



STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Report on the Review of the Investment Fiji Bill 2022 (Bill No. 5 of 2022)



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CHAIRPERSON'S FOREWORD



A lot of changes have been introduced by the Fijian Government as a means of developing and improving Fiji's economy and one such vital change is the review of the investment framework. This saw the review of the *Foreign Investment Act 1999*, which was then replaced by the *Investment Act 2021* ('**Investment Act**') that consequently led to the review of the *Investment Fiji Act 1980* ('**1980 Act**').

The review sees the realignment of the functions of Investment Fiji in order to complement the changes brought about by the Investment Act.

The *Investment Fiji Bill 2022* aims to bring into fruition the Fijian Government development plan in increasing and improving investment opportunities for both domestic and foreign investors. The Fijian Parliament had referred the *Investment Fiji Bill 2022* to the Standing Committee on Justice, Law and Human Rights, for review.

At the commencement of the review, the Committee made preliminary deliberations on the Clauses of the Bill and noted that the Investment Fiji Bill 2022 ('**Bill**') is the outcome of the review of the 1980 Act and seeks to replace this Act and to realign the mandate and functions of Investment Fiji to that of a promotional agency.

As part of the review the Committee conducted public consultation via in-person submissions in various communities and invitation to the public to provide written submissions. The Committee received support and commendation on the introduction of the Bill, from majority of the public that had participated in the public consultation. However, like most activities that impact the lives of the people of a country, there will also be other suggestions that are based on the premise of making improvements.

Consideration was also given to the impact of the Bill on Fiji's efforts in meeting its targets of 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 economy by promoting best investment practices. Additionally, the objective of the Bill is as such that it applies equally to all persons and thus realising the principles of gender equality and empowerment of women and girls.

At the conclusion of the review, the Committee acknowledges that there were a few concerns raised by submitters regarding the investment framework, which the Committee extensively deliberated on and came to the conclusion that the mandate and functions of Investment Fiji, as provided in the Bill, adequately addresses these concerns. Therefore, the Committee believes that the Bill is sufficient as it is and that no amendments are needed.

The Committee also felt; that for the effective implementation of the proposed law; that a few recommendations are put forth for the Parliaments' consideration, and these are also provided in this Report.

I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input; Hon. Rohit Sharma (Deputy Chairperson), Hon. Ratu Suliano Matanitobua, Hon. Dr. Salik Govind, and Hon. Mosese Bilitavu. I would also like to acknowledge the public and entities that provided their views on the Bill and for taking an interest in the proceedings of the Committee and Parliament.



Hon. Alvick Avhikrit Maharaj
Chairperson

COMMITTEE MEMBERSHIP



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 Ritesh 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
- Territorial Military Officer – Republic of Fiji Military Forces



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 Bultavu (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

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PART 1 - INTRODUCTION

1.1 Background

As part of the efforts of developing and improving Fiji's economy, a lot of changes have been introduced by the Fijian Government, including the review of the investment framework. The first step of the changes to the investment framework, was brought about in the review of the *Foreign Investment Act 1999* ('**1999 Act**'), which was then subsequently replaced by the *Investment Act 2021* ('**Investment Act**'). The Investment Act also introduced certain changes to the investment framework, which included the repeal of the 1999 Act; establishment of legal, social and economic principles for the development of investment activity in Fiji; defining the rights, duties and responsibilities of domestic and foreign investors; providing 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; removing the issuance of Foreign Investment Registration Certificates ('FIRCs') by Investment Fiji; and removing the power for Investment Fiji to conduct investigations and inspections necessary for the purpose of regulating foreign investors.

These changes brought about by the Investment Act consequently led to the review of the *Investment Fiji Act 1980* ('**1980 Act**'), and the realignment of the functions of Investment Fiji in order to complement the changes brought about by the Investment Act. The *Investment Fiji Bill 2022* ('**Bill**') is the outcome of the review of the 1980 Act, which seeks to replace this Act and ensure the realignment of the mandate and functions of Investment Fiji to be that of a promotional agency.

The Standing Committee on Justice, Law and Human Rights ('**Committee**'), was referred the *Investment Fiji Bill 2021* for review on **10 February 2022**, 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 to Parliament in the March 2022 Parliament Sitting.

The March 2022 Parliament Sitting, was then deferred to April, which thus meant the Committee having ample time to conduct the review on the Bill, before reporting back in the April 2022 Parliament Sitting.

As provided in the Explanatory Notes to the Bill, 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.

1.2 Committee's Review Procedure

The Committee's review process was through the resolution of the Committee and the following provides a brief summary of the agreed upon procedure and program.

The first step in the Committee's review process was the formulation of its program with regards to its review process, which are as follows:

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 in-person 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 official social media page.

The Committee also conducted in-person public consultation meetings in various key locations around Vanua Levu and Viti Levu. A list of the areas visited by the Committee is appended as Appendices of this Report.

Given the COVID-19 restrictions in place during the time of the review, the Committee was mindful of the Ministry of Health's instructions on public gathering and therefore acted with due diligence by ensuring that the relevant Covid-19 protocols were followed in regards to social distancing, temperature checks, and so forth, during the public consultation meetings.

The Committee also ensured that the public consultation was open to the public via media live coverage through the parliament web page and social media platforms, and in instances where venues had poor internet connections – the Committee made pre-recording videos which were then published after the conclusion of the consultation meeting. This ensured that all meetings conducted were accessible by the public, who could also provide their comments for the purpose of SO 111(1)(a).

A summary of the submissions received is provided in a later part of this report, under the heading '*Committee's Deliberation and Analysis of the Bill*'.

iii.) Drafting of Committee Report

The final step of the review process is the compilation of all issues identified from the evidence received from the public consultation. This is then deliberated on extensively and whereby the Committee forms its own independent view on all issues identified. The review work and its outcome is then captured in a Committee report, which is also reviewed before being finalised for tabling in Parliament.

PART 2 - COMMITTEE'S DELIBERATION AND ANALYSIS OF THE BILL

2.1 Initial Reading of the Bill

The Committee commenced its analysis of the Bill, reading through it, Clause by Clause. From this initial reading, it was noted that the the *Investment Fiji Bill 2022* ('**Bill**') is the outcome of the review of the *Investment Fiji Act 1980* ('**1980 Act**'). The Bill seeks to replace the 1980 Act and to realign the mandate and functions of Investment Fiji to that of a promotional agency.

The Committee had extensive discussions on the provisions of the Bill and resolved that given the limited time provided to the Committee to review the Bill; that it be prudent to firstly hear the views of the public on this very important piece of proposed legislation. This public consultation would then allow the Committee to gauge the public's perspective on the Bill before deliberating further, whilst also bearing in mind the requirements as set down by Parliament in referring the Bill to the Committee.

2.2 Bill Summary

By way of consensus, the Committee during the drafting of this Report believed that it be prudent to also capture, the necessary matters the proposed law is intending to bring about. This would conveniently provide the reader of this Report with the aforementioned information about the Bill and the Bill summary is provided below.

Part 1: Preliminary; this Part of the Bill would provide for the interpretation, application, objectives and the principles of the Bill that will guide its implementation.

Part 2: this part of the Bill provides for the establishment of the Investment Fiji, and its mandate and functions. It also provides for the establishment of the Board, the CEO, the Subcommittee, staff and other matters pertaining to its functions.

Part 3: this part of the Bill provides for the Accounts and Finances for Investment Fiji and its reporting obligations for auditing and the Annual report, which is presented to Parliament.

Part 4: this part of the Bill provides for the power of the Minister to direct the Board to provide information in respect to properties and activities. This part also defines the penalties of offences committed by both individuals and body corporate.

2.3 Evidence received and Issues Identified

As part of the review, the Committee conducted public consultation on the Bill, in various key locations in Vanua Levu and Viti Levu and also called for written submissions from interested persons or entities. This consultation ensured that the public participated in the legislative making process, which is fundamental to democracy. All the submissions

received were considered and deliberated on extensively. This report does not provide details of each submission received, but only the pertinent issues identified from the submissions. These pertinent issues are summarised below. Details of the submissions received is provided via the transcripts and copies of written submissions, which can be found in the appendices to this report and can be accessed via the Parliament website link: www.parliament.gov.fj.

There were several comments put forward by the participants of the public consultation, and all of which pointed to the sentiment that the Bill is fully supported given its objectives of improving the investment framework in Fiji¹. All the submissions received highlighted the important role Investment Fiji will play in Fiji's investment environment, which relates to Clauses 5 and 6 of the Bill.

The Committee noted that many foreign investors tend to invest in Fiji for a short period of time, and eventually leave, once they have achieved their targeted profits. There is a lot of potential for locals to invest within Fiji, and it needs support from the relevant institutions and Government. Thus there was recommendation that more emphasis and support be provided to local investors.²

Submitters also impressed upon the Committee that there is great potential for local investors for example in Vanua Levu in both industrial and natural resources and emphasis should be placed on the re-development of entry points to places Vanua Levu such as wharves and international airports for shipping and freight services that could lead to efficient economic growth and sustainable employment.³

Another submitter emphasised the importance of government institutions in having credible and realistic data on natural resources, for example beach-de-mers/sea cucumbers that are utilised by investors. The submitter further elaborated that proper data on resources available locally, should be made available to investors, which would assist investors in making informed decisions⁴. Therefore, the investment framework and the work of Investment Fiji should be geared towards such roles, which would create a favourable environment for investors.

Investment Fiji highlighted that under the new Bill, it will move its focus from being a regulator to a promoter of investment. The shift will allow them to focus solely in identifying and connecting with the right investors and getting the right opportunities that will enable high economic returns. It was also emphasised that there will be no differentiation between foreign and local investors; given that both are contributing to the nation's economy.⁵

¹ Submissions in venues whereby public consultation on the *Investment Fiji Bill 2022* were held, Appendices: *Transcripts of Evidence*.

² Labasa Chamber of Commerce, Submission at Ro Qomate House, Ministry of Youth and Sports, Labasa, Appendices: *Transcripts of Evidence*.

³ Ibid 2, Appendices: *Transcripts of Evidence*.

⁴ Ibid 2, Appendices: *Transcripts of Evidence*.

⁵ Investment Fiji, Submission at the Parliament Complex, Suva, Appendices: *Transcripts of Evidence*.

Additionally, the Committee was provided assurance that local investors and resource owners will be assisted through programmes in building capacity of becoming potential exporters. Another point that was emphasised on, was the transitional period provided in the Bill, which is provided for the purpose of allowing investors to shift from the current law that is in place to a new law, which will enable them to really understand the new rules and regulations, et cetera⁶.

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 Fiji's goals in achieving its targets on the sustainable development goals and the efforts towards its national development plan.

As a starting point, the objectives of the Bill aims to contribute to an attractive investment climate in Fiji to increase investment, generate employment, contribute to sustainable and social development, promote growth for the benefit of all Fijians and provide equity for investors with transparent, reliable, efficient and fair rules and procedures.

Fiji is one of the 54 commonwealth countries that has committed in making comprehensive assessment of its progress in achieving the 17 Sustainable Development Goals from year 2017 to 2030. In relation to the relevant SDGs indicators, the Committee sees that the objective of the Bill relates to the Sustainable Development Goal 8 that provides for the following goal "*promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all*".

The Bill will bring about the necessary mandatory framework for the Investment Fiji, which is envisioned to promote Fiji into the foreign arena of investment. The new dimension of Investment Fiji will also bridge the potential local investors to set up businesses and in turn create employment opportunities in Fiji. Given that it relates to SDG 8, the criteria set out in the Bill is specifically focused on SDG 8.3, which is "*that promotes development-oriented policies that supports productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalisation and growth of micro-small and medium-sized enterprises including access to financial services*".

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. The Committee noted that the Bill is designed to impact all Fijians and the people living in Fiji, and is based on premise of promoting the principles of gender equality and empowerment of women and girls.

⁶ Ibid 5, Appendices: *Transcripts of Evidence*.

Additionally, SDG 8.3.1 specifies the reporting and monitoring process of Government in the *proportion of informal employment in non-agriculture employment, by sex*, which also relates to the investment framework, whereby this can be used as the catalyst for determining the proportion of men and women that are engaged in the investment sector. These reporting mechanism will thus benefit all persons that are in the investment sector or are looking to be part of it.

PART 3 - OUTCOME OF REVIEW

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

The Committee considered all the evidence received and had extensive discussions on these and 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.

The Bill will provide Investment Fiji the much needed legal backing to boost investment activities by being focused on promotion and awareness of Fiji's potential and investment advantages. This approach that the Bill intends to put in place, is stated to have direct correlation with increased investment activities and economic growth, in countries that have also followed this approach.

Additionally, the Committee also acknowledges that there are ongoing work and progress within Fiji's economy, which would sufficiently address investment fears of both local and foreign investors, and would directly compliment the work of Investment Fiji as provided in the proposed law.

Despite the well founded provisions of the Bill in regards to its potential in boosting investment activities; the Committee feels that it would be prudent to also provide recommendations for Parliament to consider, which would assist in the implementation of the Bill and hopefully contribute to a thriving investment environment in Fiji. These recommendations are as follows:

- Firstly, that respective institutions, which deal with investment, continue to collaborate in order to provide an investment environment that is appealing to investors.
- Additionally, that adequate resources are provided to the Investment Fiji, to enable it to effectively carry out its work, whether it be its investment promotional functions or assisting relevant institutions in capacity building.
- Moreover, that there be a monitoring and evaluation system that is set up, which effectively monitors the work carried out by Investment Fiji and the investment framework as a whole.

PART 4 - APPRECIATION

The Committee acknowledges all those that had provided great support to the Committee during the review of the Bill.

First and foremost, the Committee acknowledges all the members of the public and entities for their invaluable contribution, which assisted the Committee in the review. Secondly, the Parliament of the Republic of Fiji for realising the importance of public participation in the legislative making process, thus having confidence in the Committee to conduct public consultation.

The Committee also acknowledges the Speaker of the Parliament, for providing the Committee ample sitting days to carry out the review on the Bill and the Secretary-General to Parliament for supporting the Committee during the review period.

The Committee would like to show its appreciation to Investment Fiji for its timely response to the Committee's queries.

Moreover, the Committee would also like to acknowledge the Parliament IT and Media Team for its support, which enabled the Committee to do awareness of the review and broadcast its public consultation meetings via the digital television platform, Walesi, and Parliament social media pages, Facebook and Twitter.

PART 5 - 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 a few concerns regarding the investment framework, which were considered and deliberated on extensively by the Committee. This review has shown that the Bill is aimed at improving the investment framework and environment and will address some of the lingering concerns of investors and potential investors. Therefore the Committee recommends that the Bill is sufficient as it is and that no amendments be made at this point in time.

The Committee through this bi-partisan report commends the *Investment Fiji Bill 2022 (Bill No. 5 of 2022)* to the Parliament.

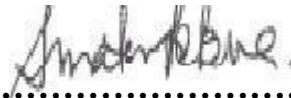
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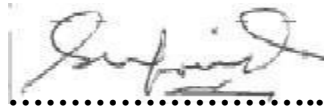
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DATE: 3 April 2022