

ACCESS TO BUSINESS FUNDING BILL 2024
(BILL NO. 18 OF 2024)

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BILL NO. 18 OF 2024**A BILL**

FOR AN ACT TO FACILITATE ACCESS TO BUSINESS FUNDING BY PRIVATE
COMPANIES AND OTHER BUSINESSES

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 Access to Business Funding Act 2024.
- (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—

“approved form” means a form approved under section 31;

“basic information package” means the information package prescribed under section 30 or, if none is prescribed, the basic information package approved by the regulator under section 32;

“Companies Act” means the Companies Act 2015;

“crowd funding service” has the meaning set out in section 17;

“debt security”—

- (a) means a right to be repaid money or paid interest on money that is, or is to be, deposited with, lent to, or otherwise owing by, any person; and
- (b) includes—
 - (i) a security commonly referred to in the financial markets as a debenture, bond or note;
 - (ii) a convertible note; and
 - (iii) a redeemable share in an entity that would otherwise be an equity security, except a share redeemable only at the option of the entity;

“equity security”—

- (a) means a share in the capital of a company; but
- (b) does not include a debt security;

“file” means to apply, give, submit, send or lodge, and includes to file by electronic means;

“financial product” means an equity or debt security;

“form” includes accessible format;

“format” includes accessible digital format;

“intermediary” means a person through whom an eligible issuer offers financial products;

“licence” means a securities industry licence issued or renewed by the Reserve Bank under Part 24 of the Companies Act read with sections 23 and 24;

“Minister” means the Minister responsible for micro, small and medium enterprises;

“peer-to-peer lending service” has the meaning set out in section 18;

“personal offer” has the meaning set out in section 7;

“prescribed” means prescribed by regulation;

“private company” has the same meaning as in section 16 of the Companies Act;

“Registrar”—

- (a) means the Registrar of Companies holding office under section 12(2) of the Companies Act; and

(b) includes a deputy registrar or any assistant registrar or other officer performing the role of the Registrar of Companies under that Act;

“regulation” means a regulation made under this Act;

“regulator” means the Reserve Bank of Fiji;

“Reserve Bank” means the Reserve Bank of Fiji established under section 3 of the Reserve Bank of Fiji Act 1983;

“retail investor” means, in relation to an offer of a financial product, a person who is not a wholesale investor in relation to the offer;

“service disclosure statement” or “SDS” means the disclosure statement that is required by section 20;

“small offer” means the offer of securities in accordance with section 6;

“wholesale investor” means, in relation to an offer of a financial product, any of the following—

(a) an entity that carries on the business of investment in financial products;

(b) an individual or a company that is required to have a securities industry licence under Part 24 of the Companies Act;

(c) a bank that is a licensed financial institution under the Banking Act 1995;

(d) an insurer as defined in section 2 of the Insurance Act 1998;

(e) the Government or a Government agency;

(f) a local authority; or

(g) any other person, group of persons or class of persons prescribed by regulations; and

“working day” means a day that is not a Saturday, Sunday or public holiday.

Purpose

3. The purpose of this Act is to facilitate investor and lender funding for businesses carrying on business in Fiji.

Application

4.—(1) In the event of a conflict between this Act and the Companies Act, a provision of this Act prevails over any provision in the Companies Act.

(2) Nothing in this Act excludes the application of the Financial Transactions Reporting Act 2004.

(3) The Moneylenders Act 1938 does not apply to any matter or circumstance arising under this Act.

(4) Nothing in this Act precludes or affects the private placement of securities by a private company.

(5) The Reserve Bank is responsible for the administration of this Act as the regulator.

Act binds the State

5. This Act binds the State.

PART 2—SMALL OFFERS

Private company may make small offer of equity securities

6.—(1) A private company (the offeror) may make an offer for the issue by it of equity securities if the offer is a small offer.

(2) An offer is a small offer if—

- (a) it is a personal offer;
- (b) it does not breach the 48–investor limit;
- (c) it does not breach the \$2 million limit;
- (d) it does not breach the retail investor limit;
- (e) the offer document complies with section 9; and
- (f) the offeror has filed a basic information package under section 10(1).

(3) An offeror must not make more than 1 offer, including an offer through an intermediary under Part 3 in any 12–month period.

(4) A small offer is not an offer to the public for the purposes of section 16(1)(c) or 282 of the Companies Act.

(5) Regulations may be made prescribing a different number or sum for each of the limits referred to in subsection (2)(b), (c) and (d), and section 8 and regulations made under this Act must then be read as amended accordingly.

Meaning of personal offer

7. For the purposes of section 6, an offer is a personal offer if it is an offer that is made to, and may only be accepted by, an offeree who—

- (a) is likely to be interested in the offer, having regard to—
 - (i) any previous contact between the offeror and the offeree;
 - (ii) professional or other connection between the offeror and the offeree;
 - or
 - (iii) statements or actions by the offeree indicating that the offeree is interested in offers of that kind; or
- (b) has an annual gross income of at least \$100,000 for each of the person’s 2 most recently completed income tax years before the making of the offer.

When offer breaches limit

8.—(1) An offer breaches the 48–investor limit if the number of persons to whom the securities are issued under the offer exceeds 48.

(2) An offer breaches the \$2 million limit if the amount raised from the issue of the securities under the offer exceeds \$2 million.

(3) An offer breaches the retail investor limit if the amount raised from the issue to a retail investor of securities under the offer exceeds \$20,000.

Offer document

9. A small offer must be made in an offer document that—

- (a) is in the approved form, if any;
- (b) contains a basic information package;
- (c) is complete; and
- (d) has been filed with the regulator and the Registrar.

Calculation of current 12–month period

10.—(1) For the purposes of section 6(3), the 12–month period begins on the date when the offeror files a basic information package with the regulator and the Registrar.

(2) The regulator may require a fee to be paid for filing a basic information package.

Offeror must file list of security holders

11.—(1) An offeror under a small offer that results in the issue of a financial product to one or more persons must file a full list as at the completion of the offer of all holders of that class of security.

(2) The list must be—

- (a) filed with the regulator and the Registrar;
- (b) filed in the approved form, if any;
- (c) filed within 15 working days after the conclusion of the small offer; and
- (d) accompanied by the prescribed fee, if any.

Extension of Part 2 to debt securities by regulations

12. Regulations may be made extending the application of this Part to the offer by a private company of debt securities, and in that event each reference in section 6 to “equity securities” must be read as a reference to “equity or debt securities”.

PART 3—OFFER THROUGH INTERMEDIARY

Division 1—General

Interpretation for this Division

13. In this Division—

“co-operative society” means a society registered under the Co-operative Societies Act 1996;

“eligible issuer” or “issuer” means a co-operative society, partnership, private company or sole trader;

“partnership” means a partnership for the purposes of the Partnership Act 1910 provided that the terms of the partnership are contained in a written partnership agreement; and

“sole trader” means a self-employed person who owns and runs his or her own business as an individual.

Eligible issuer may offer equity or debt securities through intermediary

14.—(1) An eligible issuer may make an offer through an intermediary for the issue by it of equity securities (in the case of a private company only) or debt securities if—

- (a) the intermediary is a licensed intermediary;
- (b) the offer is made by way of—
 - (i) a crowd funding service;
 - (ii) a peer-to-peer lending service; or
 - (iii) any other service prescribed by regulations for the purpose of this section;
- (c) the offer is not concurrent with, and does not overlap with, a small offer by the issuer under Part 2;
- (d) the offer does not breach the retail investor limit;
- (e) the offer does not breach the \$5 million limit; and
- (f) in the case of an offer of equity securities made by way of a crowd-funding service, the articles of association of the issuer do not—
 - (i) confer rights of pre-emption over the equity securities that are the subject of the offer; or
 - (ii) otherwise restrict the transferability of those equity securities.

(2) An offer under this section is not an offer to the public for the purposes of section 16(1)(c) or section 282 of the Companies Act.

(3) Regulations may be made prescribing a different sum for the limit referred to in subsection (1)(e), and section 15 and regulations made under this Act must then be read as amended accordingly.

When offer breaches \$5 million limit

15.—(1) An offer under this Part breaches the \$5 million limit if it results in the amount being raised from the issue of securities by the offeror through a licensed intermediary exceeding \$5 million in any 12-month period.

(2) For the purposes of subsection (1), the 12-month period begins on the date when the offer is first posted on the intermediary’s website.

Who is a licensed intermediary

16. A licensed intermediary is a person who is licensed in accordance with section 23 to provide the service in question.

Meaning of crowd funding service

17. A person provides a crowd funding service if—

- (a) that person provides a facility for the offer of equity securities by a private company; and
- (b) the principal purpose of the facility is to facilitate the matching of private companies that intend to raise funds with multiple investors who are seeking to invest relatively small amounts.

Meaning of peer-to-peer lending service

18. A person provides a peer-to-peer lending service if—

- (a) that person provides a facility for the offer of debt securities by an eligible issuer; and
- (b) the principal purpose of the facility is to facilitate the matching of lenders with borrowers who are seeking loans for business purposes.

Division 2—Disclosure by intermediary

Interpretation for this Division

19. In this Division—

“intermediary” means the provider of a service; and

“service” means a service listed in section 14(1)(b).

Disclosure must be made to retail investor

20.—(1) An intermediary who provides a service to a retail investor must ensure that a service disclosure statement relating to the intermediary’s service is given to the investor before the investor makes a transaction using the service.

(2) The service disclosure statement must—

- (a) be given to an investor in accordance with section 21; and
- (b) comply with the requirements of section 22.

(3) If an intermediary fails to make disclosure to a retail investor required under subsection (1) —

- (a) the retail investor may cancel the transaction by written notice to the intermediary within 20 working days after making the transaction; and
- (b) the intermediary must, within 10 working days after receiving the notice, repay any money paid by the investor arising out of the transaction.

When and how service disclosure statement must be given

21.—(1) A service disclosure statement must be given to a retail investor not less than 15 working days before the investor makes a transaction using the service for the investor to take professional advice.

(2) A service disclosure statement must—

- (a) be given to the retail investor directly;
- (b) if the investor has specified an address including an electronic address for communication by the provider, be delivered or sent to that address;
- (c) if the investor has not provided an address, state the retail investor’s last known address; or
- (d) be delivered or sent to an address including an electronic address specified by the investor for receiving the disclosure statement.

Requirements for service disclosure statement

22. A disclosure statement must—

- (a) be in writing;
- (b) state the date as at which the disclosure statement is prepared;
- (c) state the name and contact details of the provider; and
- (d) comply with the prescribed requirements for a service disclosure statement, including requirements relating to form, content and accompanying documents.

*Division 3—Licensing for crowd funding, etc**Reserve Bank may license crowd funding, etc*

23.—(1) A person must not carry on the business of providing one or more of the services listed in section 14(1)(b) unless—

- (a) that person holds a securities industry licence issued under Part 24 of the Companies Act as modified by section 24; and
- (b) the licence specifies that the holder is licensed under that licence to provide the service or services in question.

(2) Regulations may be made—

- (a) prescribing criteria for the issue of a licence in addition to any criteria that apply under Part 24 of the Companies Act; and
- (b) prescribing conditions or additional conditions including requirements for annual reporting to the Reserve Bank that must be included in the licence of a provider of a service listed in section 14(1)(b) or to which that licence is subject.

(3) The Reserve Bank must not issue or renew a securities industry licence that specifies, and must not amend an existing licence to specify, that the holder is licensed to provide one or more of the services listed in section 14(1)(b) unless the Reserve Bank is satisfied that the licence holder also meets the prescribed additional criteria.

Modification of Part 24 of Companies Act

24.—(1) This section modifies Part 24 of the Companies Act for the purposes of the issue or renewal under that Part of a licence for a service listed in section 14(1)(b).

(2) In section 275 of the Companies Act—

- (a) the term “this Act” must be read as including this Act; and
- (b) the reference in subsection (1)(c) to ceasing to qualify for a securities industry licence includes ceasing to qualify under the additional criteria prescribed under section 30(2).

(3) The following provisions are modified in the case of a provider that is a body corporate—

- (a) section 278(1)(b) (applicant must be a member of a securities exchange approved under Part 23 of the Companies Act) does not apply;
- (b) section 278(1)(c) (applicant must be a company incorporated under the Companies Act) does not apply;
- (c) in section 278(1)(d)(ii) and (iii), the term “company” must be read as a body corporate wherever incorporated; and
- (d) in section 278(1)(e), the term “prescribed” must be read as “prescribed by regulations made under the Access to Business Funding Act 2024”.

PART 4—MISCELLANEOUS

Meaning of “document”

25. In sections 26 to 29, “document”—

- (a) means a document required by or for the purposes of this Act or filed with the regulator or the Registrar under this Act or the regulations; and
- (b) includes an electronic document.

False or misleading statement

26. Any person who—

- (a) makes or authorises the making of a statement in a document that to the person’s knowledge is false or misleading in a material particular; or
- (b) omits or authorises the omission of any matter or thing without which a document is to the person’s knowledge misleading in a material respect,

commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$50,000.

*False or misleading information***27.** Any person who—

- (a) makes or authorises the making of a statement in a document that is based on information that to the person’s knowledge is false or misleading in a material particular; or
- (b) has omitted, from a statement in a document that is based on information, a matter or thing the omission of which to the person’s knowledge renders the information false or misleading in a material respect,

commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$50,000.

*Failure to take reasonable steps to ensure document not false or misleading***28.** Any person who—

- (a) either—
 - (i) makes or authorises the making of a statement in a document that is false or misleading in a material particular; or
 - (ii) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect; and
- (b) does not take reasonable steps to ensure that the statement is not false or misleading or to ensure that the statement does not omit any matter or thing without which the document would be misleading, as the case may be,

commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$50,000.

*Effect of approval of document***29.—**(1) This section applies for the purposes of sections 26 to 28.

(2) Any person is taken to have authorised the making of the statement or the omission of the matter or thing, whichever applies, if—

- (a) the person votes in favour of a resolution approving, or otherwise approves, a document; and
- (b) the document contains a statement that, to the person’s knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person’s knowledge, misleading in a material respect.

Regulations

30.—(1) The Minister may make Regulations prescribing 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) Regulations that may be made under subsection (1) include Regulations—
- (a) prescribing a kind or class of debt security as a security to which Part 2 applies;
 - (b) prescribing when a fee is payable under this Act or the regulations, and the amount payable;
 - (c) prescribing a different number or sum for each of the limits referred to in section 6(1)(b), (c) or (d) or section 14(1)(e);
 - (d) prescribing requirements for a basic information package, for example, requirements related to form, content and accompanying documents;
 - (e) prescribing additional criteria under section 23(2)(a);
 - (f) prescribing conditions or additional conditions that must be included in the licence of a provider of a service listed in section 14(1)(b) or to which that licence is subject;
 - (g) prescribing minimum entry requirements and examinations for the issue of a licence to an individual;
 - (h) prescribing a person, a group of persons or a class of persons as a wholesale investor;
 - (i) prescribing the circumstances in which the regulator may reject a document that has been filed with it;
 - (j) prescribing an information event or circumstance requiring a notice to be filed with the regulator, for example the withdrawal or conclusion of an offer;
 - (k) requiring the information that must be filed for a specified information event or circumstance;
 - (l) prescribing any other matter relating to the form of, or the procedure for, making an offer;
 - (m) prescribing requirements for a service disclosure statement, for example, requirements related to form, content and accompanying documents; or
 - (n) prescribing requirements for reporting transactions to investors.

Approved forms

- 31.**—(1) The regulator may approve forms for use under this Act or the Regulations.
- (2) The regulator may approve forms for use in—
- (a) hard copy format;
 - (b) digital format accessible through an approved website; or
 - (c) both.

(3) Unless regulations or the regulator specifies otherwise, the approved form or format for filing a notice or document with the regulator or the Registrar is the format comprising the data field contained in the online registry maintained by the regulator or the Registrar for that notice or document.

(4) If the regulator approves forms in hard copy format only, it must publish its approved forms on an approved website.

(5) For the purposes of this section, an approved website is a website—

- (a) that is maintained by the regulator or on its behalf; and
- (b) to which the public has free access.

Regulator may approve basic information package

32.—(1) The regulator may approve the form and requirements of a basic information package for use under this Act if none has otherwise been prescribed.

(2) The regulator must publish the approved form and requirements on an approved website.

Consequential amendments

33.—(1) The Companies Act is amended by—

- (a) in section 3 in the definition of “offer to the public”, deleting paragraph (b) and substituting the following—

“(b) a small offer by a private company that complies with section 6(2) of the Access to Business Funding Act 2024;”;

- (b) in section 16—

- (i) renumbering section 16 as section 16(1); and

- (ii) after subsection (1), inserting the following new subsections—

“(2) The requirement in subsection (1)(a) that the right to transfer shares be restricted does not apply in the case of shares issued as a result of an offer of equity securities made by way of a crowd funding service under the Access to Business Funding Act 2024.

(3) Nothing in subsection (2) otherwise affects the rights of shareholders in a private company.

(4) In subsection (1)(b), the reference to a limit of 50 members does not include persons who become members of the company as a result of an offer of equity securities made by way of a crowd funding service under the Access to Business Funding Act 2024.”.

(2) In section 667 of the Companies Act, “Act” must be read to include this Act.

October 2024

ACCESS TO BUSINESS FUNDING BILL 2024

EXPLANATORY NOTE

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

1.0 BACKGROUND

- 1.1 Micro, Small and Medium Enterprises (**'MSMEs'**) in Fiji require access to finance to be able to start, grow and sustain business operations. Access to finance for MSMEs has been a constant challenge due to the cost of borrowing and stringent collateral requirements.
- 1.2 There is also currently no formalised or regulated process for connecting venture capital and other private investors to MSMEs which means potential funds are not easily made available to MSMEs that need them.
- 1.3 The Access to Business Funding Bill 2024 (**'Bill'**) therefore seeks to reduce the financing gap and propose new forms of raising capital, either through equity or debt, in a regulated manner. Such financial regimes are small offers, equity crowdfunding and peer to peer lending.

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 interpretation of key terms used in the Bill.
- 2.3 Clause 3 of the Bill provides for the purpose of the Bill which is to facilitate investor and lending for businesses in Fiji.
- 2.4 Clause 4 of the Bill provides for the application of the Bill including applicable provisions of the Companies Act 2015 (**'Companies Act'**), Financial Transactions Reporting Act 2004 and the Moneylenders Act 1938.
- 2.5 Clause 5 of the Bill provides that the new legislation binds the State.

- 2.6 Clause 6 of the Bill provides for what a small offer is and who may make a small offer of equity securities. Clause 6 of the Bill also limits the making of an offer by an offeror to one in every 12-month period.
- 2.7 Clause 7 of the Bill provides the meaning of what a personal offer is, that is, an offer made to an offeree who is likely to be interested in the offer made and subject to considerations as outlined in clause 7 or whose annual gross income is at least \$100,000 for the previous 2 completed income tax years.
- 2.8 Clause 8 of the Bill outlines possible grounds for breach of limits in a small offer.
- 2.9 Clause 9 of the Bill requires a smaller offer to be made through an offer document.
- 2.10 Clause 10 of the Bill provides for the calculation of the 12-month period after which an offeror may make a small offer. The Reserve Bank of Fiji (**'regulator'**) may also charge fees for filing a basic information package.
- 2.11 Clause 11 of the Bill requires an offeror to file a full list of all holders of the class of security where a small offer has resulted in the issue of a financial product to one or more persons.
- 2.12 Clause 12 of the Bill allows for regulations to be made to extend the application of Part 2 of the Bill to an offer of debt securities that is made by a private company.
- 2.13 Clause 13 of the Bill provides for the interpretation of key items specifically in Division 1 of Part 3 of the Bill.
- 2.14 Clause 14 of the Bill provides for the making of an offer through an intermediary provided the intermediary is licensed to do so and where the offer is made by way of a crowd-funding service, peer-to-peer lending service or other prescribed service, and meets the criteria outlined in clause 14.
- 2.15 Clause 15 of the Bill outlines possible grounds for breach of the \$5 million limit for an offer made under Part 3 of the Bill.
- 2.16 Clause 16 of the Bill provides who a licensed intermediary is, that is, a person who is licensed in accordance with clause 23 of the Bill.
- 2.17 Clause 17 of the Bill provides the meaning of a crowd funding service.
- 2.18 Clause 18 of the Bill provides the meaning of a peer-to-peer lending service.
- 2.19 Clause 19 of the Bill provides for the interpretation of key items specifically in Division 2 of Part 3 of the Bill.

- 2.20 Clause 20 of the Bill requires an intermediary to provide a service disclosure statement to an investor before the investor makes a transaction using the services of the intermediary.
- 2.21 Clause 21 of the Bill requires that a service disclosure statement be given to a retail investor not less than 15 working days before the investor makes a transaction using the service.
- 2.22 Clause 22 of the Bill outlines the requirements for a service disclosure statement.
- 2.23 Clause 23 of the Bill allows the regulator to issue a licence for the services under clause 14 of the Bill provided the licence holder holds a securities industry licence issued under the Companies Act and that the licence specifies the services.
- 2.24 Clause 24 of the Bill modifies Part 24 of the Companies Act.
- 2.25 Clause 25 of the Bill provides the meaning of “document”.
- 2.26 Clauses 26 to 28 of the Bill provide for offences in relation to false or misleading statements, false or misleading information and failure to take reasonable steps to ensure a document is not false or misleading.
- 2.27 Clause 29 of the Bill provides for the treatment of a document for the purposes of the offence provisions under clauses 26 to 28 of the Bill.
- 2.28 Clause 30 of the Bill empowers the Minister to make Regulations to give effect to the provisions of the Bill.
- 2.29 Clause 31 of the Bill allows the regulator to approve forms for use under the new legislation or any regulations made.
- 2.30 Clause 32 of the Bill allows the regulator to approve the form and requirements of basic information packages, and requires the regulator to publish the approved forms and requirements on an approved website.
- 2.31 Clause 33 of the Bill consequentially amends the Companies Act.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The new legislation comes under the responsibility of the Minister responsible for micro, small and medium enterprises.

G. E. LEUNG
Attorney-General