



FijiFIU

Fiji Financial Intelligence Unit

WRITTEN SUBMISSION

**OF THE FINANCIAL INTELLIGENCE UNIT TO THE
STANDING COMMITTEE ON JUSTICE, LAW AND
HUMAN RIGHTS ON:**

1. Investment Bill 2020 (Bill No. 49 of 2020)

Introduction

The Financial Intelligence Unit (FIU) is a centralised, independent, administrative and a statutory agency of the Fijian Government that was established in 2006 under the FTR Act. The powers, duties and functions of the FIU are clearly defined in the FTR Act.

The core role of the FIU as an intelligence agency is to receive, analyse and disseminate financial intelligence to relevant law enforcement agencies.

The FIU is also Fiji's anti-money laundering (AML) and combating the financing of terrorism (CFT) regulator and the lead agency on AML/CFT policy formulation, compliance and enforcement.

The FIU would like to make submissions on the above-mentioned Bills that are currently before the Parliament Standing Committee on Justice, Law and Human Rights. These Bills have an indirect impact on the mandate of the FIU and its vision of "*protecting Fiji from money laundering*".

Investment Bill 2020

Role of Foreign Investment

Foreign investment plays a critical role in any economy. It is important to have a regulatory and institutional framework that encourages and facilitates foreign investment in Fiji in an efficient, open and transparent manner.

We note that this Bill will replace the current Investment Act of 1999, which is quite obsolete. It's based on international best practice and provides overarching requirements that will be further defined by regulations. We note that the Bill also provides for the rights and obligations of the investor.

Assessing Foreign Investment Proposals

While foreign investments benefit a country, Governments must also consider the *potential costs* of foreign investments. In Australia's example, the Treasury Department (approving agency for foreign investment applications) applies a "national interest" test for approving proposals from foreign investors. The test is, *a foreign investment proposal must not deter/work against Australia's "national interest"*. In Australia's case, "national interest" includes factors such as:

- Impact on the economy;
- Impact on the community;
- National security;
- Impact on competition;
- Policy consistency (such as taxation and environmental policy objectives); and
- Character of the investor.

There is a need to have a comprehensive and holistic assessment of foreign investments proposals to assess not only the financial benefits that such an investment will bring to Fiji but also how it will impact other aspects of the economy (such as impact on the community, competition in the market; taxation and national security).

Section 6 of the Bill provides for the registration of a foreign investor. There is no longer a requirement to obtain a foreign investment certificate from Investment Fiji. Under this Bill, an

investor permit for individual investors is to be managed by the Department of Immigration. The process for registration under the Companies Act will apply including online registration on the e-ROC portal. The foreign investor is still required to obtain the other necessary licenses, permits, etcetera, etc required under any other written law, such as, immigration permit.

The FIU has a mandate under the FTR Act to conduct due diligence checks on persons or entities of interest upon request from government agencies. In 2020, the FIU received 70 requests for background and credibility checks on 114 individuals and 90 entities. In 2019, the FIU received 89 requests on 162 individuals and 99 entities from various Fijian government departments and agencies. This includes requests by Investment Fiji to conduct due diligence on potential foreign investors.

Since 2016, the FIU has conducted due diligence checks on 32 foreign entities and 89 individuals applying for investment in Fiji as follows:

	2016	2017	2018	2019	2020	TOTAL
Number of Checks on Entities	14	4	5	3	6	32
Number of Checks on Individuals	23	24	21	13	8	89

The proposed changes in section 6 of the Bill will improve the efficiency of registering foreign investors and will greatly improve Fiji’s ranking for ease of doing business.

However, the FIU would like to highlight the importance of having clearer and stronger processes and criteria for vetting potential investors to ensure that Fiji opens its doors to quality and sustainable investors.

The vetting process must also focus on the credibility of potential foreign investors to ensure disclose and assessment of pertinent investor information is undertaken at the outset. This may include, among other things, information on ultimate beneficial ownership, group ownership and consortium structures, and legitimacy and source of funding.

The law and supporting regulations must clearly identify the responsibilities of the various government agencies in vetting foreign investors.

Foreign Investment in Critical Infrastructures

Economic policies to privatise and deregulate sectors that were traditionally owned and controlled by the State (for example, water, electricity, communications, transport, etc) has seen an increasing trend of goods and services that were traditionally provided by governments are being provided by private actors.

Recent case studies from around the world have shown that foreign investment in critical infrastructure can pose a risk on a Government’s ability to retain sovereign control over these key

assets or infrastructures in the country. Refer to these website links for media articles on recent cases:

- <https://www.bbc.com/news/world-asia-50498720> *China could 'turn off power' in the Philippines, senate hears*
- https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12290024 *Not in national interest': Ministers block foreigners from buying 4500ha of farmland*

We need to be aware of the growing national security risks associated with foreign investments in critical infrastructures such as the electricity grid, communications networks, water supply and transport system. There is a need for controls to be in place with regards to foreign investment in critical infrastructures to ensure that Government maintains full control of these infrastructures or assets.

Section 7 of the Investment Bill includes a key provision on protection of national security interests. This protects critical infrastructures, critical technologies, etc from foreign investment and foreign interest. Any proposed foreign investment in these critical areas or sectors require the approval of the Minister.

The FIU supports this proposed provision in section 7.

This provision will mitigate the risk of Fiji's critical infrastructure being controlled by a foreign investor that is directly or indirectly ultimately controlled by a foreign state. This will safeguard Fiji's national security and sovereignty.

The FIU further recommends that clear processes are put in place to support the implementation of section 7 of the Bill, including, any non-compliance and legal consequences on foreign ownership of any critical infrastructure.