

INVESTMENT FIJI BILL 2022
(BILL NO. 5 OF 2022)

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BILL NO. 5 OF 2022

A BILL

FOR AN ACT TO CONTINUE THE INVESTMENT FIJI BOARD AS INVESTMENT FIJI FOR THE PURPOSE OF PROMOTING AND FACILITATING INVESTMENT AND EXPORT IN FIJI AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Act may be cited as the Investment Fiji Act 2022.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—
 - “Board” means the Board of Investment Fiji constituted under section 7;
 - “CEO” means the chief executive officer of Investment Fiji appointed under section 10;
 - “chairperson” means the chairperson of the Board;

- “deputy chairperson” means the deputy chairperson of the Board;
- “domestic investor” has the meaning given in section 2 of the Investment Act 2021;
- “foreign investor” has the meaning given in section 2 of the Investment Act 2021;
- “investment” has the meaning given in section 2 of the Investment Act 2021;
- “Investment Fiji” means Investment Fiji continued in existence under section 4;
- “investor” means a domestic investor or foreign investor;
- “member” means a member of the Board;
- “Minister” means the Minister responsible for investment; and
- “Ministry” means the Ministry responsible for investment.

Objectives

3. The objectives of this Act are to set out the mandate and functions of Investment Fiji for the implementation of investment and export promotion strategies in close collaboration with the Ministry, which are aimed at increasing domestic and foreign investment in Fiji and increasing exports for Fiji’s development.

PART 2—INVESTMENT FIJI

Investment Fiji

4.—(1) The Investment Fiji Board established under section 3 of the Investment Fiji Act 1980 continues in existence as Investment Fiji in accordance with this Act.

(2) Investment Fiji is—

- (a) a body corporate with perpetual succession and a common seal;
- (b) capable of holding real and personal property;
- (c) capable of suing and being sued; and
- (d) capable of doing and suffering all such other acts and things that a body corporate may lawfully do and suffer.

Mandate of Investment Fiji

5. The mandate of Investment Fiji is—

- (a) Investment promotion: to increase the contribution made by investors to Fiji’s economy by promoting Fiji’s competitive and comparative advantages;
- (b) Investment facilitation: to facilitate all necessary information and services to assist prospective and existing investors to meet their specific investment project needs;
- (c) Export promotion: to facilitate and promote the development and expansion of export;

- (d) After-care: to provide investors with assistance to overcome any challenges to the growth and expansion of their activities and support investors with their expansion and diversification objectives;
- (e) Policy advocacy: to collect information and raise awareness on the challenges faced by investors and recommend reform measures to improve Fiji's investment and business-enabling environment; and
- (f) Image building: to promote Fiji as a desirable investment destination.

Functions of Investment Fiji

6. The functions of Investment Fiji are to—

- (a) designate and implement investment support and promotion strategies in collaboration with development agencies and relevant institutions;
- (b) support investment promotion activities carried out by public and private sector organisations;
- (c) assist investors with obtaining a licence or approval related to the establishment and execution of its investment project;
- (d) coordinate and cooperate with regulatory institutions in an effort to increase the effectiveness and efficiency of Government services relevant for investors;
- (e) assist investors with resolving investment disputes in accordance with the Investment Act 2021;
- (f) promote and find relevant markets for Fijian products;
- (g) provide capacity building for exporters;
- (h) undertake the planning and presentation of information and guidance for investors;
- (i) to cooperate with domestic, regional and international organisations, where appropriate, to form partnerships, build synergies and adopt best practice to promote investments and exports;
- (j) maintain an investor after-care service to assist investors during the operational and expansion phase;
- (k) provide information and guidance services that may be required by investors during pre, current, or post investment stages, in collaboration with relevant institutions;
- (l) promote and assist foreign investors to collaborate with domestic businesses by setting up an effective investor linkage programme;
- (m) organise the foreign investor reporting requirement within Investment Fiji and analyse the data as an input for the investment strategy of Investment Fiji;

- (n) develop or collect from relevant institutions any information and data which may contribute to increasing investments in Fiji, and to arrange the updating and distribution of such information;
- (o) contribute to reform processes aimed at the improvement of the investment climate and recommend initiatives within the mandate of Investment Fiji;
- (p) issue and support the issuance of printed material and electronic publications in English or any other language providing details on Investment Fiji's mandate and functions;
- (q) undertake or commission research, feasibility and project studies, sector analysis or any other analysis within the mandate of Investment Fiji related to the investment climate and opportunities in Fiji;
- (r) contribute to the development of Fiji's communities by attracting investments to areas that lack development;
- (s) provide support to national and international conventions, seminars and other similar meetings on subjects relating to Investment Fiji's mandate and functions, and to ensure continued participation in such conventions, seminars and meetings;
- (t) establish and maintain an investment portal with information on the regulatory and institutional framework for investment and detailed data on investment opportunities in Fiji; and
- (u) perform any other function conferred on Investment Fiji by this Act or any other written law.

Board

7.—(1) The Board consists of a chairperson and 7 other members appointed by the Minister responsible for public enterprises following consultation with the Prime Minister.

(2) The Minister responsible for public enterprises must appoint one of the members to be the chairperson and the Board must appoint one of the members to be the deputy chairperson.

(3) A member may hold office for a term of 3 years and is eligible for reappointment.

(4) A member is entitled to such remuneration and allowances as may be determined by the Minister responsible for public enterprises following consultation with the Prime Minister.

(5) A member may resign from his or her office by giving written notice of the resignation to the Minister.

(6) A member may be removed from office by the Minister for any reason, including on the grounds of the inability to perform the functions of office, bankruptcy, and neglect of duty or misconduct, proved to the satisfaction of the Minister.

(7) The Board has such powers and functions as prescribed under this Act.

(8) The powers of the Board are not affected by any vacancy in its membership.

Meetings of the Board

8.—(1) The meetings of the Board must be held at such times and places as the chairperson determines.

(2) Subject to subsection (3), the chairperson must preside at each meeting of the Board.

(3) If the chairperson is absent from any meeting of the Board, the deputy chairperson must preside at that meeting, and if both the chairperson and the deputy chairperson are absent, the meeting must be presided over by a member who is nominated by the chairperson and failing any such nomination, the meeting must be presided over by a member appointed by the members present.

(4) The quorum for all meetings of the Board is 5 members.

(5) All questions arising at any meeting of the Board must be decided by a majority of votes of the members present at the meeting.

(6) At a meeting of the Board, all members present have the right to vote, and if there is a tie in the number of votes, the chairperson, or in the absence of the chairperson, the deputy chairperson or the member presiding has a casting vote.

(7) A resolution of the Board that is in writing and signed or assented to by letter, facsimile, e-mail or such other electronic means as approved by the Board, by a majority of the members, is as valid as if it had been passed at a meeting of the Board.

(8) Subject to this Act, the Board may regulate its own proceedings.

Functions of the Board

9. The functions of the Board are to—

- (a) develop and approve projects or proposals on investment support and promotion strategies in collaboration with the Ministry;
- (b) make recommendations to improve the level of effectiveness of the activities carried out by Investment Fiji;
- (c) approve the budget, activity plan and estimate of expenditure for the financial year of Investment Fiji;
- (d) approve the charter of Investment Fiji;
- (e) establish a good governance framework for the operations of Investment Fiji;
- (f) provide strategic direction to Investment Fiji;
- (g) approve any purchase, sale or lease of property and borrowing of money above a prescribed value;
- (h) coordinate and work in collaboration with relevant institutions and corporations on the subjects included in the activity plan of Investment Fiji;

- (i) approve the employment of personnel on a management level for Investment Fiji;
- (j) appoint, reappoint or remove the CEO on terms and conditions as may be determined by the Board, in accordance with this Act and any other written law; and
- (k) establish a subcommittee in accordance with section 11.

CEO

10.—(1) The Board may appoint a suitably qualified person as the CEO of Investment Fiji in accordance with terms and conditions as may be determined by the Board.

(2) The CEO is to be paid such remuneration and allowances and employed on such terms and conditions of employment as may be determined by the Board.

(3) The CEO—

- (a) is in charge of the day-to-day operations of Investment Fiji;
- (b) is responsible for the development of work programmes for Investment Fiji, in accordance with the strategic direction provided by the Board for the implementation of investment and export promotion strategies;
- (c) may, with the approval of the Board, prepare internal policies and strategies addressing internal affairs important for the operation of Investment Fiji;
- (d) may, with the approval of the Board, set priorities regarding the services and activities provided by Investment Fiji in accordance with its internal policies and strategies, Investment Fiji's capacity and the available resources to achieve the best results;
- (e) reports to the Board; and
- (f) is to perform any other function conferred under any other written law.

Subcommittee

11.—(1) The Board may establish a subcommittee as the Board determines necessary to advise or make recommendations to the Board on any matter arising out of or connected with the Board's functions under this Act.

(2) The Board must—

- (a) appoint a chairperson and other members of a subcommittee;
- (b) determine the terms and conditions for the appointment of the subcommittee; and
- (c) determine the procedures and allowance of the members of the subcommittee.

Staff of Investment Fiji

12.—(1) The CEO may appoint officers and employees, including acting, temporary or casual officers and employees, as it considers necessary to effectively deliver Investment Fiji’s mandate, exercise its powers and perform its functions, and may remove any officer or employee from his or her office or employment.

(2) Officers and employees of Investment Fiji are to be paid such remuneration and employed on such terms and conditions of employment as may be determined by the CEO, subject to the approval of the Board.

Limitation of liability

13.—(1) No proceedings, civil or criminal, lie against Investment Fiji for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or with reasonable care.

(2) No proceedings, civil or criminal, lie against any member, officer, or employee of Investment Fiji for anything done or said, or any failure to do or say anything in the course of the operation of Investment Fiji, unless it is shown that the member, officer, or employee did not act in good faith or with reasonable care.

PART 3—ACCOUNTS AND FINANCE

Funding, financial reporting and audit of accounts

14.—(1) Parliament must ensure that adequate funding and resources are made available to Investment Fiji to enable Investment Fiji to effectively deliver on its mandate, exercise its powers and perform its functions.

(2) The financial year of Investment Fiji is the same as the Government’s financial year.

(3) The funds of Investment Fiji consist of—

- (a) all monies lawfully received by Investment Fiji in accordance with this Act or any other written law;
- (b) all monies appropriated by Parliament for the purposes of Investment Fiji; and
- (c) all other monies lawfully received by Investment Fiji.

(4) Investment Fiji must cause proper accounts to be kept and must, as soon as practicable after the end of each financial year, cause to be prepared for that financial year a statement of accounts of Investment Fiji which must include a balance sheet and an account of income and expenditure.

(5) Investment Fiji must cause the statement of accounts to be audited in accordance with the Audit Act 1969 and the Financial Management Act 2004.

(6) The audit is to be conducted by the Auditor-General or any other person appointed in accordance with the Audit Act 1969.

(7) Investment Fiji must submit a copy of the statement of accounts and a copy of the audit report to the Minister in accordance with the Financial Management Act 2004.

Annual report

15. Investment Fiji must prepare, submit and publish an annual report for each financial year in accordance with the Financial Management Act 2004.

PART 4—MISCELLANEOUS

Directions by the Minister

16.—(1) The Minister may, following consultation with the Board, give the Board such directions not inconsistent with the provisions of this Act, as the Minister considers fit, as to the exercise and performance by the Board of its powers and functions under this Act.

(2) The Board must comply with the directions given by the Minister.

(3) The Board must furnish the Minister with such information with respect to its properties and activities as the Minister may require from time to time.

Regulations

17.—(1) The Minister may, following consultation with the Board, make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Minister may prescribe offences and penalties, not exceeding—

(a) in the case of a natural person, a fine of \$50,000 or imprisonment for a term of 10 years or both; or

(b) in the case of a body corporate, a fine of \$1 million.

Repeal

18. The Investment Fiji Act 1980 is repealed.

Transitional

19. A person who, at the commencement of this Act, is a director or an employee of the Investment Fiji Board established under section 3 of the Investment Fiji Act 1980 continues in office or employment on the terms and conditions on which he or she was appointed as a director or engaged as an employee.

Consequential amendments

20. The Investment Act 2021 is amended by—

(a) in section 2—

(i) deleting the definition of “Agency”; and

(ii) after the definition of “investment dispute”, inserting the following new definition—

““Investment Fiji” has the meaning given in section 2 of the Investment Fiji Act 2022;” and

(b) deleting “Agency” wherever it appears and substituting “Investment Fiji”.

February 2022

INVESTMENT FIJI BILL 2022

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 In June last year, the Investment Act 2021 (**‘Investment Act’**) which was the outcome of the review of the Foreign Investment Act 1999 (**‘1999 Act’**) was enacted by the Parliament of the Republic of Fiji.
- 1.2 The Investment Act, *inter alia*—
- (a) repeals the 1999 Act;
 - (b) establishes legal, social and economic principles for the development of investment activity in Fiji;
 - (c) defines the rights, duties and responsibilities of domestic and foreign investors;
 - (d) provides equity for investors with transparent, reliable, efficient and fair rules or procedures within the framework of the international treaties and agreements to which Fiji is a party;
 - (e) removes the issuance of Foreign Investment Registration Certificates (**‘FIRC’**) by Investment Fiji; and
 - (f) removes the power for Investment Fiji to conduct investigations and inspections necessary for the purpose of regulating foreign investors.
- 1.3 Given the removal of Investment Fiji’s function to issue FIRCs and its power to conduct investigations and inspections, a review of the Investment Fiji Act 1980 (**‘1980 Act’**) was conducted to realign the functions of Investment Fiji in order to complement the changes brought about by the Investment Act.
- 1.4 The Investment Fiji Bill 2022 (**‘Bill’**) which is the outcome of the review of the 1980 Act, therefore seeks to replace the 1980 Act to realign the mandate and functions of Investment Fiji to that of a promotional agency.

- 1.5 The purpose of realigning the mandate and functions of Investment Fiji is to enable Investment Fiji to move away from being a regulator of foreign investors in Fiji and to focus primarily on the role of being a promotional agency for attracting both foreign and domestic investors to invest in Fiji.
- 1.6 The Bill proposes the following as the new mandate of Investment Fiji—
- (a) Investment promotion: to increase the contribution made by investors to Fiji’s economy by promoting Fiji’s competitive and comparative advantages;
 - (b) Investment facilitation: to facilitate all necessary information and services to assist prospective and existing investors to meet their specific investment project needs;
 - (c) Export promotion: to facilitate and promote the development and expansion of export;
 - (d) After-care: to provide investors with assistance to overcome any challenges to the growth and expansion of their activities and support investors with their expansion and diversification objectives;
 - (e) Policy advocacy: to collect information and raise awareness on the challenges faced by investors and recommend reform measures to improve Fiji’s investment and business-enabling environment; and
 - (f) Image building: to promote Fiji as a desirable investment destination.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides for the definitions of certain terms used in the new legislation.
- 2.3 Clause 3 of the Bill provides for the objectives of the new legislation.
- 2.4 Clause 4 of the Bill provides for the continuation of the Investment Fiji Board established under section 3 of the 1980 Act as Investment Fiji.
- 2.5 Clauses 5 and 6 of the Bill provide for the mandate and functions of Investment Fiji respectively.
- 2.6 Clause 7 of the Bill provides for the composition of the Board of Investment Fiji (**‘Board’**) and outlines the appointment and term of the members of the Board.

- 2.7 Clauses 8 and 9 of the Bill provide for the meetings and functions of the Board.
- 2.8 Clause 10 of the Bill provides for the appointment of the chief executive officer of Investment Fiji.
- 2.9 Clause 11 of the Bill provides for the establishment of subcommittees by the Board.
- 2.10 Clause 12 of the Bill provides for the appointment of the staff of Investment Fiji.
- 2.11 Clause 13 of the Bill provides for the limitation of liability for work carried out in good faith or with reasonable care by members of the Board, or officers or employees of Investment Fiji.
- 2.12 Clause 14 of the Bill provides for the funding, financial reporting and auditing of the accounts of Investment Fiji.
- 2.13 Clause 15 of the Bill provides for the preparation, submission and publication of Investment Fiji's annual report.
- 2.14 Clause 16 of the Bill empowers the Minister to give directions not inconsistent with the Act to the Board.
- 2.15 Clause 17 of the Bill empowers the Minister to make regulations.
- 2.16 Clause 18 of the Bill repeals the 1980 Act.
- 2.17 Clause 19 of the Bill provides the transitional provisions for a director or an employee of the Investment Fiji Board established under section 3 of the 1980 Act to continue in office or employment on the terms on which he or she was appointed as a director or engaged as an employee at the commencement of the new legislation.
- 2.18 Clause 20 of the Bill amends the Investment Act by deleting the definition of "Agency" and aligning the Investment Act to what is proposed in the Bill.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The new legislation comes under the responsibility of the Minister responsible for investment.

A. SAYED-KHAIYUM
Attorney-General