issues pertaining to the Clauses of the Bill.

One of the main key issue noted from the public consultation was the lack of awareness on the Bill. The majority of the populace had no idea of the implications of the Bill, which was quite concerning, for the Committee, given that the Bill also aims to promote the protection of the customers and users of the payment systems, which in this case include the general public.

The Bill establishes a national payment system, which is guided by an enabling framework which creates a transparent and level playing field. The Bill also aims to support the move towards a less-cash or cash-reduced society with innovative digital payment solutions

There were submissions that put forward concerns regarding definitions on certain words and phrases used in the Bill. These words and phrases include, “public interest” and “acts done in good faith”. There were various arguments on these words, which include that certain words or phrases should be provided clear and concise definitions, or that certain words or phrases be given a broader definition or that certain words or phrases be given definitions or deleted from the Bill. *Clause 53 - Protection for acts done in good faith* does not define ‘acts done in good faith’; this seems very broad and leaves room for interpretation of what acts done in good faith could be interpreted to mean.

A number of provisions in the Bill are not clearly defined, and these terms should be clarified before the Bill is presented to Parliament. In particular, the nature of the “public interest” test set out in Clauses 15.6(i) and 16.3(a) is unclear and is not defined anywhere in the text of the Bill. While we acknowledge that the nature of the public interest is broad, and cannot always be clearly defined in legislation, we consider the ambiguity of this term to increase the risks associated with RBF’s dual status as both regulator and participant.

There was a concern raised on certain provisions of the Bill, which are believed to give excessive powers to the RBF to not only own/participate in the operation and settlement of payment systems, but also be able to grant licenses to service providers. The RBF is also the regulator and overseer of all national payment systems in Fiji; these extensive powers may raise concerns about the impartiality of the regulator. There was suggestion that the scale and scope of RBF’s participatory activities were to be clearly delineated in the Bill. Not having clear demarcation would blur the line between participant and regulator in a way which may undermine confidence in the regulatory regime. There was also suggestion that if the RBF wish to fully participate in the payment services market, a regulatory structure should be designed in which RBF’s role as regulator is more constrained.

Submission received also noted a concern regarding the appointing powers provided to the Governor of the RBF. The Bill automatically appoints the head of the regulator of the Bill (the Governor of the RBF) as the chairman of the National Payment System Council and who is responsible for selecting his or her own council members. It was suggested that in general, a best practice for such a structure would be to have another authority appoint the Council Members, and the suggestion was that the council members be appointed by the Minister.

It was further recommended that the National Payment System Council is mandated to include at least one member who is not a participant in the payment system market or represents consumer interests. Clause 9 (3) (a) imposes the condition that the Governor “must ensure that the members represent banks, non-bank payment service providers and other payment system participants”. Given the likely existence of some common interests

between these participants, which may not be shared in common with consumers, it was argued that this regulatory structure creates a risk of regulatory capture. It is recommended, therefore, that the Bill mandate the inclusion of an independent party on the Council. This independent member should be specifically mandated to represent consumer interests. Additionally as provided in Clause 9(1) having “Reserve Bank” issue instructions to detail the procedures and functions of the council can raise governance issues. Recommend that instructions as per section 12(1) are issued by the line Minister.

Submission also raised the issue regarding the remuneration of the National Payment System Council and that any remuneration of the council members should be disclosed or, at least, referenced in the Bill.

There are concerns regarding certain clauses which seem to be vague considering that it does not detail the information that will be required hence can lead to privacy issues which the applicant will have less to no choice but to oblige. It was recommended that:

- either the clause is amended to include certain information that will be required to be submitted with applications;
- that the Clause include safeguard information that is submitted with applications and/or restrict regulators from sharing information submitted as per application requirements; and
- that the clause to make it mandatory that the reserve bank require further information beyond the detailed prerequisites, such requests must be accompanied with proper/good reasons.

Concerns were also raise on certain provisions, which sets out requirements, which relate to banking institutions, thus there was concern that payment service providers that are not banking institutions would be unduly prejudiced by being subjected to the requirements specified, which is to maintain capital levels prescribed by the Reserve Bank of Fiji.

Clause 15(6) details the circumstances to which an active license may be revoked or suspended. If the Bill goes into detail on grounds of revocation or suspension of a license(s) it is recommended that this be reciprocated through the detailing of the terms and conditions for renewal of license. Thus submitters recommend that a clause detailing the terms and conditions of renewal of license be included in the Bill.

It was also noted that Clause 15.6(i) permits RBF to suspend or revoke licenses on the grounds that they “in the opinion of the Reserve Bank, the operation of the payment system ... no longer represents the interests of its participants”. Such a provision is unusual, in that it appears to empower RBF to revoke the license of a participant for those participants’ own good. This “representing the interests of participants” must be more clearly defined in the text of the Bill, especially if RBF also intends to participate in this market.

It was also recommended that conditions for transferring of licenses is to be detailed for unison purposes. Failing to detail conditions to transfer licenses can result in double standards and an inconsistent system.

Concerns were raised on provisions that provide conditions that payment service providers are to adhere to; for example Clause 16. This was said to be onerous on payment service providers and also be too bureaucratic in terms of getting approval from the Reserve Bank of Fiji before making any urgent changes to their system. There was a suggestion for amending the provisions in the Bill to allow for necessary changes and solutions to be done without going through the bureaucratic process of getting approval from RBF. Suggestions were made for amending the provision to allow for more flexibility for payment service provider to be able make necessary change to the payment system.

Provisions to protect the privacy of payment system users should also be considered. It was noted that Clause 48(1) and (2)(j) states that *“The terms and conditions of electronic funds transfers involving a customer’s account must be disclosed by a bank or other payment service provider in a manner clearly understood by the customer... (2)(j) the circumstances under which the bank or other payment service provider may in the ordinary course of business disclose information concerning the customer’s account to third parties”*. This does not appear to preclude the inappropriate sharing of information by payment system providers with third parties. While competitive pressure can normally be relied upon to ensure that full disclosure of terms and conditions of use is sufficient to safeguard consumer interests, the existent of network effects may limit the extent of competition in this market. It was recommended that consumer privacy safeguards are included in the final legislation.

There was concern raised on the flexibility and robustness of the Bill to cater for an electronic-paperless payment system: implying clearing and settlement processes across complex national borders and diverse timelines. For instance, according to Clause 49 Issuance of electronic money subsection (1) (e): “clearing and settlement mechanisms must facilitate the provision of final settlement not more than 24 hours after a payment instruction has been initiated.” This raises the questions: What is the counter plan if the time lapse exceeds 24 hours? Are there electronic mechanisms or contingencies in place when this happens? Perhaps subsidiary legislation (regulations) and policy statements, issued by the Minister of Finance and the bank respectively, will cover this in depth. However, specific disclosures to this revelation should be made in the Bill beforehand.

The Bill should include subsection that allows the customers to raise their complaints to the Reserve Bank should they feel that service provider has not done its due diligence in conducting thorough investigation with grievances raised.

Additionally, it was also noted that there was concern involving the effectiveness of the Bill in resolving prevalent issues like financial inclusion and the sustainability of (and access to) funds held by all participants who use the payment systems. This includes the questionable security of funds transferred along mobile phone platforms in the form of electronic money, and the ease of use of (and access to) payment systems by **persons with disabilities**. The Bill should provide secure measures for payment system security, which is inclusive and caters for all Fijians especially the marginalised populace.

The nature of a market for payments systems provision is such that it is likely to be relatively uncompetitive without active pro-competition intervention by regulators. The existence of “network effects” – whereby customers generally wish to use the same

system as everyone else – tends to reduce the number of players in the market. Given these pressures on competition, it is recommended that regulators are specifically empowered to intervene to promote competition in this market. In so far as there are provisions relating to competition – for example, the “strongly compromising competition” provision noted in Clause 15. The Bill should provide for inter-agency cooperation with specialised competition and market regulators, which could assist in the implementation of the provisions of the Bill.

It is also recommended that provisions are to be made in the Bill to minimize the risk to consumers of events which could render Payment Systems inoperative. For example, the Bill does not currently make any provision for what happens to the customers of a payment service provider whose license is revoked. This may constitute a risk to consumers, and provisions should be made for addressing this risk in the text of the Bill

Transcripts of the submissions can be obtained from the online Appendices of this Report, which can be accessed via the parliament website: www.parliament.gov.fj.

2.3 Research into other jurisdictions

In reviewing the Bill the Committee was also conscious of its impact on all the lives of Fijians and noted how the proposed law was a first of its kind for Fiji. The Committee believed that it would be prudent to consider looking into other jurisdictions with similar legislation.

The focus of the jurisdictions research was on the approach that other jurisdictions took with regards to the key issues noted by the Committee during the review. The following provides the comparative research done by the Committee, in an effort to gauge how other jurisdictions have set up their national payment systems.

The Committee looked into three jurisdictions, Australia, New Zealand and Samoa. For this part of the review, the Committee relied on publicly available resources, utilising information easily accessible from the internet.

The Committee noted from this review that in all the jurisdictions, the national payment system is governed via legislation that is similar to Fiji’s *National Payment System Bill*. The payment system in the countries researched have a similar setup to that which Fiji is looking to set up and that is the payment system is managed, overseen and regulated by the country’s Central Bank/Reserve Bank.

2.4 Sustainable Development Goals/National Development Plan Impact Analysis

In reviewing the Bill, the Committee was mindful of the impact it would have on the Fiji’s goals in achieving the sustainable development goals and the efforts towards its national development plan.

As a starting point, the objective of the Bill aims to establish a blanket legislation which creates the legal framework for the payment systems in Fiji. This objective relates to the ambitious development plan and goal by the Government of Fiji in developing a well-

established, competitive and stable financial system¹. The Fijian Government development plan notes that a robust, well-functioning and regulated financial sector is a key driver for economic development.

The Bill will bring about the necessary regulatory framework, which is envisioned to improve efficiency and stability in Fiji's financial system.

The Committee was also mindful of the requirements of the Standing Orders of Parliament regarding gender, which is also a key goal in the sustainable development goals. The Committee ensured that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally. Despite the lack of gender-related information during the review, it is evident from the deliberations on the Clauses of the Bill that it was designed to impact all Fijians and the people living in Fiji, irrespective of gender.

3.0 OUTCOME OF REVIEW

After extensive deliberation, the following outlines some of the main outcomes of the Committee's deliberation and review.

The pertinent issues identified during the review were discussed at length by the Members of the Committee and considered with the assistance of the drafting team, so as to ensure that all these relevant issues were appropriately addressed and that the objectives of the Bill were preserved.

The Committee weighed all options concerning the numerous issues that had been identified and had extensive discussions on these.

In regard to issue of certain words and phrases found in the Bill to be given proper interpretation provisions; the Committee is of the opinion that Bill is drafted following international standards regarding payments systems. Thus words and phrases used in the Bill follow standard drafting rules.

In regard to the issue of certain provisions in the Bill raising concerns in that they provide excessive power to the Reserve Bank of Fiji and the Governor of the Reserve Bank of Fiji; the Committee is of the opinion that the Bill has necessary safeguards in place. The Bill also aligns to international best practices, which means that the Bill will enable Fiji's payment system to be in line with international standards.

The Clauses of the Bill also mandate the RBF to promote the soundness, efficiency, safety and competitiveness of the payment system. Thus meaning the Bill has provisions that address all the risks that affect the reliability of the payment system.

Therefore the Committee is of the opinion that the Bill is sufficient as it is and that all issues raised are addressed adequately in the current wording of the Bill.

¹ Fijian Government 5-Year National Development Plan, 3.2.8 - Financial Services, page 95.

4.0 CONCLUSION

After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation and review noted that there was great support for the Bill.

The review highlighted numerous issues on the Bill, which were considered extensively by the Committee through consultations with the initiating Ministry, the public and the drafters of the Bill so as to address all the issues raised and to ensure the objectives of the Bill are not affected. Therefore the Committee recommends that the Bill is sufficient as it is and that no amendments be made.

The Committee through this report commends the *National Payment System Bill 2020* (Bill No. 48 of 2020) to the Parliament.

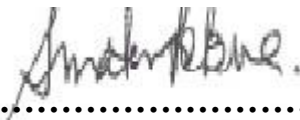
MEMBERS SIGNATURES



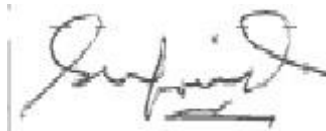
.....
HON. ALVICK MAHARAJ
(CHAIRPERSON)



.....
HON. ROHIT SHARMA
(DEPUTY CHAIRPERSON)



.....
HON. RATU SULIANO
MATANITOBUA
(MEMBER)



.....
HON. DR. SALIK GOVIND
(MEMBER)



.....
HON. MOSESE BULITAVU
(MEMBER)

DATE: 5 February 2021