



Re-invigorating Private Sector Investment

A Private Sector Assessment for

Fiji

Asian Development Bank



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Michael Mullins wrote this private sector assessment, with Samantha-Jane Odbert as research editor and Melissa Dayrit as contributing editor. The Pacific Private Sector Development Initiative core team (Paul Holden, Terry Reid, Laure Darcy, Christopher Russell, Aaron Levine, and Erik Aelbers) provided inputs as peer reviewers. This assessment was prepared under the supervision of Kanokpan Lao-Araya and Sabine Spohn of the ADB Pacific Liaison and Coordination Office, Sydney, Australia. The ADB Pacific Subregional Office also provided advice, inputs, and support during report preparation.

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Every effort has been made to ensure the accuracy of the data used in this publication.

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Foreword

A healthy and dynamic private sector is essential in order for countries to achieve long-term economic growth. Business activity creates jobs and supports entrepreneurial activities; builds human capital and physical infrastructure; and generates public revenues that support investment in health, education, and other services. The private sector, however, can only flourish in a supportive environment—one that encourages businesses to be established, to innovate, and to increase productivity.

The main objective of this report is to provide a critical review of the environment for private sector development in Fiji. It focuses on the policy and institutional requirements necessary to achieve sustained, broad-based private sector growth. The Asian Development Bank (ADB) prepared its first private sector assessment for Fiji in 2005. This report reviews Fiji's current private sector environment against issues identified in the earlier assessment and proposes recommendations to address key outstanding constraints.

Fiji's growth performance over 2006–2012 has been well below the government's target annual growth rate of 5%. It has also been below rates achieved by many of its Pacific island neighbors. This poor economic performance is the result of many factors, including high oil prices, the global economic crisis, and natural disasters. It also reflects a relatively weak domestic investment climate that has been negatively affected by ongoing political problems and delays in addressing underlying structural issues. This is not to say that positive reforms have not been implemented since 2006. In fact, this report highlights many positive changes including significant reductions to the corporate tax rate, opening up the telecommunications market to competition, and introducing competition in the iTaukei land lease process.

I am pleased to acknowledge the interest and commitment expressed by the Government of Fiji and Fijian business community stakeholders to carry out further reforms aimed at making Fiji a more attractive, low-cost place to do business. I am confident that the findings of this report will provide useful material to help them achieve this goal.

I wish to convey my thanks to the Government of Fiji and the numerous members of the private sector who contributed their valuable time. The report was prepared under the ADB regional technical assistance facility, the Pacific Private Sector Development Initiative, with generous support from the Government of Australia. I wish to thank the author (Michael Mullins), editors (Samantha-Jane Odbert and Melissa Dayrit), peer reviewers (Paul Holden, Terry Reid, Laure Darcy, Christopher Russell, Aaron Levine, and Erik Aelbers), and supervisors (Kanokpan Lao-Araya and

Sabine Spohn) of this report for their efforts. ADB's Pacific Subregional Office Regional Director Adrian Ruthenberg and his staff also provided advice and support for the preparation of this report.

I trust that this report will provide interesting information and ideas for further discussions and actions to promote private sector activities in Fiji.



Xianbin Yao
Director General
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Abbreviations

ADB	Asian Development Bank
ADR	alternative dispute resolution
ALTA	Agricultural Landlords and Tenants Act
ATH	Amalgamated Telecom Holdings
CGT	capital gains tax
CSO	community service obligations
DNR	Department of National Roads
DTCP	Department of Town and Country Planning
ERP	Employment Relations Promulgation
F\$	Fiji dollars
FDB	Fiji Development Bank
FDI	foreign direct investment
FEA	Fiji Electricity Authority
FINTEL	Fiji International Telecommunications
FIRC	foreign investment registration certificate
FPC	Fiji Ports Corporation
FNPF	Fiji National Provident Fund
FRCA	Fiji Revenue and Customs Authority
FSC	Fiji Sugar Corporation
FTPA	Fiji Training and Productivity Authority
FWA	Fiji Water Authority
GDP	gross domestic product
ILO	International Labour Organization
ILTA	iTaukei Land Trust Act
ISP	internet service provider
LGC	local government council
MOF	Ministry of Finance
MPE	Ministry of Public Enterprises
NCSMED	National Centre for Small and Medium Enterprise Development
ORC	Office of the Registrar of Companies
ORT	Office of the Registrar of Titles
PER	public emergency regulations
PPP	public-private partnership
PPSA	Personal Property Securities Act
RBF	Reserve Bank of Fiji
RLA	regional local authority
SOE	state-owned enterprise
TIN	tax identification number
TLTB	iTaukei Land Trust Board
UCV	unimproved capital value
VAT	value-added tax

Summary

The Fijian economy has not been achieving its potential. Private sector investment, the driving force behind economic growth, has fallen to one of its lowest levels since the country's independence. The government has implemented a number of substantive and progressive changes to improve the investment climate since 2006 and recognizes that more needs to be done. Key challenges and associated recommendations for making Fiji a more attractive, low-cost place to do business are summarized below.

Key Challenges	Recommendations
Reducing policy uncertainty	<ul style="list-style-type: none"> Establish a more open environment for public dialogue and debate, by relaxing remaining constraints on public gatherings and further encouraging independence in media reporting. Establish a formal, structured, high-level public–private sector dialogue mechanism, to guide investment climate reform and consider recommendations made in this report.
Improving the regulatory environment for starting and operating a business	<p>Business start-up</p> <ul style="list-style-type: none"> Complete the Companies Act review, and introduce modern legislation both relevant to Fiji's context and consistent with good international practice. Introduce an electronic portal, which allows integrated business start-up registration and archive filing. <p>Site development approvals</p> <ul style="list-style-type: none"> Strengthen the Department of Town and Country Planning and local authorities' planning capacity, to increase the transparency and speed of site development approval processes. <p>Labor regulations</p> <ul style="list-style-type: none"> Review the Essential National Industries Decree and identify practical strategies for making the labor market more efficient and dynamic, without undermining workers' rights to organize and bargain collectively. Review the existing labor regulatory requirements to identify how they could be simplified. <p>Licenses</p> <ul style="list-style-type: none"> In the short term, introduce a simple set of regulations to streamline general business license issuance and ensure consistency in how the regulations are administered. Review the existing business licensing regime to bring it in line with international good practice principles. Introduce a regulatory impact analysis process to assess proposals for new regulation—including licenses and permits—to ensure they meet good practice principles.

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Table *continued*

Key Challenges	Recommendations
Creating a more welcoming environment for foreign investment	<ul style="list-style-type: none"> • Raise awareness of the removal of the minimum investment threshold among foreign investors, and improve facilitation services to increase the speed with which new investments can be implemented. • Further relax exchange controls to enable companies to more freely remit profits and investment equity.
Facilitating contract enforcement	<ul style="list-style-type: none"> • Strengthen the understanding and use of contract law by creating a codification of contract laws in the form of broad principles. Revise the Sales of Goods Act, using the United Nations Convention on Contracts for the International Sale of Goods (1988). • Further enhance judicial systems and resources for processing commercial cases within the courts and small claims tribunals. • Strengthen the arbitration framework. • Enforce judicial awards and arbitration decisions automatically or through licensed private agents.
Rationalizing investment incentives	<ul style="list-style-type: none"> • Reduce and simplify investment incentives. • Continue with reforms to modernize the Income Tax Act, to make the system friendlier to small business, while not increasing the total tax burden on investors.
Removing price controls	<ul style="list-style-type: none"> • Significantly reduce the number of price controls (limiting them to a few basic commodities, at most) and support vulnerable groups through other measures, such as targeted transfers. • Review the existing competition framework and the Commission's administrative structure and staffing resources, to further strengthen the commission's capacity as a multisector competition authority.
Strengthening infrastructure services	<p>Electricity</p> <ul style="list-style-type: none"> • Complete a rural electrification master plan and support its implementation. • Remove technical regulation of the electricity sector from the Fiji Electricity Authority. <p>Water and sanitation</p> <ul style="list-style-type: none"> • Adjust the water tariff to achieve full cost recovery, while maintaining the existing lifeline tariff for poor households. Enable the Fiji Water Authority (FWA) to charge value-added tax (VAT) on its tariffs or exempt it from paying VAT on its purchases. • Strengthen the technical regulation of the water and sewerage system. • Improve the quality and coverage of the centralized sewerage system. • Immediately complete the FWA corporatization and commercialization process. • Consider separating operations and maintenance (O&M) and service delivery from FWA asset ownership, by engaging private operators through performance-based management contracts to deliver incentive-linked services and more streamlined operations. <p>Telecommunications</p> <ul style="list-style-type: none"> • Continue to expand telecom coverage to include all Fiji's populated areas. • Implement the national broadband policy and action plan, including enhancing competition options in broadband internet service by making the existing fixed line infrastructure available to multiple users under reasonable terms and conditions.

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Table *continued*

Key Challenges	Recommendations
	<p>Roads</p> <ul style="list-style-type: none"> • Further strengthen the existing road maintenance system and improve regulatory oversight in road performance and quality standards. <p>Ports</p> <ul style="list-style-type: none"> • Benchmark Fiji's ports against a suitable best practice port, to identify practical strategies to speed up port and terminal handling and eliminate the existing port service surcharge. • Undertake a mapping exercise of the entire process for importing and exporting goods at the Suva and Lautoka ports, to identify bottlenecks and burdensome procedures, and propose practical solutions. • Pursue Fiji Ports' proposed Rokobili container and multipurpose terminal project within a public-private partnership arrangement, and encourage quality international operators to invest in the project through strengthened procurement processes.
Reducing the role of the state in the economy	<ul style="list-style-type: none"> • Continue to implement planned state-owned enterprise reforms in a prioritized and strategic way, to ensure the efficient use of public funds. • Complete the planned review of the Public Enterprise Act to strengthen provisions dealing with governance, transparency, and accountability; and bring the act in line with good practice.
Enhancing access to iTaukei land ^a	<ul style="list-style-type: none"> • Review the Agricultural Landlords and Tenants Act with the aim of creating a more flexible and equitable leasing regime for agricultural land. • Strengthen iTaukei Land Trust Board management and administration of iTaukei leases. • Introduce a simple, accurate, and computerized land registry system that is quick and inexpensive to use. • Relax restrictions on non-resident dealings in freehold land (Land Sales Act) and make the process more transparent.
Increasing access to finance and financial services	<ul style="list-style-type: none"> • Introduce a secured transactions framework to enable more effective and widespread use of movable property as collateral. • Continue to provide support to achieve greater financial inclusion for women and men. • Introduce credit bureau legislation.

^a Editor's note: In June 2010, Cabinet approved the Fijian Affairs (Amendment) Decree 2010, requiring the use of the terms "native" or "indigenous" Fijians to be replaced with "iTaukei". This report reflects this emendation throughout, except where the name of an organization, decree, or specific legislation uses the word "Native" in its title.

Re-invigorating Private Sector Investment

Private sector investment is the driving force behind economic growth. New business start-ups, along with expansion of existing businesses, generate jobs and higher income levels. It also contributes taxes for public investment in health, education, and other services.

There are many factors that shape the environment for private sector investment. These factors can accommodate or constrain businesses, and play an important role in determining whether or not a country will prosper. An accommodating environment encourages businesses to be established, to innovate, and to increase productivity.

The Asian Development Bank (ADB) prepared an assessment of Fiji's environment for private sector development in 2005. It focused on the institutional and policy requirements for broad-based private sector investment growth and identified a number of constraints in this regard. This report reviews the 2012 private sector environment against issues identified in the 2005 assessment and proposes recommendations to address key outstanding constraints.

The Fijian economy is not achieving its potential

Average annual gross domestic product (GDP) growth during 2006–2012 was negligible (0.7%), well below the government target of 5%, and below the modest growth achieved during 2001–2005 (2.4%).

Total investment as a percentage of GDP was 15.6% over 2006–2012¹—nearly 10% lower than the government target of 25%. In August 2013, the Governor of the Reserve Bank of Fiji reported that private sector investment levels had risen from 3.5% of GDP in 2010, to a forecast 13% of GDP in 2013. Over this same period, total investment is expected to have increased from 13.5 to 28.2% of GDP.²

¹ Fiji Bureau of Statistics and Reserve Bank of Fiji (RBF). RBF estimates, given the the Fiji Bureau of Statistics has yet to publish data from 2005 onward.

² Whiteside, B. (Governor of Reserve Bank of Fiji). Annual Donor and Development Partners Forum. 27 August 2013. Suva.

Despite this improvement, limited business growth over the preceding period has meant that the majority of Fijians³ continue to remain outside the formal wage economy. The incidence of poverty, particularly in rural areas, remains high.⁴

Despite many positive reform initiatives, significant challenges remain

Fiji's poor economic performance over 2006–2012⁵ is the result of many factors including high oil and food prices, the global economic crisis, and recent natural disasters. It also reflects a weak domestic investment climate that has been negatively affected by ongoing political issues and by delays in addressing underlying structural issues.

This is not to say that positive reforms did not occur during the period. In fact, the government initiated a number of substantive and progressive changes over 2006–2012, including tax reforms (to simplify tax administration and reduce the corporate tax rate), opening up the telecommunications market to competition, and introducing competition in the iTaukei land lease process (Land Use Bank).

However, government and stakeholders recognize that much more needs to be done in order to make Fiji a more attractive, low-cost place to do business. The government developed a roadmap⁶ that set out a strategic framework for achieving a number of policy goals over 2009 to 2014. Economic policy goals and objectives are conceptually sound but ambitious in scope, particularly given that the government is operating with a credibility problem as a result of the 2006 coup and abrogation of the Constitution in 2009.

Key challenges the government must address as it pushes ahead with its reform agenda are discussed below. More detailed information about each challenge and the recommendations for reform, including specific actions, are contained in the appendixes.

Reducing Policy Uncertainty

Risk is an important factor in investment decision making. When private investors are deciding where to invest their capital, they consider the risks that could negatively affect their investment. An unstable political environment and frequent policy changes with limited consultation increase the cost of doing business; reduce rates of return; and create uncertainty, particularly when making long-term decisions.

Reducing political and policy instability is the most pressing challenge the government faces if it hopes to increase private sector investment levels in the country. The government announcement confirming that a new constitution will be in place by 2013 will help create greater certainty about future investment prospects.⁷

³ Editor's note: Fiji's citizens (iTaukei, Indo-Fijians, Rotumans, and minority ethnic groups) are collectively known as Fijians. References to individual groups in this report are specified accordingly.

⁴ Fiji Bureau of Statistics. 2010. *Preliminary Report: Poverty and Household Incomes in Fiji in 2008–2009*. Suva.

⁵ See Appendix 1.

⁶ Ministry of National Planning. 2009. *Roadmap for Democracy and Sustainable Socio-Economic Development 2009–2014: A Better Fiji for All*. Suva.

⁷ Editor's note: The government released its own Draft Constitution of Fiji in March 2013, following the rejection

The government's policy-making process has also been a significant cause of uncertainty for business and has the potential to undermine the sustainability of reforms. The increased uncertainty is due to a combination of factors. First, the pace of change has been relatively rapid, making it difficult for business to keep up and for bureaucrats to effectively implement changes. Second, the quality of consultation on many of these policy changes has been poor. In particular, there does not appear to be a formal, structured mechanism in place through which policy makers and the business community can work collaboratively to set a realistic and sustainable reform agenda. Third, weaknesses in technical capacity have made it difficult to implement change. In addition there had, until recently, been a number of restrictions which had seriously impeded public discourse on policy issues. Restrictions on people's ability to hold public meetings and censorship within the media were lifted in July 2012, with restrictions on meeting in public parks, roads or sporting arenas still in effect in 2013. Further improvements will be achieved through meaningful and open dialogue and debate. Continuing to move in this direction will help build a sustainable constituency for reform.

Recommendations:

- Establish a more open environment for public dialogue and debate, by relaxing remaining constraints on public gatherings and further encouraging independence in media reporting.
- Establish a formal, structured, high-level public-private sector dialogue mechanism to guide investment climate reform;⁸ and consider the recommendations made in this report through this mechanism.

Improving the Regulatory Environment for Starting and Operating a Business

Where regulations governing business start-up and operation are transparent, not overly costly to comply with, and equitably administered, they promote economic stability, progress, and prosperity. Unfortunately, many of Fiji's regulatory requirements⁹ remain difficult for businesses to comply with, particularly micro and small businesses which have fewer resources to draw on.

Business start-up requirements serve as the gateway through which businesses enter, and contribute to, the formal economy. Cumbersome processes and high transaction costs keep businesses in the informal sector, which hinders their access to credit as well as their ability to settle contract disputes through the legal system. Key elements of the process are company formation and the registering of business entities in a public registry to identify and locate their legal owners or representatives. A review of the Companies Act was initiated in 2010 and a draft companies decree was released in early 2011. The draft decree included many positive changes but could be further strengthened by limiting it to the essential requirements and making it more relevant to Fiji's context.¹⁰ Little substantive progress has been made in streamlining and speeding up the overall registration process. It currently requires physical visits to at least five different agencies and takes between 32 days and 40 days to complete—well above international best practice of

in January 2013 of an earlier draft by the Constitution Commission. The Constituent Assembly was subsequently canceled, and public consultations on the government's Draft Constitution were held in April 2013. Until the planned elections are held in 2014, there will continue to be a level of uncertainty for private investors.

⁸ See Appendix 2.

⁹ See Appendix 3.

¹⁰ Editor's note: The Decree was promulgated in 2013 but, at the time of publishing, had not yet been made available for review.

1 day. A web-based portal enabling applicants to lodge applications for most of the steps in the business entry process and pay application fees is reportedly close to completion. The registration system, however, does not consolidate application forms and still requires manual processing. Moreover, the registry maintained by the Office of the Registrar of Companies remains paper-based, making public access to registry information time-consuming and difficult to obtain.

Site development approvals are a critical part of many investments. The process ensures compliance with requirements such as meeting land use zoning requirements, obtaining building permits, and securing approvals for development master plans and subdivision of land. Despite a number of positive reforms initiated by the Department of Town and Country Planning (DTCP) since 2006, obtaining site development approvals remains a time-consuming exercise. Key constraints include limited administrative capacity within the DTCP and local authorities to process applications, a lack of standard operating procedures, and challenges in obtaining timely inputs from referral agencies.

Labor regulations establish the terms and conditions under which workers are hired, employed, and dismissed, and have undergone a major overhaul since 2006. The Employment Relations Promulgation (ERP) introduced in 2007 repealed and replaced six labor laws. It is largely compliant with international labor standards, although a number of subsequent decrees have eroded worker rights. For example, the recently introduced Essential National Industries (Employment) Decree overrides the ERP, and undermines workers' ability to form unions and undertake collective bargaining in a number of industries not typically considered "essential". This has the potential to destabilize employer–employee relations.¹¹ In addition, compliance with some of the labor laws, regulations, and procedures—particularly those related to social security payments, employment terms, and conditions including minimum wages and workplace standards—are beyond many small businesses' capacity.

Licenses affect specified businesses and occupations by regulating their entry into, and conduct within, markets. Because of their prescriptive nature, licenses can generate significant and unnecessary costs for businesses, raise prices for consumers, and increase the potential for corruption. For this reason, licenses should be carefully assessed to ensure that their benefits outweigh their costs. There is a lack of readily available information about the extent and functioning of the overall licensing regime in Fiji. A brief review of two licenses—the general business license and the hotel license—suggests there is duplication and inconsistency with good practice principles. The general business license, which applies to all businesses, appears to be particularly problematic in this regard. There has also been a recent trend to introduce new licenses, such as the scrap metal dealer license, with limited stakeholder consultation.

Recommendations:

Business Start-Up

- Complete the review of the Companies Act and introduce modern legislation that is relevant to Fiji's context and consistent with good international practice.
- Introduce an electronic portal, enabling an integrated business start-up registration and archive filing system.

¹¹ See Appendix 3.

Site Development Approvals

- Strengthen the DTCP and local authorities to increase both the transparency of site development approval processes and the speed with which the system operates.

Labor Regulations

- Review the Essential National Industries Decree to identify practical strategies for making the labor market more efficient and dynamic, without undermining workers' rights to organize and bargain collectively.
- Review existing labor regulatory requirements to identify how they could be simplified.

Licenses

- In the short term, introduce a simple set of regulations to streamline general business license issuance, and ensure consistency in how it is administered.
- Conduct a review of the overall business licensing regime to bring it in line with good practice principles.
- Introduce a regulatory impact analysis process to assess proposals for new regulations, including licenses and permits, to ensure they meet good international practice.

Creating a More Welcoming Environment for Foreign Investment

Foreign direct investment (FDI) is a key ingredient for successful economic growth in developing countries, because the very essence of economic development is the rapid and efficient transfer and adoption of best practice across borders. FDI is particularly well suited to encourage and translate this into broad-based growth.

The government has a policy of encouraging foreign investment into Fiji.¹² FDI inflows have been an important component of investment flows in the past, although they have varied considerably. During 2006–2011, both foreign investor interest and FDI inflows declined substantially. Investment Fiji reported that the average annual number of new foreign investment registrations declined from 491 in 2005–2006 to 99 in 2009–2010, while World Development Indicators show that average FDI inflows fell from approximately F\$471 million in 2006–2009 to around \$356 million in 2010–2011.

While this trend can be attributed to many factors, changes to the foreign investment registration process, coupled with continued foreign exchange controls and a fixed exchange rate, added to the uncertainty of investing in Fiji.

Reforms introduced in 2004 substantially improved the transparency and speed of the foreign investment registration process. However, the introduction of increased minimum investment levels in 2009 undermined those improvements. In January 2009, the lowest investment level was increased to F\$250,000—five times the 2005 rate. The amount had to be brought into Fiji as cash and deposited in a local bank account. The requirement did not suit the pattern of starting small and building investments incrementally that many foreign investors follow when investing in small markets like Fiji. It also did not suit many types of small specialized services

¹² See Appendix 4.

activities where foreign investment is needed, such as specialist consultants. The requirement for minimum investment levels to be reflected in the owner's contribution, or for companies in their paid-up capital, was also problematic because it reduced investor flexibility to determine the mix of equity and debt they wished to use. While Investment Fiji reportedly considered requests from foreign investors to relax these minimum investment requirements, the process was not well publicized and was discretionary. In November 2012, as part of the 2013 Budget, the government addressed this issue by eliminating the F\$250,000 minimum investment requirement. Investment Fiji also received a budget increase to bolster its investment promotion and facilitation efforts.

Continued foreign exchange restrictions administered by the Reserve Bank of Fiji create the perception that it is difficult to remit funds. The 2012 budget increased the delegated limits for foreign exchange remittances, allowing commercial banks greater authority to conduct transactions without Reserve Bank approval. While this is a positive step, the restrictions still represent an additional regulatory hurdle for businesses that can disrupt the timing of profit and investment equity repatriation. Fiji's exchange rate is a conventional peg arrangement, linked with a basket of currencies (Australian dollar, United States dollar, New Zealand dollar, Japanese yen, and the euro). This has led to periodic overvaluation and sharp devaluations in the past, such as the 20% devaluation in April 2009.

The recent changes to the foreign investment registration, coupled with continued foreign exchange controls and a fixed exchange rate, add to the uncertainty of investing in Fiji. This has likely contributed to a reduction in foreign investor interest in the country. The number of projects implemented over this period also substantially decreased.

Recommendations:

- Raise awareness of the removal of the minimum investment threshold among foreign investors, and improve facilitation services to increase the speed with which new investments can be implemented.
- Further relax foreign exchange controls to enable companies to more freely remit profits and investment equities.

Facilitating Contract Enforcement

The ability to make and enforce contracts and resolve disputes is fundamental if markets are to function properly. Good enforcement procedures enhance predictability in commercial relationships and reduce uncertainty by assuring investors that their contractual rights will be promptly upheld by local courts.

Fiji operates a four-level court system, supported by a number of specialist tribunals. Alternative dispute resolution processes are also in place.¹³ The 2009 abrogation of the Constitution required re-establishment of the entire judiciary. Despite the challenges this created, a number of positive reforms have been implemented since 2006. The reforms include the introduction of additional

¹³ For example, the Consumer Council of Fiji's operational divisions include the Alternative Dispute Resolution (ADR) and Consumer Advisory Division. Its functions include complaints resolution through ADR, legal representation, and advisory services. The Ministry of Labour, Industrial Relations and Employment established a Mediation Unit in 2008 under the Employment Relations Promulgation 2007. The Unit is supported by the Employment Relations Tribunal and Employment Relations Court.

court masters to enable judges to focus exclusively on deciding legal disputes, increased claim thresholds for commercial cases within the Magistrates Court and small claims tribunals, and expansion of the small claims tribunals to areas outside of Suva.

A number of issues continue to reduce the effectiveness of the current system, however. General contract law is not codified. Contract law includes the rules that determine when an agreement is enforceable, the grounds on which a breach occurs, and the consequences of a breach. The general rules are found only in the reported decisions of courts in various common law jurisdictions, and the volume of these reports is massive and constantly increasing. Moreover, the form in which the rules are stated varies from judgment to judgment, and no single formulation can ever be taken as authoritative or final. This inaccessibility, and the time and cost required to apply the law, creates difficulties in Fiji, where skilled legal advice is limited. As a result, contract law is poorly understood, little used, and often mistrusted by local businesspeople. In cases where legislation exists for specific types of contracts, such as the sale of goods, it is out of date and does not follow recent international developments.

Processing of commercial cases through the courts continues to be slow.¹⁴ While the amount of time it takes to make judgments in commercial cases is not tracked by the courts, the World Bank estimates the process within the High Court takes the better part of a year.¹⁵ There is also a substantial backlog of commercial cases. Conversations with business owners provided anecdotal evidence, which suggested that the biggest constraint to strengthening the functioning of the courts is the quality of the judiciary. New electronic case management software is reportedly in the process of being introduced and, once operational, it should help support the implementation of measures to improve the efficiency of the court system. The small claims system appears to be working well, but it faces challenges in the quality of referees and delays in serving documents.

The use of arbitration continues to be underutilized. In particular, the law does not provide for binding arbitration since appeals on any question of law arising out of an award may be taken to the High Court. This increases costs, since parties face either repeated arbitration or starting a judicial process. The court system, while supportive, does not actively refer cases to arbitration.

In addition, mechanisms to enable low cost collateral seizure following a judicial decision are limited.

Recommendations:

- Strengthen the understanding and use of contract law by creating a codification of the law in the form of broad principles, and revise the Sales of Goods Act using the United Nations Convention on Contracts for the International Sale of Goods (1988).
- Further enhance the judicial system and resources for processing commercial cases within the courts and small claims tribunals.
- Strengthen the framework for arbitration.
- Enforce judicial awards and arbitration decisions automatically or through licensed private agents.

¹⁴ See Appendix 5.

¹⁵ World Bank. 2013. *Doing Business* database.

Rationalizing Investment Incentives

Simple tax systems with relatively low statutory tax rates promote economic growth. Systems characterized by relatively high marginal tax rates along with a number of exemptions and allowances tend to be less economically efficient. They also impose higher administrative and tax compliance costs.

Since 2006, the government has introduced measures to simplify its tax procedures.¹⁶ It has also steadily decreased the corporate tax rate. Most recently, the 2012 Budget set the rate at 20%—a significant reduction from the 2006 rate of 31%. While the reduction has been positively received by the private sector, other tax reforms, such as the 2012 changes in the treatment of prior year losses, have created additional uncertainty. Moreover, despite the decrease in the corporate tax rate, a large package of investment incentives continues to be offered. The incentives provide a means for some businesses to further reduce their tax burden as well as the cost of importing selected goods.

Fiji's reliance on incentives, however, is counterproductive. The sector- and region-specific nature of many of the incentives leads to business decisions that do not allocate resources effectively for the Fijian economy because investment is dictated by the desire to avoid taxes rather than to obtain the best before-tax return on investment. The heavy reliance on tax holidays is also problematic because they are expectation-based rather than evidence-based. They also reward the formation of new companies rather than encourage improvements in areas that are really needed, such as increasing productive assets, accessing better technology, and enhancing labor productivity. Tax holidays are also seldom cost-effective. Almost all empirical research suggest that very little additional investments result from incentives, apart from footloose, short-term investments that, if affected at all, often leave or form a new company after the tax holiday expires. Awarding incentives also involves discretion. Such a negotiation-type approach to awarding incentives lacks transparency and can lead to unequal treatment. The complexity and negotiated nature of many of the incentives also makes access particularly difficult for small businesses. Fiji's poor private sector investment performance over the past decade suggests that incentives have not been an effective mechanism for attracting productive investment.

Recommendations:

- Reduce and simplify investment incentives.
- Continue with reforms to modernize the Income Tax Act with the aim of making the system friendlier to small businesses while not increasing the total tax burden on investors.

Removing Price Controls

Prices set freely by the market play a crucial role in regulating the economy. Further, prices let businesses know which products and services are most highly valued by consumers and tell them which management methods, materials, or technologies produce the greatest economic benefit. By holding out the prospect of profits, prices give each enterprise an incentive to invest,

¹⁶ See Appendix 6.

innovate, and offer products that are more highly desired. Prices also inform consumers about the relative scarcity of resources used in producing and providing various goods or services.

The Commerce Commission is the key government institution responsible for encouraging competition within Fiji's marketplace.¹⁷ It was strengthened during 2006–2010. It plays an active role in de-monopolizing markets, as well as removing or controlling anticompetitive practices. Recently, it played an important role in opening up the telecommunications sector to competition.

The commission is also empowered to regulate prices. It sets prices for infrastructure services provided by several monopoly service providers. It also imposes ceiling prices in several other sectors, which include a wide range of food items¹⁸ and, more recently, hardware and electrical products.¹⁹ While competition exists in these sectors, the commission believes it insufficient; and, as a result, market participants are earning abnormally high profits. The use of price controls is therefore justified by the pretext of protecting the interest of low-income users.

However, in reality, price controls distort market signals, discourage investment, and encourage low-quality production. Many of the products currently under price control are agricultural items that could be produced in Fiji. Price controls only serve to undermine the development of vibrant and sustainable industries for these products. They also create a significant administrative burden for both government and business, particularly micro- and small businesses. Good practice is to use competition policy to deter or control anticompetitive behavior. Support for low-income consumers, when required, should be achieved through other means such as targeted transfers.

Recommendations:

- Significantly reduce the number of price controls (limiting them—at most—to a few basic commodities), and provide support to vulnerable groups through other measures, such as targeted transfers, to mitigate the impact of any price increases.
- Review the existing competition framework and the Commerce Commission's administrative structure and staffing resources, to strengthen its capacity as a multisector competition authority.

Strengthening Infrastructure Services

Electricity

Electricity is provided by the Fiji Electricity Authority (FEA), a fully corporatized, commercially oriented, government-owned utility. Approximately 75% of Fiji's population has access to power. Many rural areas are not connected to FEA's electricity grid and are forced to rely on

¹⁷ See Appendix 7.

¹⁸ Editor's note: The number of basic food items under price control increased from 335 in September 2012, to 444 in August 2013. Source: Fiji Commerce Commission, 2013.

¹⁹ Editor's note: For example, the commission released details of 370 individual price controlled electrical items in June 2013, 324 individual price controlled items in the "fasteners" category (including nails, screws and bolts) in March 2013, and 449 price controlled items under the "paint" category in December 2012. Source: Fiji Commerce Commission. 2013.

intermittent and unreliable stand-alone diesel generators. In 2007, the Department of Energy began installing solar home systems in rural areas, but the program's sustainability is being comprised by maintenance issues. Fiji's commercial electricity tariff rate increased 46% between 2009 and 2011.²⁰ Even with the increase, the rate remains the lowest in the region. This is partly due to FEA's access to hydropower. The recent tariff increase improves FEA's profitability and will allow it to continue to proceed with much needed investment. The areas of most pressing concern are rural electrification and separating the technical regulation of the system from FEA's service delivery function.

Water and Sewerage

Water and sewerage services are provided by the Fiji Water Authority (FWA). FWA is a newly corporatized, 100% government-owned entity. The corporatization process started in 2007 but, at December 2012, the assets had not yet been transferred from the department to the new entity. Approximately 80% of the population has access to treated, delivered water. Before 2007, the system was managed by the Water and Sewerage Department. As a result of chronic Department underfunding, the system was in a poor condition, characterized by frequent breakdowns and low water pressure. Considerable progress has been made since 2007 toward improving the system, particularly in the heavily populated Suva–Nausori and Nadi–Lautoka corridors. As of September 2012, however, water and sewerage services remained heavily subsidized to all user groups, including large commercial users. More than half of FWA's annual budget is provided by the government. Water rates are also exempt from value-added tax (VAT) while FWA must pay VAT on electricity for its pumping stations and other inputs. Tariff rates need to be increased if FWA is to continue rebuilding and maintaining the system on a full cost recovery basis. Other outstanding issues include limited sewerage coverage (only 16% of the population is connected to a central sewage system), and weak technical regulation of the sector.

While corporatization has been a positive first step in introducing transparent and financial accountability at FWA, it has not yet resulted in improved services to the public. It would require full commercialization, with strong performance incentives for management and staff, a robust community service obligation framework, and hard budget constraints. One way that this could be achieved could be a partnership with the private sector, whereby the operation and maintenance (O&M) of FWA's physical assets would be managed by a private partner, who would be paid for achieving specific performance targets. This would create strong incentives to improve service levels.

There is extensive international experience²¹ with water sector O&M contracts—particularly in Latin America and Africa—and this experience has demonstrated the effectiveness of these management contracts, when properly designed. Fiji could draw on this experience to structure a contract that improves service delivery, efficiency, and accountability by directly linking services performance with return on investment for the private operators.

²⁰ Prior to the increases, electricity was historically underpriced, making it extremely difficult for FEA to operate profitably, properly maintain existing or invest in new infrastructure.

²¹ Editor's note: See, for example, Marin, P. 2009. *Public–Private Partnerships for Urban Water Utilities: A Review of Experiences in Developing Countries*. Washington, DC: The World Bank.

Telecommunications

Reforms introduced in 2008 successfully deregulated the telecommunications sector. This has led to increased competition, improvements in service accessibility, and lower prices, particularly in the mobile phone sector. Mobile phone penetration increased by 140%, from 34 subscribers per 100 inhabitants in 2006 to 83 in 2011. Despite this improvement, some rural areas remain without telecommunications coverage. The government is developing an information sharing policy to create opportunities for private companies to share infrastructure capital expenditures in rural areas. It also introduced a F\$0.03 per minute levy on all incoming international calls, which could be used to support network expansion. The other key outstanding issue is limited broadband internet availability, which remains in its infancy. In 2011, there were 2.7 fixed internet subscribers, and 16.1 mobile broadband subscribers per 100 inhabitants. The government launched a national broadband policy in October 2011. Its goals include providing all primary and secondary schools with broadband access by 2016 and service to 95% of the population. A constraint to increasing fixed broadband internet use is Telecom Fiji's ownership of the fixed line infrastructure. Telecom Fiji is not obligated to provide access to competitors, and the small size of the country makes the prospect for building new infrastructure unlikely. Increasing broadband penetration will require opening the infrastructure to competitors, under reasonable terms and conditions.

Roads

Fiji's road network is largely complete. A large proportion, however, still consists of low-standard gravel roads where vehicle operating costs are high. Traffic volumes are also increasing and heavy vehicles are further damaging the roads. As such, there is a need to maintain and improve the country's road assets and the Department of National Roads (DNR) was responsible for this work. In 2006–2011, the DNR implemented many road work projects, including road and bridge upgrades in the Suva–Nausori corridor, the Kings Highway, and Sigatoka Valley. However, DNR's capacity was constrained by weak contract management skills and an inability to make effective use of its road asset management system. The government introduced a road levy in January 2009 to generate additional revenue to support road development, infrastructure and maintenance. Despite the levy, which had generated about F\$8.0 million annually, DNR claimed that its road maintenance budget remained underfunded.

In recognition of the need to build capacity, DNR was corporatized in January 2013 and renamed the Fiji Roads Authority ('the Authority'). The Authority is responsible for all roads and bridges formerly managed by DNR and municipal councils, and for all public jetties. The Authority's 2013 annual budget²² is F\$428 million, comprised of a F\$201 million government grant, F\$221 million in loans (F\$126 million China EXIM Bank, F\$70 million EXIM Bank of Malaysia, and F\$25 million ADB), and F\$6 million from municipal councils.

Ports

Fiji Ports Corporation is responsible for the operations and maintenance of Fiji's ports of entry. It is a government-owned commercial enterprise. Infrastructure upgrades at the Suva and Lautoka ports in 2004–2006 have resulted in significant improvements in container efficiency in recent years. Fiji Ports also intends to develop a new container and multipurpose

²² Fiji Roads Authority. 2012. *2013 Corporate Plan and Statement of Corporate Intent*. Suva.

terminal at Rokobili, on 50 acres of land adjacent to the Suva Port.²³ In 2011, the World Bank estimated the cost of importing and exporting a container to and from Fiji to be USD\$635 and USD\$655 respectively—the lowest in the Pacific islands. Despite these results, there is still plenty of opportunity to improve ports and terminal handling efficiency. Shipping companies, for example, continue to levy a port service surcharge on all containers entering and leaving Fiji, and the surcharge has been growing. The surcharge was F\$250 in 2008, and averaged F\$350 by December 2012. It has been justified on the basis of increased costs associated with congestion and poor port handling performance. Importing and exporting goods also involves agencies other than the port authority. This includes the Fiji Revenue and Customs Authority to obtain customs clearance, as well as the Biosecurity Authority of Fiji for quarantine approval. The overall paperwork associated with importing and exporting appears to be more burdensome than other jurisdictions and could be reduced through targeted and consistent reform measures.

Recommendations:

Electricity

- Complete a rural electrification master plan and support its implementation.
- Remove the technical regulation of the electricity sector from FEA.

Water and Sewerage

- Adjust the water tariff to achieve full cost recovery from all users who can afford to pay; maintain the existing lifeline tariff for poor households; and enable FWA to charge VAT on its tariffs, or exempt it from paying VAT on its electricity purchases.
- Strengthen the technical regulation of the water and sewerage system.
- Improve the quality and coverage of the centralized sewerage system.
- Immediately complete the FWA corporatization and commercialization process.
- Consider separating O&M and service delivery from FWA asset ownership, by engaging private operators through performance-based management contracts to deliver incentive-linked services and more streamlined operations.

Telecommunications

- Continue to expand telecommunications coverage to include all populated areas of the country.
- Implement the national broadband policy and action plan, including enhancing competition options in broadband internet service by making the existing fixed line infrastructure available to multiple users under reasonable terms and conditions.

Roads

- Further strengthen the existing road maintenance system and improve regulatory oversight in road performance and quality standards.

²³ The PSDI recommends that this project is pursued under a public–private partnership (PPP) arrangement, using a transparent and robust development process.

Ports

- Benchmark Fiji's ports against a suitable "best practice" port to identify practical strategies to speed up port and terminal handling and eliminate the existing port service surcharge.
- Undertake a mapping exercise of the entire process for importing and exporting goods at the Suva and Lautoka ports in order to identify bottlenecks, burdensome procedures, and practical solutions.
- Pursue Fiji Ports' proposed Rokobili container and multipurpose terminal project within a public-private partnership (PPP) arrangement, and encourage quality international operators to invest in the project through strengthened procurement processes.

Reducing the Role of the State in the Economy

State-owned enterprises (SOEs) continue to play a significant role in the Fijian economy. In addition to providing infrastructure services, they are involved in a broad range of commercial activities. In all, the state owns or has a majority stake in 22 SOEs. The portfolio represents approximately 20% of the Fijian economy's total fixed assets. The government is also in the process of liquidating three other SOEs, and corporatizing three government departments.

The size and breadth of the SOE portfolio negatively impacts the Fiji economy in a number of ways. It provides low investment returns, which acts as a drag on economic growth. SOEs also crowd out private investment and, because they are the sole provider of goods and services in some sectors, their inefficiencies increase the cost of doing business. Investing in underperforming SOEs also has opportunity costs, because they absorb funds that could generate higher returns through more productive activities.

The government recognizes these problems. As part of its 2007 Roadmap for Democracy and Sustainable Socio-Economic Development, it introduced an ambitious plan to accelerate public enterprise reform, including a program of SOE divestment, corporatization, and increased outsourcing to the private sector. Reforms since 2006 include the merger of Fiji Ships and Heavy Industries into Fiji Ports Corporation in 2009, the process to corporatize the Water and Sewerage Department into the Fiji Water Authority which began in 2007, and privatization of Fiji Dairy in 2012. The government also introduced a comprehensive program in 2011 to reform the sugar industry and return the Fiji Sugar Corporation to profitability. Despite the government's ambitious SOE divestment plan, however, little progress has been made across the entire portfolio to 2013, since a slowdown began in 2010.

Implementation of the reform agenda has been constrained because of limited institutional capacity within the Ministry of Public Enterprises (MPE) and other parts of government. For example, MPE operated with just six staff until 2012. It received additional resources in its 2012 budget and, at September 2012, had increased its staff to 17. The number of specialist monitoring staff in MPE doubled to eight in 2012, representing oversight responsibility of just 2.75 SOEs per staff member. The 2012 Finding Balance report indicated that four SOEs per monitoring staff member is more usual. Therefore, the number of monitoring staff cannot be seen as a capacity constraint within MPE. Additional employees are only part of the solution—staff also need to be appropriately skilled and experienced, and effectively managed. Unfortunately, MPE lost several senior staff in 2012, and the majority of its new recruits have little experience with SOE reform. In March 2012, ADB approved a \$500,000

technical assistance project²⁴ to provide capacity development within the Ministry of Finance (MOF) and MPE. The project commenced in June 2012 and is assisting the government to strategically implement its SOE reforms. While significant training and development has been provided to Asset Management Unit (AMU) staff in the MOF, efforts to provide training and development to MPE staff have been constrained. As a result, technical capacity, which has slowed or undermined reform progress, will likely remain a challenge in the foreseeable future. In addition to capacity building, there is a critical need to develop a realistic implementation plan that focuses on a few priority areas to achieve real, sustained benefits from SOE reform efforts. Given SOE responsibility is split between MPE and the MOF, close coordination between these agencies will be required to ensure scarce government resources are effectively used.²⁵

Fiji's SOE and PPP legislation is also outdated. Robust legislation in these areas is needed to underpin SOE reform, and create opportunities for effective cooperative ventures between the state and private businesses. Fiji's Public Enterprise Act has weak provisions dealing with governance, transparency, and accountability. Fiji's Public Private Partnerships Act lacks transparent decision criteria for awarding tenders and includes excessively burdensome provisions, such as the requirement to establish a PPP controlling company to oversee any cooperative venture. A formal review of the Public Enterprise Act was completed in July 2012. The PPP Act also needs a formal review to bring it in line with best practice.

A very useful measure to improve SOE performance would be the implementation of the community service obligations (CSO) provisions in the Public Enterprise Act. If amended, the Public Enterprise Act will provide further details on the CSO process but implementation of even the existing provisions would provide a useful mechanism for SOEs to transparently identify their CSOs and disclose their impact on the SOE's overall financial performance. Fiji's SOEs are very supportive of this approach, and have made several technical assistance support requests since 2008. However, the political environment has made it very difficult to engage in ongoing reform.

Recommendations:

- Continue to implement the planned SOE reforms in a prioritized and strategic manner, to ensure the efficient use of public funds.
- Complete the planned review of the Public Enterprise Act to strengthen provisions dealing with governance, transparency, and accountability; and bring the act in line with good practice.

Enhancing Access to iTaukei Land

Land plays two important roles in economic development. It is an input to economic activity and is used as collateral by businesses to access financing. No country has managed to achieve sustained prosperity without stable, clearly defined, and well-protected land property rights.

²⁴ ADB. 2012. *Technical Assistance to the Government of Fiji for Implementing Reforms of State-Owned Enterprises*. Manila.

²⁵ The MOF's ability to undertake robust fiscal monitoring appears to be undermined by ongoing communication issues and lack of collaboration with MPE. These deficiencies will need to be addressed by both ministries to enhance the coordination environment for significant SOE reform.

The majority of land in Fiji (88%) is under communal tenure.²⁶ Access to iTaukei land can only be achieved through a lease. Until recently, the only way to secure a formal lease was through the iTaukei Land Trust Board (TLTB). In 2010, the government introduced a Land Use Bank managed by a Land Use Unit within the Ministry of Lands and Mineral Resources. This change has broken TLTB's iTaukei land lease monopoly. While institutional capacity for administering the initiative is still being developed, as of June 2012 the Land Use Bank had attracted over 4,000 hectares of land and issued 15 leases. The attraction of the Land Use Bank is its ability to provide more beneficial lease arrangements to landowners and tenants than TLTB does. This has prompted TLTB to review its leasing system with the aim of improving its competitiveness.

Two key issues will need to be addressed in order for TLTB to improve its leasing system. First, it will require changes to the Agricultural Landlords and Tenants Act (ALTA), which applies to leases of agricultural land greater than a hectare in area. Land included in the Land Use Bank is not subject to ALTA. Currently, ALTA is not effectively meeting landlord or tenant needs. From a landlord's perspective, the act sets rental payments at too low a level. Provisions of the act fix rents at a maximum of 6% of unimproved capital value, whereas the Land Use Bank now offers 10%. There is little incentive to landowners to renew agricultural leases through TLTB. From a tenant's perspective, the act fails to provide sufficient security for development activities. It limits lease terms to 30 years and does not include a renewal provision. Second, it will require TLTB to improve its general lease procedures and conditions. The current process for negotiating a lease is overly time-consuming, and there is a chronic problem of rental arrears. There is also insufficient flexibility when setting lease terms to ensure they align with development needs, and the need to find a practical solution to the failure of existing leases to provide clear provisions regarding ownership of improvements on the land.

All formal dealings in land, whether an iTaukei lease or sale of freehold land, must be registered at the Office of the Registrar of Titles (ORT). The main roles of a land registry are publicity and establishing a priority ranking of claims. Neither role is being effectively addressed by the ORT. The registry is paper-based, requires filing of the entire sales agreement instead of a notice of the transaction, assigns priority from the date of filing rather than by date, minute, and second, and is time consuming for the public to use.

A small amount of Fiji's land base (8%) is freehold.²⁷ The Land Sales Act requires nonresidents purchasing freehold land greater than one acre to obtain consent from the minister of lands and mineral resources. The policy is in place to ensure individual foreign citizens do not accumulate extensive areas of land. The process for obtaining consent is time-consuming and discretionary.

Recommendations:

- Review ALTA with the aim of creating a more flexible and equitable leasing regime for agricultural land.
- Strengthen TLTB management and administration of iTaukei leases.

²⁶ See Appendix 10, Table A10 (Land Allocation in Fiji), page 73.

²⁷ Ibid.

- Introduce a simple, accurate, computerized land registry system that is quick and inexpensive to use.
- Relax restrictions on nonresident dealings in freehold land (Land Sales Act) and make the process more transparent.

Increasing Access to Finance and Financial Services

Well-functioning financial markets are essential for promoting growth. Without access to finance, businesses cannot start or grow.

Access to finance in Fiji is better than in other Pacific island countries, but is considerably below countries with developed financial markets. Fiji's ratio of domestic credit to the private sector to GDP averaged 81% over 2006–2011, falling to 75% in 2011. The ratios of neighboring Pacific island countries ranged between 26% and 56%. Developed financial markets, however, typically have ratios of 100% or more. Australia's and New Zealand's ratios over this period, for example, were 125% and 142%, respectively. Moreover, broad access to financial services within Fiji is low, particularly in rural areas and among lower-income members of the community. In 2009, the Pacific Financial Inclusion Programme estimated 220,000 people, approximately 65% of economically active persons employed in the informal sector, lack access to formal banking services.

The government initiated a considerable amount of financial reform during 2006–2011. This included establishing a financial inclusion task force with the aim of improving financial literacy and extending financial services to 150,000 unbanked people by 2014, and adopting a reform plan to put the Fiji National Provident Fund (FNPf) on a sounder financial footing. As of June 2012, the Reserve Bank reported that 60% of the target unbanked clients had received some form of financial service. FNPf introduced a new age-based, actuarially sound pension rate in March 2012.

A review of the Pacific islands banking sector by the Pacific Financial Technical Assistance Centre in 2010 found Fiji's average lending rates and interest rate spreads were among the lowest in the region and in line with comparable economies elsewhere. The review also found Fiji's banking sector was highly profitable, in large part due to foreign exchange income and other non-interest flows. In an effort to encourage greater lending to the private sector, the Reserve Bank launched a credit guarantee scheme for small and medium-sized enterprises in January 2012, followed by the introduction of sector lending targets for commercial banks in March 2012. However, it should be noted that sector lending targets can also cause inefficient allocation of resources, reducing and/or removing banks' ability to make strategic business decisions.

A number of issues still need to be addressed, however, if Fiji hopes to further improve private sector access to finance and make financial services more accessible to the population.

A key constraint limiting business access to finance is the lack of an effective secured transactions framework to use movable property as collateral. Movable property includes equipment, inventory, accounts receivable, crops, and livestock. While the legal framework allows creditors to enter into a secured loan by creating a security interest against a debtor's property, the system

is deficient in many areas. As a result, many small businesses find it difficult to obtain credit despite possessing assets that could serve as collateral. An additional area of concern is the lack of a legal framework for credit reporting. Credit information is an important determinant in lending decisions because it allows lenders to more accurately evaluate risks. Fiji has had a privately-owned credit bureau since 2001. Its reporting system includes more than 300,000 individuals and most companies operating in the country. It voluntarily bases its operating procedures and code of conduct on New Zealand legislation. While the bureau has not faced legal challenges to date, the legality of the credit information it provides is often questioned by consumers and consumer advocacy groups. To avoid potential future problems, it would be prudent for Fiji to create its own legal framework for credit reporting.

A key factor limiting greater financial inclusion is the lack of sustainable microfinance institutions. Past efforts have generated some initial successes, but none of the microfinance providers has yet reached the scale and sustainability needed to provide permanent, affordable financial services to a large number of excluded people. Moreover, there has been insufficient regulatory supervision of the sector, along with a lack of long-term technical assistance to improve the capacity and outreach of sector participants. Commercial banks, despite having established microfinance windows in 2010, display little evidence of being genuinely interested in downscaling into microcredit. The best option of filling the gap, therefore, seems to be the establishment of a new microfinance bank. There is also potential for credit unions and cooperatives to play an expanded role in microfinance provision, but this will require the introduction of new monitoring and supervisory structures.

Recommendations:

- Introduce a secured transactions framework to enable more effective and widespread use of movable property as collateral.
- Continue to provide support to achieve greater financial inclusion.
- Introduce credit bureau legislation.

Bibliography

- Asian Development Bank (ADB). 2006a. *An Analysis of the Secured Transactions Framework for Lending in Fiji Islands*. Manila.
- . 2006b. *Improving the Legal Business Environment in the Pacific Region*. Consultant's Report. Manila (TA 6162-REG).
- . 2006c. *Private Sector Assessment for Fiji Islands: Promise Unfulfilled*. Manila.
- . 2007. *Improving the Delivery of Infrastructure Services in the Pacific*. Final Consultant's Report. Manila (TA 6527-REG).
- . 2008. *Completion Report: Fiji Islands Ports Development Project*. Manila.
- . 2010. *Microfinance in Fiji: Challenges and Opportunities*. Consultant's Report. Manila (TA 6353-REG).
- . 2011a. *Aide Memoire Ports Development Project Fiji—Independent Evaluation Mission*. Manila.
- . 2011b. *Asian Development Outlook 2011: South-South Economic Links*. Manila.
- . 2011c. *Finding Balance 2011: Benchmarking the Performance of State-Owned Enterprises in Fiji, Marshall Islands, Samoa, Solomon Islands, and Tonga*. Sydney.
- . 2011d. *Pacific Infrastructure Performance Indicators*. Manila.
- . 2012a. *Asian Development Outlook 2012: Confronting Rising Inequality in Asia*. Manila.
- . 2012b. *Fiji 2012: Revitalizing the Fiji Economy*. Manila.
- . 2012c. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Papua New Guinea*. Sydney.
- . 2013. *Asian Development Outlook 2013: Asia's Energy Challenge*. Manila.
- Chand, G. 2009. *The Small Claims Tribunal: An Effectiveness Study*. Prepared for the Consumer Council of Fiji. Suva.
- Dornan, M. 2011. *Solar-based rural electrification policy design: The Renewable Energy Service Company (RESCO) model in Fiji*. In *Renewable Energy*, 36, 797–803.
- Dornan, M. and Jotzo, F. 2011. *Electricity Generation in Fiji: Assessing the Impact of Renewable Technologies on Costs and Financial Risks*.

- Fiji Bureau of Statistics. 2010. *Preliminary Report: Poverty and Household Incomes in Fiji in 2008–2009*. Suva.
- Fiji Institute of Applied Studies. 2010. *Regulatory Impacts on Small and Micro Enterprise Success in Fiji*. Suva: National Centre for Small and Micro Enterprises Development.
- Fiji Ports Corporation. 2010 *Corporate Plan*. Suva.
- Fiji Roads Authority. 2012. *2013 Corporate Plan and Statement of Corporate Intent*. Suva.
- Government of Fiji. Various legislations, decrees, and information bulletins.
- Government of Fiji, Bureau of Statistics. 2010a. *Fiji Facts and Figures*. July. Suva.
- . 2010b. Key Statistics. Suva.
- Government of Fiji, Department of Lands and Surveys, Ministry of Roads and Mineral Resources. Undated. *Land Tenure Systems in Fiji*. Suva.
- Government of Fiji, Fiji Electricity Authority. 2011. *2010 Annual Report*. Suva.
- Government of Fiji, Ministry of Finance. 2009. *Economic and Fiscal Update: Supplement to the 2010 Budget Address, Strengthening the Foundations for Economic Growth and Prosperity*. Suva.
- Government of Fiji, Ministry of National Planning. 2009. *Roadmap for Democracy and Sustainable Socio-Economic Development 2009–2014: A Better Fiji for All*. Suva.
- . 2010. *Millennium Development Goals, 2nd Report 1990–2009, Report for the Fiji Islands*. September. Suva.
- Government of Fiji, Ministry of the Environment. 2007. *Fiji National Liquid Waste Management Strategy and Action Plan*. Suva.
- International Monetary Fund. 2010. *Republic of Fiji: 2009 Article IV Consultation—Staff Report and Public Information Notice on the Executive Board Discussion*. Washington, DC.
- . 2011. *Republic of Fiji: 2010 Article IV Consultation—Staff Report and Public Information Notice on the Executive Board Discussion*. Washington, DC.
- . 2012. *Republic of Fiji: 2011 Article IV Consultation—Staff Report and Public Information Notice on the Executive Board Discussion*. Washington, DC.
- . 2013. *World Economic Outlook Database 2013*.
- James, S. International Finance Corporation. 2009. *Incentives and Investment: Evidence and Policy Implications*.
- Jayaraman, T.K. and Choong, C. 2012. *Implications of Excess Liquidity in Fiji's Banking System: An Empirical Study*. Munich.
- KPMG. 2002. *Review of the Investment Approval Process*. For the Fiji Ministry of Commerce, Business Development and Investment. Suva.
- Marin, P. 2009. *Public–Private Partnerships for Urban Water Utilities: A Review of Experiences in Developing Countries*. Washington, DC: The World Bank.
- Ministry of National Planning. 2009. *Roadmap for Democracy and Sustainable Socio-Economic Development 2009–2014: A Better Fiji for All*. Suva.

- Naidu, V. and Reddy, M. 2002. *ALTA and Expiring Land Leases*. Suva: University of South Pacific.
- Network Strategies. 2010. *Progress of Competition in Pacific Islands Mobile Markets*. Auckland.
- OECD. 2002. *Foreign Direct Investment for Development: Maximizing Benefits, Minimizing Costs*. Paris.
- Pacific Financial Inclusion Programme. 2009. *Fiji Financial Services Sector Assessment*. August. Suva.
- Pacific Islands Forum Secretariat. 2008. *Review of Financial Management of Customary and Other Land in the Pacific*. Suva.
- Reserve Bank of Fiji. 2011. *Capital Markets Annual Report 2010*. Suva.
- . 2010. *Quarterly Review*. December. Suva.
- . 2011. Future Investment and Growth in Fiji. Presentation to the Fiji Institute of Accountants. June. Suva.
- Suva City Council. 2012. *Final Annual Corporate Plan 2012*. Suva.
- Whiteside, B. (Governor of Reserve Bank of Fiji). *Opening Address at Launch of BSP 'Bula Elite' Product*. 13 June 2013. Suva.
- World Bank. 2009. *Fiji Enterprise Survey*. Washington, DC.
- . 2011. *Assessment of the Social Protection System in Fiji and Recommendations for Policy Changes*. December. Washington, DC.
- . 2013a. *Doing Business* database.
- . 2013b. *World Bank Development Indicators Database*.
- World Trade Organization. 2009. *Fiji Trade Policy Review*. February. Geneva.

APPENDIX 1

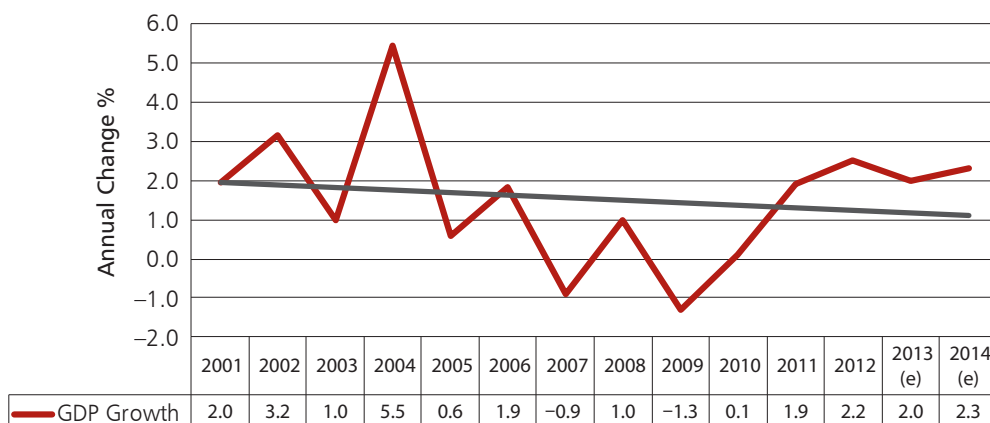
Fiji's Economic Performance, 2006–2012

In real terms, the Fiji economy contracted

The rate of growth of an economy is measured by tracking annual changes in gross domestic product (GDP). The Government of Fiji's economic growth target is to increase GDP annually by 5%.¹ The target was not achieved during 2006–2012. Moreover, the economy was unable to maintain the modest growth it had achieved during 2001–2005.

Over 2001–2005, Fiji's annual GDP growth averaged 2.4%; during 2006–2012, it averaged 0.7% annually (Figure A1.1). As a result, the size of the Fiji economy in 2012 was only marginally larger than it was in 2006. Because the population increased over this time, Fiji's per capita GDP actually decreased slightly from F\$5,095 in 2006 to F\$5,048 in 2012 (Figure A1.2).

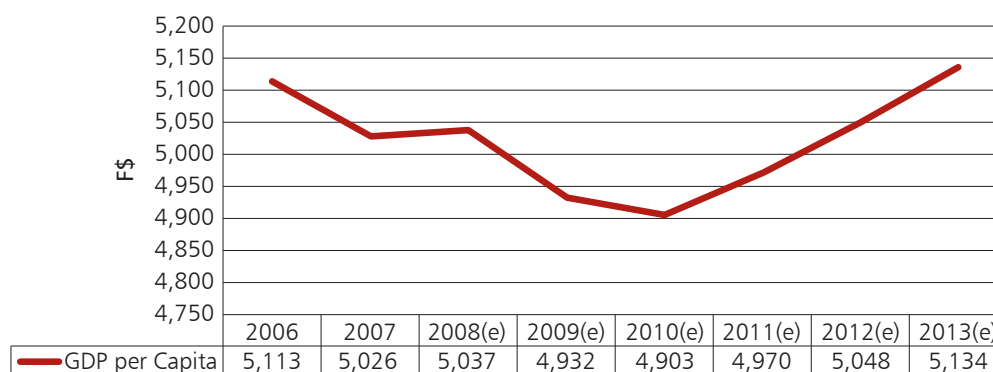
Figure A1.1 Fiji Growth Rate of GDP, 2001–2014 (% per year)



e = ADB estimated forecast rates, GDP = gross domestic product.

Sources: Reserve Bank of Fiji, Asian Development Bank. 2013, 2012, 2011. *Asian Development Outlook*. Manila; and World Bank Development Indicators.

¹ Government of Fiji, Ministry of National Planning. 2009. *Roadmap for Democracy and Sustainable Socio-Economic Development 2009–2014: A Better Fiji for All*. Suva.

Figure A1.2 Fiji GDP per Capita, 2006–2013 (constant F\$)

F\$ = Fiji dollar, GDP = gross domestic product.

Source: International Monetary Fund. 2013 World Economic Outlook Database.

Fiji's economy faltered during this period, along with those of Samoa and Tonga. The Cook Islands, a comparative tourism-driven economy, averaged an even lower 0.62% over the same period. In comparison with these smaller economies, the Pacific's larger neighbors fared considerably better. Papua New Guinea and Solomon Islands registered average growth above 5%, while Vanuatu averaged close to 4%. Overall, average GDP growth in the Pacific islands² region during this period was 3.6% (Figure A1.3).

The level of poverty in Fiji has risen over time. In 1991, it was estimated at 25% of the population. In 2011, it was assumed to be between 35% and 40%.³

The structure of the economy remains relatively unchanged

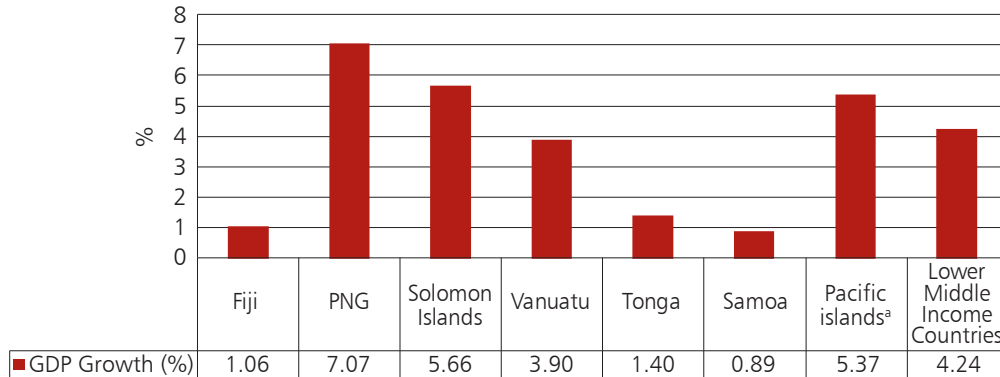
The public and finance sectors both grew during the period and continue to be the largest sectors of the economy. Other sectors registering growth included tourism (hotels and restaurants) and fishing. The share of agriculture in GDP declined mainly due to natural disasters and the deterioration of the sugar sector. Nonetheless, at least half of the population remains involved in agriculture, reflecting a lack of other employment opportunities and low productivity growth in this sector.⁴

² Pacific islands are the Cook Islands, Fiji, Republic of the Marshall Islands, the Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, and Vanuatu.

³ Poverty levels in Fiji are not directly linked to hunger, as the majority of the population has access to agriculturally productive land, especially in rural areas. For this reason, the term "low income" is generally used instead of poverty. The poverty incidence cited is based on the World Bank review of Fiji's social protection system in 2011, which estimated that the overall incidence of poverty in the country fell from 40% in 2002–2003 to 35% in 2008–2009. However, the estimates masked significant differences between rural and urban areas. The incidence of poverty in 2008–2009 was estimated to be 40% in rural areas and 35% in urban areas. Moreover, it was found that the urban poverty rate had declined since 2002–2003, while the rural poverty rate remained unchanged.

⁴ The agriculture sector is not contributing to economic growth, yet continues to involve a significant proportion of the population. Productivity gains associated with growth (increased output per person) are not evident in this sector.

Figure A1.3 Average GDP Growth, Selected Pacific Island Countries, 2006–2013 (%)

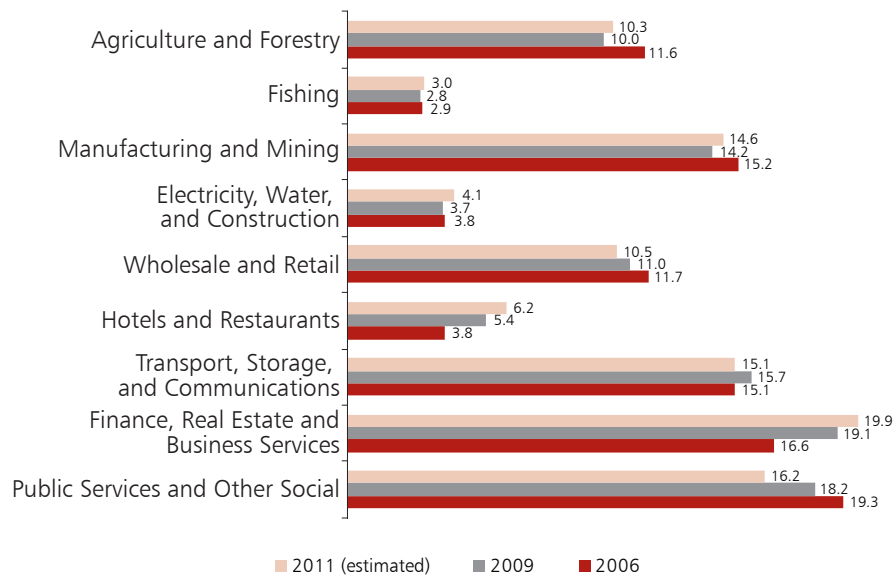


GDP = gross domestic product, PNG = Papua New Guinea.

^a Pacific islands = the Cook Islands, Fiji, Republic of the Marshall Islands, the Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, and Vanuatu.

Sources: Asian Development Bank. 2013, 2012, 2011. *Asian Development Outlook*. Manila; and World Bank Development Indicators.

Figure A1.4 Fiji GDP by Economic Activity, 2006–2011 (%)



GDP = gross domestic product.

Source: Reserve Bank of Fiji.

The majority of Fijians continue to remain outside the formal wage economy

About 40% of the population were actively participating in the Fijian economy in 2010. This translates into about 333,000 people. Of this amount, only 40% were employed in the formal sector as regular wage earners. The majority—approximately 51%—were unregistered working proprietors and staff, unpaid and seasonal workers, and subsistence farmers. A further 9% were considered officially unemployed (i.e., actively looking for a regular wage job), and the active labor force also excludes an additional 120,000 people between the ages of 20 and 59.⁵

Of the 133,000 formal sector jobs in the economy, at least 25% (34,000) are in the public sector.⁶ The remaining 75% (99,000) are employed by the private sector.

Despite the low official unemployment level, the economy has not been able to generate sufficient formal sector job opportunities for people. Moreover, each year, the labor pool grows by an additional 17,000. The public service is currently undergoing a right-sizing exercise and is unlikely to expand its work force. Formal sector job growth therefore will have to come from the privately owned businesses—there are no other options. Currently, the formal sector is only able to hire about 10,000 of these new entrants each year. The remainder are absorbed into the informal sector and cash crop and mixed cash crop/subsistence agriculture.⁷

Constraints to private sector development cause poor economic performance

Economies grow and create jobs as a result of productive investment. The long-term prosperity of a country depends on its investment ratio (investment divided by GDP). In fast-growing economies such as the People's Republic of China, this ratio regularly exceeds 40%. Even in mature, high-income economies that are expanding, the investment ratio is typically well over 20%. To achieve a real GDP growth rate of 5% per annum, the rule of thumb estimate is that the investment ratio needs to be at least 25%. This is the target investment rate established by the Government of Fiji.

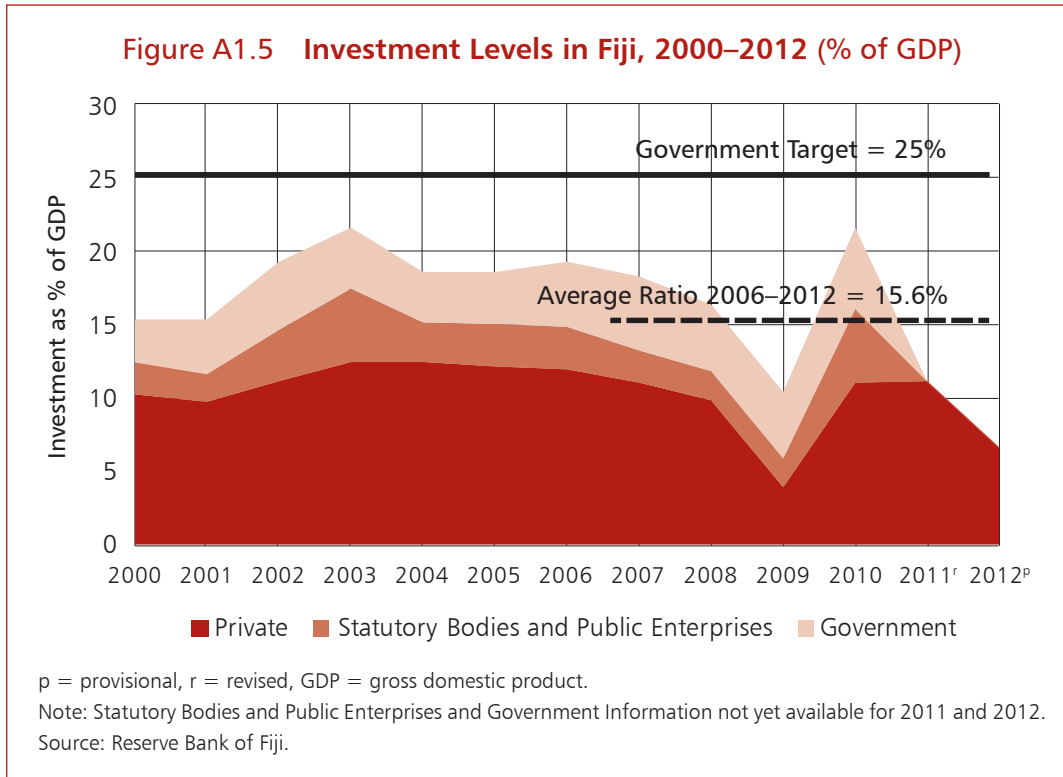
The 25% investment target was last achieved in 1981. Over 2006–2012, the average investment to GDP ratio was 15.6% (Figure A1.5). This represents a reduction of 3.0% over the average investment levels recorded between 2000 and 2005. Not only did total investment levels decrease; the private sector share of this investment declined. It fell from an average of 11.3% of GDP in 2000–2005, to 9.3% over 2006–2012. It was 11.0% in 2010, and was estimated to have fallen to a provisional level of 6.6% in 2012.⁸

⁵ Fiji Islands. 2011. *Bureau of Statistics 2010: Key Statistics*. Suva.

⁶ There are no readily available figures for public sector employment. However, recent reports suggest the total is more than 34,000, which include 27,000 central government employees, 6,900 employees of state-owned enterprises (SOEs), and an unknown number of people employed by local level governments. Sources: Fiji Times Online, "Civil service reforms begin to take shape," 5 July 2011; and ADB. 2011. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Fiji, Marshall Islands, Samoa, Solomon Islands, and Tonga*. Sydney.

⁷ Fiji Ministry of Finance. 2009. *Economic and Fiscal Update: Supplement to the 2010 Budget Address, "Strengthening the Foundations for Economic Growth and Prosperity."* Suva.

⁸ ADB. 2012. *Asian Development Outlook 2012: Confronting Rising Inequality in Asia*. Manila and private communication with the Reserve Bank of Fiji.



Constraints on private sector development raise the cost of doing business, reduce profitability, and harm economic growth by discouraging investment. Removing constraints will improve the performance of the economy.

Little can be done about constraints such as small size and geographic isolation. Fiji's small market size reduces opportunities for firms to take advantage of economies of scale in production and distribution. It also means the per capita cost of providing government and infrastructure services will be high. Remoteness means imports, exports, and tourists all need to be transported over vast distances, which in turn increases the costs of living in and visiting the country. Fiji is a small player with little influence in the wider global economy. While these facts cannot be altered, the government can take steps to reduce the limitations posed by these constraints. Moreover, it needs to ensure it does not exacerbate these constraints through poor policies that make it unnecessarily difficult for businesses to establish and operate in a profitable environment.

Unstable politics and policies are a risk to investment

It is also important to note the importance of risk in investment decision making. When private investors are deciding where to invest their capital, they consider the risks that could negatively affect their investment. This is especially the case for foreign investors. Factors such as political and policy stability have a powerful influence on decisions. An unstable political environment, frequent policy changes with limited consultation, and sudden exchange rate

fluctuations increase the cost of doing business and reduce rates of return. In response, because of the perceived risk, investors require higher rates of return or shorter periods to recoup their investments before they invest.

Fiji's poor economic performance over the past 7 years is a function of many factors including the global economic crisis and natural disasters. However, it also reflects a weak domestic investment climate that has been negatively affected by uncertainty and risk as a result of a legacy of coups (most recently in December 2006); the abrogation of the Constitution in April 2009; and delaying elections until 2014. Recent enterprise surveys overwhelmingly identified political and policy instability as the top constraint facing Fiji's business environment.⁹ The finding was consistent across all sizes of firms—small, medium, and large. Discussions conducted with the private sector during the course of preparing this report reconfirmed this finding. The ongoing instability has considerably increased the perceived risk associated with investing in Fiji and must be addressed quickly if private sector investment levels are to substantially strengthen.

The negative impact of the uncontrollable external events and political problems has been further exacerbated by delays in addressing structural issues identified in the 2005 private sector assessment. While the government has made progress in some areas, significant challenges remain.

⁹ World Bank. 2009. *Fiji Enterprise Survey*. Washington, DC; and Reserve Bank of Fiji. 2011. *Future Investment and Growth in Fiji*. Presentation to the Fiji Institute of Accountants. 6 June. Suva.

APPENDIX 2

Managing Investment Climate Reform

The government, following the abrogation of the Constitution in 2009, developed a strategic planning and management process including the Strategic Framework for Change and the Roadmap for Democracy and Sustainable Socio-Economic Development 2009–2014.

The roadmap sets out a strategic framework to achieve what the government believes is a sustainable democracy, good and just governance, socioeconomic development, and national unity. It presents a vision; a mission and guiding principles; and, under the headings of “Good Governance,” “Economic Development,” and “Socio-Cultural Development,” a sectoral analysis along with policy objectives, strategies, and key performance indicators. It also includes an implementation and monitoring mechanism headed by the National People’s Charter Council. The council is designed to have inputs from 11 subcommittees, a secretariat, and government ministries and departments, as well as representatives from the private sector and civil society.

The roadmap’s goals and objectives in terms of economic growth are presented in Table A2. A key strategic priority is to raise investment levels, particularly private sector investment, to achieve the target 25% of gross domestic product.

The roadmap’s economic policy goals and objectives are conceptually sound. They are also ambitious and implementation will be challenging. A critical factor in determining the success of the roadmap will be the extent to which the government operates in a sufficiently inclusive, transparent, and accountable manner to win the sustainable cooperation and support of the business community and wider society. The coup and abrogation of the Constitution means that the executive operates outside the usual parliamentary process. As a result, the government is operating with a credibility problem. It will be important for the government to address this problem if it is to make real progress with its ambitious policy agenda.

It is also important to note that the prospects of success in areas of economic policy will be greatly influenced by the market’s assessment of whether and how the politically controversial issues relating to future elections and the Constitution will be resolved. Government announcements made in 2011 indicate that planned timelines with respect to these issues will be met.¹ The process for developing a new Constitution commenced in May 2012 and was expected to be in

¹ Fiji Government Online Portal. 2011. *Election on Track: AG*. 7 September.

Table A2 Roadmap for Democracy and Sustainable Socio-Economic Development 2009–2014: Policies for Economic Growth

Goals	Objectives
Maintain macroeconomic stability	<ul style="list-style-type: none"> • Stabilized macroeconomic factors • Improved standard of living
Sustainable, growing, and globally competitive tourism industry	<ul style="list-style-type: none"> • Increased economic contribution of the tourism sector • Benefit to resource owners from greater participation in the tourism industry
Globally sustainable and competitive manufacturing, commerce, and industry to compete with imports and expand exports	<ul style="list-style-type: none"> • Diversified and expanded manufacturing and commercial sectors • Diversified exports base • Improved business regulatory environment • Enhanced consumer protection and awareness
Creating sustainable livelihoods through enterprise development	<ul style="list-style-type: none"> • Improved community livelihoods through micro, small, and medium-sized enterprises
Global integration and international relations for political and economic enhancement	<ul style="list-style-type: none"> • Benefits to communities from Fiji's diplomatic and economic relations • Cordial bilateral and multilateral relationships • Enhanced global trading opportunities
Fullest and most productive utilization of human resources	<ul style="list-style-type: none"> • Employees work in a safe, healthy, decent, conducive, and sustainable work environment where more people can secure incomes from employment in the formal and informal sectors and acquire technical skills and productivity levels needed for higher incomes and economic development.
Proper land use planning and management	<ul style="list-style-type: none"> • Resource owners and land users secure long-term incomes from environmentally sustainable land development and management.
Sustainable sugar and nonsugar agriculture and livestock industries	<ul style="list-style-type: none"> • Restructuring of the sugar industry into a commercially viable and sustainable industry • Thriving agriculture sector that sustains food security and sets the platform for commercial agricultural development.
Sustainable development of forests, fisheries, and mineral and groundwater resources	<ul style="list-style-type: none"> • Conservation and management of resources • Benefit to communities from sustainable development of resources that maximize long-term economic returns
Effective, stable, and competitive financial system that enhances economic growth	<ul style="list-style-type: none"> • Public access to appropriate modes of transparent, sound, and secure financial and banking facilities • Widened coverage of financial services • Deepened financial markets • Strengthened management of superannuation funds
Cost-efficient infrastructure services for people and businesses	<ul style="list-style-type: none"> • Access to safe, efficient, and affordable transport and cargo shipping • Access to affordable and reliable energy supplies • Access to reliable and adequate supplies of safe water and environmentally safe sewage treatment • Improved coverage, quality, and price of information and communications services

place by the end of the first quarter 2013.² This will be followed by an election in 2014.³ Until the planned elections are held, there will continue to be a level of uncertainty for private investors.⁴

The reform process has been a cause of uncertainty

Several progressive legislative changes with respect to improving the investment climate have been introduced since 2006. These changes include tax reforms (simplification of tax administration and reduction in the corporate tax rate), opening up the telecommunications market to competition, adopting a plan to put the Fiji National Provident Fund on a sound financial and actuarial footing, and introducing competition in the iTaukei land lease process (Land Use Bank). These reforms, and others, are discussed in other sections of this report. Unfortunately, the impact and sustainability of the reforms introduced to date are being undermined by the way the reform process is being managed.

This is because the government's policy-making process has itself been a cause of uncertainty. The uncertainty is due to a combination of factors. First, in the 45 months between January 2009 and September 2012, the government issued 241 new decrees—an average of more than five decrees each month.⁵ Many in the private sector indicated they are finding it difficult to keep up with the speed of change. This has been made more challenging due to the fact that legislative amendments have not been incorporated into consolidated legislation. To be able to understand much of the legislation, one needs to have access to the original act plus all of the subsequent amendments.

Second, the level of consultation with the business community concerning the changes has been limited. Many of the decrees represent substantive policy changes. Private sector participants consulted in the course of preparing this report complained a lack of meaningful dialogue at the policy formulation stage in defining problems, establishing priorities, and identifying practical solutions. Consultation, when it occurs, seems largely to be done once a decree has been formulated. In particular, there does not appear to be a formal, structured mechanism currently in place through which policy makers and the business community can work together to set a realistic and sustainable reform agenda.⁶ Active involvement of stakeholders in the reform process creates a sense of ownership that makes policies more likely to succeed in practice. At the moment this appears to be lacking. This undermines the potential sustainability of reforms beyond the proposed 2014 election.

² Ministry of Information, *PM Bainimarama—Announcement on the constitutional consultations process*, March 9 2012.

³ Ministry of Information, *Election on Track: Ratu Inoke*, 28 May 2012.

⁴ Editor's note: The government released its own Draft Constitution in March 2013, following the rejection in January 2013 of an earlier draft by the Constitution Commission. The Constituent Assembly was subsequently canceled, and public consultations on the government's Draft Constitution were held in April 2013.

⁵ During 2009, 53 decrees and 14 promulgations were passed (a total of 67 legislative changes). In 2010, another 70 decrees were passed. Over the course of 2011, a total of 52 decrees were introduced. A further 52 decrees were passed in the first 9 months of 2012.

⁶ The Growing the Economy Working Group under the National People's Charter Council appears to include a cross section of representatives from the business community. Associated terms of reference of the working group were also developed. It is unclear how active the working group was in the past. Following the abrogation of the Constitution, however, it no longer appears to be functioning.

Third, institutional capacity to implement reforms is low. Policies and legislations are only as effective as the institutions that implement them. Unfortunately, the technical capacity of many of these institutions appears to have further weakened due to the continued loss of many skilled and experienced staff.⁷ The travel bans established by Australia and New Zealand on members of the Fiji government appeared to have discouraged qualified and experienced people from accepting senior positions in Fiji.⁸ This made it difficult for these institutions to develop and implement the systems and procedures necessary to efficiently and effectively implement the reforms expected of them. Many in the private sector commented on the inexperience of staff at the implementing agencies, as well as their fear of making day-to-day operating decisions.

In light of these credibility and institutional challenges, it would be prudent for the government to reduce the scale of its reform program by focusing on a critical set of interventions and ensure they have sufficient stakeholder support to strengthen the chance that the reform will be continued after the election in 2014. This should be done using a formal, structured, high-level public–private dialogue mechanism.⁹

There are constraints to open discussion about policy issues

Fiji's public emergency regulations (PERs) were introduced in April 2009 and remained in place until the beginning of 2012. The PERs were introduced as a means of addressing perceived threats against public order and government, and included restrictions on public meetings and the media.

Under the PERs, people and organizations wishing to hold meetings of more than five people were required to obtain a permit from the police. The police could deny or approve the granting of permit and set conditions based on their discretionary assessment of the meeting's purpose and proposed agenda. A police officer had the right to attend the meeting and stop it if he or she felt the PERs were being contravened. People considered likely to breach, or to have breached, the regulations could be detained for up to 24 hours (and further up to 7 days) on the direction of a magistrate or police officer.

The PERs also gave the permanent secretary of the Ministry of Information powers to prohibit any broadcast or publication that he or she believed might cause disorder, breaches of the peace, public disaffection or alarm; or undermine the government. All materials for publication or broadcast had to be submitted to the permanent secretary prior to publication.

⁷ Between 1987 and 1999, more than 64,000 migrants left Fiji permanently, of which more than 16% were in professional categories. The outflow of skilled personnel intensified again after the 2000 coup. An additional 47,724 emigrated between 2000 and 2008, of which about 30% were workers in professional, managerial, technical, and administrative positions.

⁸ These bans were relaxed in July 2012. Source: Radio Australia, *Australia and New Zealand relax traveling Bans on Fiji Government*, 30 July 2012.

⁹ There is an emerging body of case studies and synthesis research papers on techniques for promoting successful dialogue between the public and private sectors to promote the right conditions for private sector development and poverty reduction. See, for example, Herzberg, B. and Wright, A. 2006. *The Public–Private Dialogue Handbook: A Toolkit for Business Environment Reformers*. Washington, DC: The World Bank Group.

The Prime Minister announced the end of the emergency regulations on 1 January 2012. However, the situation does not appear to have completely disappeared. People and organizations must still obtain permits to hold certain types of public meetings, and while there are no longer government censors in newsrooms, pressures for self-censorship within the media remain.¹⁰ If genuine policy dialogue and debate are to take place, any remaining restrictions will need to be addressed.

Recommendations:

Improvements will not happen overnight and require recognition on the part of government that real and open dialogue and debate are more likely to build sustainable reform than the existing top down/control approach.

Actions that will help reduce policy uncertainty and promote greater investor confidence are as follows:

- Establish a more open environment for public dialogue and debate by relaxing remaining constraints on public gatherings and further encouraging independence in media reporting.
 - Proactively engage with the business community and the media to promote and discuss the policy issues that are of central concern to the growth of the Fijian economy.
- Establish a formal, structured, high-level public–private sector dialogue mechanism to guide investment climate reform.
 - Membership should be kept manageable and include key government policy makers and representatives of business umbrella organizations and other relevant stakeholders. It will be important to ensure representation from small and medium-sized enterprises as well as from women entrepreneurs.
 - The role of the dialogue should be to (i) jointly review the economic policy reform agenda and identify priorities for the short to medium term, (ii) develop and analyze reform options to ensure they are practical and can be efficiently and effectively implemented, and (iii) sequence the reform implementation in line with institutional capacity.
 - Other recommendations made in this report should be considered through this mechanism.

¹⁰ The Media Industry Decree (2010) remains in force. It includes penalties, including jail terms, for any reporting that the government deems against the national interest. On 8 January 2012, the government introduced a Public Order (Amendment) Decree which strengthened prohibitions on public gatherings.

APPENDIX 3

Regulatory Requirements to Start and Operate a Business

This appendix reviews the regulatory requirements businesses must follow in order to start and operate a business. A well-functioning regulatory system is an essential component of modern society. Where regulations work well, they enhance governance and promote stability, progress, and prosperity. The requirements cover four areas:

- **Business start-up.** Business start-up applies to all businesses and involves three core functions: (i) check for uniqueness of business name, (ii) inscribe the business or company in the public registry for the purpose of identifying the legal owners or representatives and their contact information, and (iii) register with the tax authorities.
- **Access to land and site development.** Most businesses require physical premises from which to operate, and land for buildings and productive activities. Requirements associated with accessing land are discussed separately in Appendix 10. Site development involves the development of land including the construction of buildings and other structures. Regulations are prescribed to see that developments are scrutinized before they are implemented, to ensure they comply with zoning plans and will not create environmental, social and cultural damage, or public health and safety concerns.
- **Labor.** Creating and maintaining productive jobs for its citizens is a priority for all economies. Generally speaking, labor regulations establish the terms and conditions under which workers are hired, employed, and dismissed. Smart employment regulation that enhances job security and improves productivity through employer–worker cooperation means that both workers and firms benefit.
- **Licenses.** Licensing, like site development regulations, are prescriptive in nature. The required licenses affect specified businesses and occupations by regulating their entry into and conduct within markets. Licenses, which sometimes include the use of permits and certifications, typically impose on businesses a range of conditions, obligations, and rights; and are used to address market failure and achieve public interest objectives such as preventing damage to health, safety, security, or the environment. Licensing procedures require the regulated parties to obtain a certificate of compliance prior to the commencement of their business activity.

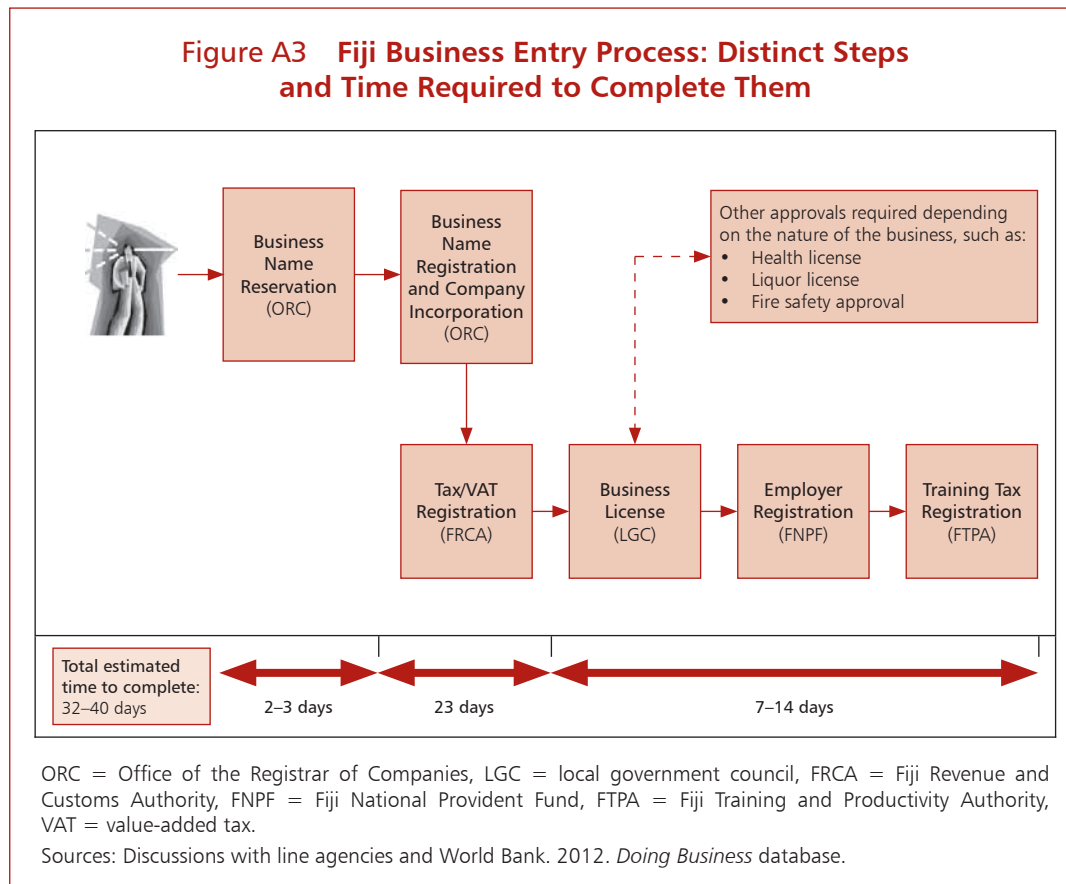
Business Start-Up Requirements

It is critical that the business start-up process is transparent, fast, and inexpensive. This step serves as the gateway through which businesses enter, and thereafter contribute to the formal economy. Cumbersome processes tend to keep businesses in the informal sector, which hinders their access to credit as well as the legal system for settling contract disputes.

Figure A3 summarizes the steps required to complete Fiji's business start-up process.

Several reforms in the licensing regime have been introduced since 2006. The reforms include:

- Tax Administration (Amendment) Decree 2010, which requires any person incorporating a company or obtaining a business license to submit proof they have registered with the Fiji Revenue and Customs Authority (FRCA);
- National Fire Service (Amendment) Decree 2009, which requires any business obtaining a business license to submit proof they have obtained a certificate from the National Fire Authority demonstrating their premises meet prescribed standards; and
- A very basic internet registration system introduced by the Office of the Registrar of Companies (ORC) in 2010, allowing enterprises to conduct business name searches online, as well as submit business name registrations and company incorporation applications.



While the registration can be submitted online, applicants still must visit the ORC office in Suva to submit paper copies of their registration applications and supporting documents and pay registration fees. Companies must also submit paper copies of their annual returns. From March 2012, investors were able to separately lodge applications to most of the other agencies involved in the business entry process, along with the agencies responsible for foreign investment approval.¹ Investors will also be able to pay their application fees online.

In addition, the Ministry of Justice initiated a review of the Companies Act in 2010. This is a welcome initiative, given that the current legislation is based on outdated law.² A draft decree was released for review in early 2011. The draft included many positive changes but could be further strengthened by limiting the provisions of the decree to essential requirements and making it more relevant to Fiji's context.³

Key outstanding issues associated with the business start-up process are summarized below:

- **The business registration process is slow and cumbersome.** Completing the existing process is estimated to take between 32 days and 40 days. International best practice is 1 day (e.g., New Zealand). The steps are also spread across several agencies and applications must be submitted in person. Applications to the ORC can only be done in Suva. Also, each application process requires providing most of the same information, repeatedly. Some of the recent reforms have also further complicated the process. For example, a tax identification number (TIN) is a prerequisite for company incorporation; however, a new legal entity must be formed before it can register for tax. In order to get around this problem, investors are forced to make an extra visit to the ORC.⁴ The planned expanded web-based portal should help speed up the process, but investors will still be required to complete separate application forms for each step in the process, and processing will still be done manually by staff within each agency.
- **Complete and updated business registration information is not readily accessible.** The ORC maintains a computerized database of business names, available online. However, the database does not include information concerning legal owners or representatives, or their contact details. To obtain this information, one must visit the ORC in person and conduct a time-consuming physical search of the files. Moreover, security of registry information is poor, resulting in lost documentation and incomplete registry files. The registry also includes many defunct businesses. As a result, the value of the registry is severely compromised. The planned expanded web-based portal will not address this issue.

¹ These agencies include Investment Fiji, the Immigration Department, and the Reserve Bank of Fiji.

² The existing Companies Act includes many requirements that modern legislation no longer needs. For example, every public company must have a minimum of three directors, two of whom must be local residents. Every private company must have a minimum of two directors, one of whom is also required to be a local resident. Seven or more persons must form a public company while two or more persons must form a private company. Moreover, at the time of incorporation, several documents, including lengthy articles of incorporation, must be filed with the registrar. Once incorporated, all companies must file lengthy annual returns. These additional requirements raise the costs of business transactions and the registry system.

³ Editor's note: The Decree was promulgated in 2013 but, at the time of publishing, had not yet been made available for review.

⁴ Rather than immediately receiving a registration certificate on completion of the incorporation process, an applicant is issued a certified copy, which he or she lodges with FRCA. On receipt of the TIN from FRCA, the applicant must return to the ORC to submit a copy of the TIN in order to receive the original registration certificate.

- **There is a lack of unique identifiers for businesses as well as their owners and/or representatives.** Each agency involved in the business start-up process maintains its own stand-alone registry. There is no standard across the government registries for business data organization; each has its own system (i.e., the ORC business name system automatically assigns a registration number, the FRCA system automatically assigns a TIN to individuals and companies, and the Fiji National Provident Fund automatically assigns employers and employees a number). As a result, it is often difficult for government agencies to communicate with one another about a particular business or person, making compliance enforcement difficult. The planned expanded web-based portal will also not address this issue concerning the lack of standardization of registries.

The cumbersome nature of the business start-up process is most problematic for micro and small businesses. While there are ways to speed up aspects of the process, such as buying an off-the-shelf company from one of the major accounting or law firms, these alternative procedures involve significant additional expenses that small enterprises can seldom afford. Forcing potential entrepreneurs—both men and women—to navigate the many steps required to register only pushes them into the informal economy or into becoming sole proprietorships. This in turn has negative implications for their ability to access finance and grow their businesses.

The business start-up process has been a problem for a long time. The Ministry of Justice has begun to take steps to modernize the Companies Act and the operations of the ORC. While the introduction of the expanded web-based business registration portal is a positive development, a lot more work remains to streamline the process and establish a modern company registry.

Recommendations:

- Complete the review of the Companies Act and introduce a modern legislation that is relevant to Fiji's context and consistent with good international practice.
- Introduce an electronic portal enabling integrated business start-up registration and archive filing, with the following characteristics:
 - It is an internet-based system through which business name; company incorporation; and FRCA, Fiji National Provident Fund, and FTPA registrations can be quickly and easily completed through a consolidated application process. It should also include an online archive filing system that will enable registrants to update their information and, in the case of corporations, to submit annual returns. It should be searchable by the public at a reasonable cost. This will require implementation of legislation to enable electronic payments.⁵
 - Consideration should also be given to introducing a unique business number for each company and/or business name that can potentially be used across all of government. The TIN should be used for this purpose. This will require consultation with FRCA. Agreement to use the unique business number will also need to be obtained from other public agencies and will require changes to their registry systems. In addition, unique identifiers should be used to identify business owners/representatives.

⁵ Fiji promulgated the Electronic Transactions Decree in 2008, but it has not yet been implemented. It establishes the validity of electronic communications and sets default rules about their use and legal effect. Implementation is being held up by the need to review other legislations impacted by the promulgation and make consequential amendments.

For people born in Fiji, it could be based on their birth registration number. A system for introducing unique identifiers for foreign citizens will also need to be developed in consultation with the Department of Immigration.

- Regulations will need to be developed to establish the legal foundation for the system and prescribe the procedural principles for its operation.

Site Development Approvals

The Town Planning Act (CAP 139) and the Subdivision of Land Act (CAP 140) establish the overall system for planning and regulating land use in Fiji. The system is administered by the Department of Town and Country Planning (DTCP) based in Suva, working in cooperation with local government councils (LGCs) and regional local authorities (RLAs). The Environmental Management Act 2005 establishes a mechanism for conducting environmental impact assessments prior to the implementation of developments that may result in significant changes to environmental, social, or cultural conditions. Environmental impact assessments are administered by the Department of Environment.

The main regulatory mechanisms on land use are:

- **Land use zoning.** Use of land for business purposes can only be done on land designated for that use. Town planning schemes set out land use zones and provisions on how to regulate and control land developments within cities and towns. Fiji has 13 LGCs of which 11 have approved town plans and two are in a draft stage. The process of zoning and rezoning land is managed by the DTCP with inputs from LGCs and RLAs. Rezoning within an approved town planning scheme takes approximately 2–3 months to complete. In rural areas, it takes approximately 3–4 weeks, assuming that joint site inspection with the Department of Environment to determine the need for an environmental impact assessment is not required.
- **Approval of development master plans.** The DTCP reviews and approves large-scale plans to ensure they comply with requirements of the Town Planning and Subdivision of Land acts and identify issues that need to be addressed.
- **Subdivision of land.** This process is used to develop a parcel of land that results in a transfer of title. Approval of the DTCP is required to subdivide any land within 3 miles of a town or city, and outside of this area to create lots of a size less than 5 acres. Depending on the proposed purpose, the process may require consultation with other government agencies. The minimum estimated time to obtain subdivision approval without an engineering plan and environmental impact assessment is 6–7 months. For major subdivisions with engineering plans and environmental impact assessments, the process can take between 2.5 and 3 years.
- **On-site development control.** This process is used to approve construction of buildings and other structures. Depending on the nature, location, or scale of the development, the process may require consultation with other government agencies or the public. Applications are submitted through the LGCs or RLAs to the DTCP for approval. The process can take between 6 weeks and 6 months to complete.

Site development approvals are a critical part of many investments. Feedback from Investment Fiji and the private sector suggest that approvals can be time-consuming to obtain and represent a significant bottleneck to project implementation. The DTCP has introduced the following positive reforms since 2006 in an effort to address these concerns:

- It commenced “out of station” processing of all types of applications. Before 2006, applications had to be forwarded to the DTCP in Suva for processing. In 2006, the DTCP began 1-day visits to Nadi to deal with tourism projects. The program has expanded to include longer visits (up to 1 week) in many areas of the country. The DTCP has also been working closely with LGCs and RLAs to ensure applications are properly prepared before they are accepted. This has included development of checklists and training to conduct initial application assessments.
- In April 2011, DTCP began to delegate approval authority for some types of development to LGCs. It has also begun to work with LGCs to develop subdivision bylaws with the aim of involving them more in the approval process.
- DTCP further began the process of developing digitized town planning schemes to be made available on its website.

Key outstanding issues on site development approvals are summarized below:

- **Limited administrative capacity.** At the end of 2011, DTCP had 24 staff members, including 2 planners and 14 technical staff. The total number of staff has remained unchanged since 2006. However, there has been considerable turnover within the department, which has resulted in the retention of less experienced staff. Human resources at the LGC and RLA levels dedicated to site development issues are much more limited—only 4 LGCs, for example, have town planning units. One of the main challenges is finding qualified town planners. The DTCP is working with the University of the South Pacific to strengthen its Bachelor of Land Use Planning degree in this area.
- **Limited written information.** There is currently little written information for clients explaining, in simple language, how the site development approvals system works and what requirements must be met. This lack of transparency can lead to client frustration when problems associated with their applications arise. There is also a lack of standard operating procedures to guide the work of DTCP, LGC, and RLA staff. This is especially problematic in an environment where the staff are new and inexperienced.
- **Problems in obtaining comments from referral agencies.** A significant portion of processing time delays reportedly occurs as a result of slow responses from referral agencies. The legislation does not require DTCP to obtain comments from other agencies. The practice, however, has become standard operating procedure. DTCP recognizes the bottleneck and has started to set a maximum period for submission of comments from these agencies (30 days), after which it automatically will proceed with its own review and approval.

Recommendations:

- Strengthen DTCP and the town councils and RLAs to increase the transparency of their site development approval processes and the speed with which the system operates, including the

- preparation of concise written information for clients explaining the site development approval process,
- preparation of manuals outlining standard operating procedures for staff involved in processing site development approvals, and
- introduction of measures to monitor and reduce the processing time associated with site development approvals.

Labor Regulations

Fiji's labor-related regulations have undergone significant reform since 2006. The country's main employment and labor standards are determined by the following laws:

- **Employment Relations Promulgation 2007.** The new law repealed and replaced six labor laws: Employment Act (CAP 92), Wages Council Act (CAP 96), Trade Disputes Act (CAP 97), Trade Unions Act (CAP 96), Trade Unions (Recognition) Act 1998 (CAP 96A), and Public Holidays Act (CAP 101). The reform is largely compliant with international labor standards. The Employment Relations Promulgation (ERP) is very detailed and requires all employers to sign written contracts with employees in accordance with a set of minimum terms and conditions. It includes nondiscrimination provisions and equal remuneration for men and women. With respect to redundancy, employers are required to pay workers not less than 1 week's wages for each complete year of service. The ERP introduces principles of good faith to promote orderly individual and collective bargaining, and sets out conditions for registration and operation of trade unions. It reintroduces a structure for setting minimum wages for selected sectors of the economy. It also establishes mediation as the primary means of settling employment disputes, supported by an employment relations tribunal and employment relations court. More recently, the introduction of other decrees has led to an erosion of worker rights, particularly with respect to the public sector.⁶
- **Health and Safety Work Act 1996.** The act sets out workplace health and safety standards along with the roles of employers, workers, and inspectors in achieving them.
- **Essential National Industries (Employment) Decree 2011.** Introduced in July 2011, the decree applies to workers, employers, and unions of any "designated corporation" operating in an essential national industry as determined by the Prime Minister. An essential industry is defined as one that is essential to the economy and gross domestic product of Fiji. The decree overrides the ERP and significantly alters existing collective agreements, reforms union organizations, and restricts industrial action.⁷ In September 2011, regulations were

⁶ Since April 2011, government employees have been exempted from certain provisions of the Employment Relations Promulgation. The result is that public servants now have fewer avenues for initiating and resolving employment disputes.

⁷ Collective agreements, for example, are only valid for 60 days from commencement of the decree. If no new agreement is negotiated in that period, the employer has the power to dictate new terms and conditions of employment without employee consent (although it may be appealed to the Prime Minister). In the case of unions, they must reregister as a representative. Registration is for 2 years subject to election by employees or with a formal written statement of support from the employer. Representatives must apply to the Prime Minister for election or reelection. The Prime Minister also determines who can vote in the election. At any time, an employer or worker can apply to have a representative de-registered if they believe less than 35% of workers wish to be represented by that representative. In addition, all office bearers and members of representative unions must be employees of the designated corporation (i.e., only single workplace unions are allowed, and employers are not obligated to deduct

introduced designating the following industries as essential: financial (four commercial banks and Fiji Revenue and Customs Authority), telecommunications (Fiji International Telecommunications, Telecom Fiji, and Fiji Broadcasting Corporation), civil aviation (Air Pacific), and public utilities (Fiji Electricity Authority and Fiji Water Authority).

Employers are also obligated under the Fiji National Provident Fund Act to make social security contributions on behalf of their employees. The normal contribution rate is 16% of the employee's gross income, with the employer and employee each contributing an equal share.

The government also introduced the National Employment Centre Decree in 2009 to provide a framework for providing employment services to the unemployed. The center is administered by the Ministry of Labour, Industrial Relations and Employment and provides skills training and job facilitation services for local and overseas employment markets. Under the decree, firms with more than 50 employees are required to offer work attachments to unemployed people registered with the center at a ratio of 1 attachment to 20 employees. People on attachments are paid a wage of F\$60 per week. Initially, salary cost was to be shared equally between the firm and the government. Due to budget constraints, however, firms are being forced to cover the entire cost. Many larger firms reportedly already voluntarily provide work attachments through the universities and technical colleges. However, these attachments are not counted against this new requirement.

Key outstanding issues on labor regulations are summarized below:

- **Undermining of unions and collective bargaining.** Fiji has ratified conventions of the International Labour Organization (ILO) related to the forming of unions and collective bargaining, which provide workers with rights to organize and bargain with employers as a collective unit.⁸ These rights were then enshrined in the ERP. The ILO conventions only permit limitations on freedom of association in very limited circumstances, such as areas that could impact on the life and health of members of the community. In many countries, the limitations are restricted to areas such as policing and firefighting. The Essential Industries Decree overrides the ERP and designates a number of industries and corporations which are not considered essential services by the ILO. The reform has created an outcry from organized labor and has the potential to destabilize employer–employee relations in the country.⁹
- **Compliance difficulties for many businesses.** Some of the labor laws, regulations, and procedures, particularly those related to social security payments, employment terms and conditions including minimum wages, and workplace standards, are likely beyond the

union dues from wages). With respect to industrial disputes, these must be resolved internally or be reviewed by the employer's designated reviewing officer. Unresolved disputes over F\$5 million may be referred to the Prime Minister for final determination. Job actions, strikes, sick-outs, slowdowns, and lockouts are prohibited except after the 36-month bargaining period has been unsuccessful and has expired, and with the permission of the Prime Minister. Employees engaging in a strike at this time are subject to lockout by their employer and the unilateral imposition of new terms and conditions by their employer. The Prime Minister may declare any strike or lockout to be unlawful. Fines (up to F\$250,000) and imprisonment (up to 10 years) may be imposed for unlawful industrial action.

⁸ International Labour Organization Conventions No. C87 Freedom of Association and Protection of the Right to Organise, 1948, and No. C98 Right to Organise and Collective Bargaining, 1949.

⁹ See for example: Fiji Trades Union Congress. 2011. *Regime enforces repressive decree*. Suva; and International Labour Organization. 2011. *Statement on Fiji by ILO Director General Juan Somavia*. Geneva.

means of many small businesses. As a result, there is a risk they will either not hire workers or continue to remain in the informal sector.¹⁰

Recommendations:

- Review the Essential National Industries Decree to identify practical strategies for making the labor market more efficient and dynamic, without undermining workers' rights to organize and bargain collectively.
- Review existing labor regulatory requirements to identify how they could be simplified.

Licenses

Currently, the government does not have a central repository of information describing the many licenses and permits in effect at various levels of government within Fiji. Investment Fiji has begun to compile some of the information but coverage is limited. As a result, it was not possible to undertake a review of Fiji's licensing regime as part of this report.

A study completed by KPMG in 2002 reviewed the investment approval processes of 22 government agencies, including those involved in the business start-up and site development processes.¹¹ It identified some licenses and made recommendations for streamlining them, but it was not exhaustive in its coverage. The Ministry of Industry and Trade was responsible for overseeing implementation of the KPMG recommendations. However, work ceased when the coup happened in 2006; and it has not been restarted. Moreover, little of the implementation work that was accomplished addressed licenses.

Licenses and permits, because of their prescriptive nature, can generate significant and unnecessary costs for businesses, raise prices for consumers, and increase potential for corruption. For this reason, their use should be carefully assessed in order to ensure the benefits outweigh the costs.

Since 2006, the government has revised the regulatory requirements for access into a number of professions, including medical and dental practitioners, medical imaging technologists, and legal practitioners. It also introduced a licensing requirement for businesses buying and selling scrap metal. Consultation on these reforms appears to have been limited. While there may be valid reasons for a new license or reforming an existing one, it is important to ensure the necessity for such a license or changing it is justified (i.e., the economic benefits outweigh the costs), and it can be effectively and efficiently implemented. Annual licensing of scrap metal dealers, for example, appears to be an unnecessarily burdensome way of deterring the theft of scrap metal.¹² In the case of legal practitioners, there does not appear to be a valid reason for

¹⁰ See, for example, the discussion in: Fiji Institute of Applied Studies. 2010. *Regulatory Impacts on Small and Micro Enterprise Success in Fiji*. Suva: National Centre for Small and Micro Enterprises Development.

¹¹ KPMG. 2002. *Review of the Investment Approval Process*, for the Fiji Ministry of Commerce, Business Development and Investment. January.

¹² The Scrap Metal Trade Decree 2011 introduced a new licensing requirement for any business buying or selling scrap metal. The license is administered by the Ministry of Industry and Trade. It was introduced in response to an increasing trend in the theft of public infrastructure and private property for the purpose of dealing in scrap metal (i.e., copper wire, water meters, railway lines, and manhole covers). Licensed scrap metal dealers are required to submit a report to the licensing authority outlining the particulars associated with each purchase of public infrastructure metal within 7 days of the transaction.

shifting the issuance of practice certificates from the Fiji Law Society to the chief registrar of the High Court. Not only does it create a potential administrative bottleneck, it also undermines the independence of the legal profession.¹³ Good practice is to use a regulatory impact analysis process to improve the quality of new regulations.¹⁴ Processes differ from country to country, but they typically use a set of clear and consistent criteria to screen new proposals and involve significant levels of consultation with stakeholders. The process is usually coordinated by a regulatory reform body based in a central area of government.

The general business license, which is part of the business start-up process, is particularly problematic. It appears to have little value apart from raising revenue for municipal governments. Under the Business License Act (CAP 204), every person is required to obtain a license if engaging in a business designated by the minister of industry and trade as requiring a business license. Licenses are administered by local government councils within municipalities and the chief accountant in all other areas. The law is interpreted as applying to all businesses. The only basis it specifies for refusing to issue or renew a business license, is if the applicant is required to register a business name at ORC but has failed to do so. In the absence of implementing regulations, each local government council has developed its own requirements and additional decision criteria for issuing licenses. There is a lack of written information clearly describing these requirements. Councils appear to be using the license merely as a means of checking to ensure businesses have met other business start-up requirements, such as registering a business name, obtaining a foreign investment registration certificate and TIN, and being located in an appropriately zoned area. As such, the process is an additional and time-consuming exercise that must be completed by businesses each year. The Ministry for Local Government, Urban Development, Housing and Environment has introduced a common fee schedule and begun efforts to establish greater consistency in how the license is being administered through the development of a checklist. While these are useful initiatives, they do not address the more important question of whether the general business license actually serves a useful purpose. There does not appear to be a valid public policy objective for it. What the license does do, however, is raise revenue for councils. Businesses may be required to obtain several licenses depending on their activity and the number of locations in which they operate. In the case of Suva City Council, business licenses generated F\$800,000 in 2010—approximately 3.5% of its annual operating budget.¹⁵ Furthermore, Suva City Council's 2012 Annual Corporate Plan projected business licensing revenues for the year ending 31 December 2012 at just under F\$1.4 million, or 5.3% of the total budget.¹⁶

The general business license also appears to duplicate other licenses. This is because many sectors already have a number of additional licensing requirements to address concerns such as public safety or other public interest objectives. A hotel with a restaurant, in addition to obtaining two

¹³ The Legal Practitioners Decree 2009 introduced a revised framework for regulating legal practitioners, who must obtain a certificate of qualification from the Legal Education Board, which sets standards for legal qualifications. The chief justice, a government employee, has the power to admit practitioners to practice who have successfully obtained a certificate of qualification from the board to practice their profession in Fiji. Persons admitted to practice must then annually obtain a practice certificate issued by the chief registrar. The decree specifies a range of decision criteria. The decree also established the new Independent Legal Services Commission to hear complaints against lawyers in Fiji. Previously, the Fiji Law Society issued practicing certificates and heard complaints. The legal profession has raised concerns that the shift undermines the profession's independence.

¹⁴ See for example, International Finance Corporation. 2009. *Regulatory Reform in Developing Countries: the Role of Regulatory Impact Analysis*. Washington, DC.

¹⁵ Personal communication, Finance Department, Suva City Council.

¹⁶ Source: Suva City Council. 2012. *Final Annual Corporate Plan 2012*. Suva.

general business licenses (one for accommodation and another for the restaurant), must also obtain a separate hotel license issued by the Hotels Licensing Board, a food establishment license issued by the Board of Health, and a liquor license issued by the Liquor Licensing Authority—all of which must be renewed annually.

A quick review of the Hotels and Guest Houses Act (CAP 195) suggests Fiji's licenses may not be following good practice principles. For example, the public policy objective of the hotel license is not clearly stated. It appears to address concerns about the character of hotel managers, premises being used for illegal or immoral purposes, and the structural soundness and safety of hotel infrastructure. Many of these concerns are either already addressed through other legislation or could be addressed through lighter forms of regulation than a license. The application process for a hotel license also lacks transparency. The act includes some general decision criteria but gives the board (a chair and four other members appointed by the minister responsible for tourism) absolute discretion in determining license applications and setting license conditions.

Recommendations:

- In the short term, introduce a simple set of regulations to streamline the issuance of business licenses and ensure consistency in license administration.
 - Consideration should be given to ending the current practice of using the license simply to check if other regulatory requirements have been obtained. Only checks that are legally required should be done as part of the process. Instead, the license should be used as a means for local governments to identify businesses operating within their jurisdiction, their activities, and their location of operation. The information should then be used to help ensure that other regulatory requirements aimed at achieving public policy objectives are being adhered to. Only one license should be issued to each business covering all of their activities and locations.
- Conduct a review of the existing business licensing regime to bring it in line with good practice principles, to
 - ensure business licensing is used to address legitimate regulatory issues such as market failure, safeguard the public interest, and manage limited natural resources;
 - encourage efficient regulatory administration, including through improved coordination between government departments and levels of government to eliminate unnecessary duplication;
 - promote consistency between licensing and tax regimes;
 - make the regime more user friendly to Fijian microentrepreneurs and small businesses; and
 - reduce the administrative burden on businesses, where feasible.
- Introduce a regulatory impact analysis process to assess proposals for new regulations, including licenses and permits, to ensure they meet good practice principles.

APPENDIX 4

Foreign Investment

The essence of economic development is the transfer and adoption of best practices across borders. Foreign direct investment (FDI) is particularly well suited to achieving this and translating it into broad-based growth. Best practice can be transmitted across borders in several ways. Foreign buyers may assist domestic businesses to upgrade their services or systems. Technology licensing allows countries to acquire innovations. Expatriates working within the country can transmit knowledge, through technical assistance, mentoring or counterpart capacity building arrangements. However, the most effective means of transferring best practice is FDI. This is because it tends to package and integrate elements from all these other methods.¹

In recognition of its value to economic growth, the Government of Fiji has a policy of encouraging foreign investment into the country.² In addition to the regulatory requirements discussed in Appendix 3, foreign investors must also comply with the following regulatory requirements before they are allowed to invest in the country:

- obtain a foreign investment registration certificate (FIRC) from Investment Fiji (required under the Foreign Investment Act);
- obtain work permits from the Department of Immigration for non-citizen owners and personnel intending to reside in the country (required under the Immigration Act); and
- Register with the Reserve Bank of Fiji to confirm remittance of investment from offshore, approve the issue and transfer of shares to nonresidents, and remit funds offshore (required under the Exchange Control Act).

The process for obtaining a FIRC was streamlined in 2004–2005 with the introduction of a predefined set of transparent lists; reserving some activities wholly for Fijian citizens and 100% Fijian-owned entities; and subjecting others to specified restrictions, such as complying with joint venture requirements. As a result, application processing time was reduced from several weeks or months to less than 5 days. Work permits take approximately 1–2 weeks to obtain and are issued based on a person’s health and character. The permits are valid for 7 years. Registering with the Reserve Bank of Fiji can be done within 1 day.

¹ It is important to note that there are potential drawbacks to foreign investment for host economies, that must be managed. They include deterioration of the balance of payments as profits are repatriated, a lack of positive linkages with local communities and businesses, potentially harmful environmental impacts in extraction and heavy industries, social disruptions and the effects on competition in national markets. For example, see the discussion in OECD. 2002. *Foreign Direct Investment for Development: Maximizing Benefits, Minimizing Costs*. Paris.

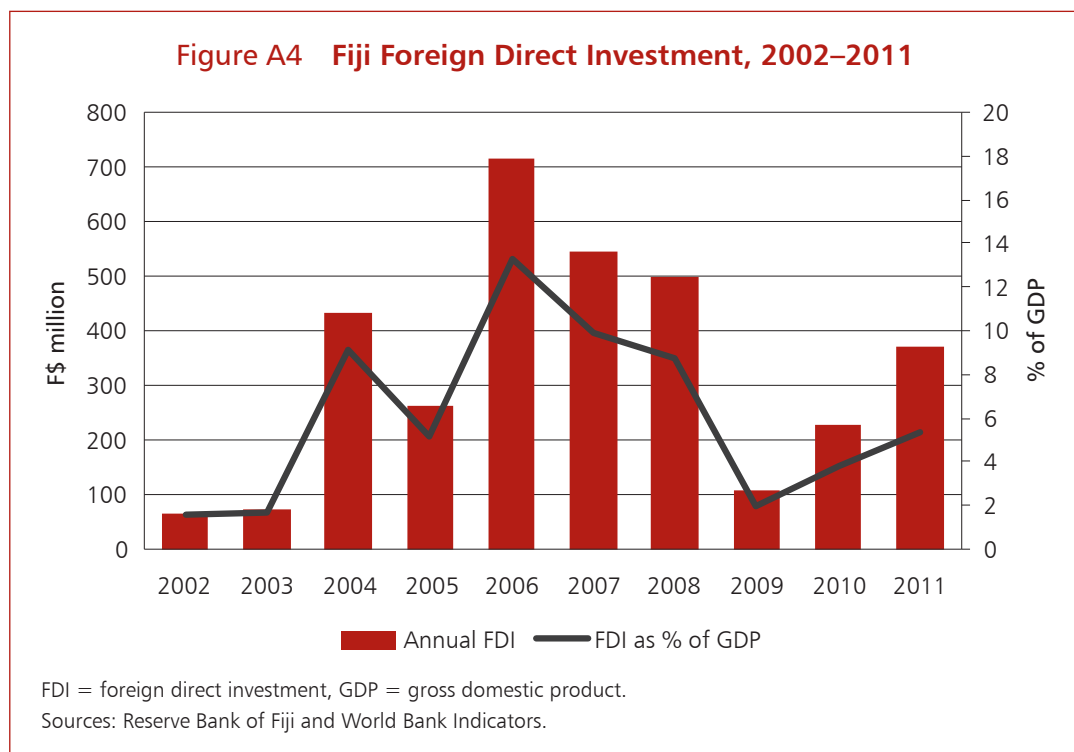
² A foreign investment in Fiji includes sole proprietorships owned by a foreign citizen, and partnerships/companies with any degree of foreign ownership.

Regulations to the Foreign Investment Act, however, were revised in 2008 and again in early 2009. The changes included the following:

- Activities on the Reserved List were amended with seven new ones included and two dropped; hence, showing a net increase in the list.
- Joint venture requirements were replaced with minimum investment thresholds ranging between F\$500,000 and F\$5.0 million for activities on the Restricted List. A minimum investment threshold requirement of F\$250,000 was also introduced for all other nonrestricted sectors.³ In addition, the minimum investment thresholds have to be in the form of cash deposited in a local bank and reflected in the shareholders' paid-in capital. Investors are given 12–18 months, depending on the size of their proposed investment, to show proof they have met the minimum investment requirements and have taken steps to implement their investments.
- The application fee was increased from F\$14 to F\$2,500.

Foreign investment has been an important contributor to Fiji's private sector investment flows in the past. Continued inflows are necessary if the government expects to achieve its investment target of 25% of gross domestic product. Foreign investment, however, has varied considerably over the years and has declined significantly since 2006 (Figure A4).

Underlying the recent decline in foreign direct investment is a decrease in the number of foreign investors seeking to establish themselves in the country. The number of FIRCs issued between



³ Editor's note: The minimum investment threshold requirement was removed in the 2012 Budget.

Table A4 Foreign Investment Registration and Implementation, 2005–2010

Item	2005	2006	2007	2008	2009	2010
Registrations						
No. of Foreign Investment Registration Certificates issued	541	441	398	245	80	117
Implementation						
No. of projects implemented	188	227	211	134	62	85

Source: Investment Fiji, 2012. *Fiji Government 2012 Budget Supplement*. Suva.

2005–2006 and 2009–2010 decreased fivefold from an average of 491 to 99 (Table A4). There has also been a decrease in the number of projects implemented over this period.

Legislative changes—such as Water Resource Tax Promulgation (2008) and the more recent Civil Aviation (Ownership and Control of National Airlines) Decree (2012)—are not the types of reforms that would be encouraging to foreign investors, because of the uncertainty they introduce into investment decision-making. Both targeted individual foreign-owned companies and changed important ground rules under which they operated, with limited consultation. The Water Resource Tax Promulgation affected Fiji Water and increased the rate it pays for water, from F\$0.03 a liter to F\$0.15 a liter. This rate, applicable to companies exporting over 3.5 million liters annually, only applied to Fiji Water. A similar decision in 2008 (to increase the rate to F\$0.20) was reversed after the company threatened to close its doors. The Civil Aviation Decree affects Qantas and reduces its influence on the Air Pacific Board, a company in which it has ownership stake and which it has been trying to sell.

In recognition of bottlenecks in the existing investment approvals process (see discussion in Appendix 3), the government is exploring the possibility of establishing an economic development board to fast-track large foreign and citizen-owned investments (value greater than F\$1.0 million). It would be chaired by the Prime Minister and include senior representatives from all key investment approval agencies. By September 2012 the Board had yet to be established. Under current legislation, each investment approval agency has authority to make decisions with respect to its area of responsibility. This currently limits the role which a Board can play in the investment approvals process to one of a facilitator rather than a decision maker. The Ministry of Trade and Industry is exploring options that would enable the economic development board to play a decision-making role in investment approval decisions. Investment Fiji is also working on a more effective means of tracking foreign investments through the investment approvals process, to better identify and address bottlenecks.

In addition to finding ways to streamline the investment approvals process, it will also be important to encourage more interest on the part of foreign investors in the country. Without it, there may be little foreign-funded projects to implement. Alongside the other issues discussed in the report, which apply to investment in general, there are a couple of additional issues which, when combined, increase the level of uncertainty—specifically for foreign investors:

- **High minimum investment thresholds.** What Fiji really needs are skilled and experienced entrepreneurs with access to new technologies and marketing networks. The banking

system currently has an excess of liquidity—it does not need new cash inflows. Prior to 2008, the FIRC did not stipulate minimum investment thresholds. Thresholds existed, but these were administered as part of the work permit process. A minimum investment of only F\$50,000 was required for each investor work permit and could be met in the form of cash or an in-kind contribution in the form of plant and equipment. The new requirements do not suit the pattern of starting small and building investments incrementally (a strategy that many foreign investors follow when investing in a small market like Fiji); or if many types of small specialized service activities where foreign investment is needed arise, such as specialist consultants. The high thresholds are also a serious disincentive for foreign citizens who might be interested in participating in small joint ventures with local citizens. The requirement that minimum investment thresholds must be reflected in the owners' contribution, or in the paid-up capital of companies, is also problematic in that it removes the flexibility of the business to decide on the mix of equity and debt it wishes to use. Investment Fiji will reportedly consider requests from foreign investors to reduce or waive the new minimum investment requirements, but the process is not well publicized and is supposedly at the discretion of the minister of industry and trade.

- **Exchange controls.** These controls create the perception that it is difficult to remit funds. The Reserve Bank of Fiji recently relaxed its foreign exchange controls. The 2012 budget increased delegated limits, allowing commercial banks greater authority to conduct transactions without the Reserve Bank of Fiji approval. Capital and profit remittances by foreign companies and individuals, however, still require tax clearance from FRCA and Reserve Bank of Fiji approval. The Reserve Bank maintains that it does not use these controls to prevent companies from repatriating profits or investment equities. In practice, however, the foreign exchange controls are still an additional regulatory hurdle for businesses to comply with and can disrupt the timing of such transactions.
- **Threat of devaluation.** Fiji's exchange rate continues to be pegged to a basket of currencies associated with its major trading partners. Fiji's recent political history has led to periodic overvaluation and repeated sharp devaluation due to inconsistent fiscal and monetary policies and a decrease in exports relative to imports. In April 2009, there was a 20% devaluation of the Fiji dollar. As a result, there is a natural reluctance on the part of foreign investors to convert a large quantity of funds into Fiji currency. Many investors would normally choose to maintain an external dollar account rather than bring it all into a local currency account.

Recommendation:

- Raise awareness of the removal of the minimum investment threshold among foreign investors, and improve facilitation services to increase the speed with which new investments can be implemented.

APPENDIX 5

Enforcement of Business Transactions

The ability to make and enforce contracts and resolve disputes is fundamental if markets are to function properly. Good enforcement procedures enhance predictability in commercial relationships and reduce uncertainty by assuring investors that their contractual rights will be promptly upheld by local courts.

Contract law includes the rules set and administered by the state that determine when an agreement is enforceable, the grounds on which a breach of the agreement will be found, and the consequences of the breach. General contract law in Fiji largely consists of rules and principles of English common law and equity, as expounded in the judgments of United Kingdom courts (English case law). In addition, case law from other common-law jurisdictions, in particular Australia and New Zealand, is regularly relied on. Over the years, there has also been a buildup of Pacific islands case law. More specifically, Fiji has a Sales of Goods Act (CAP 230) that governs the legal framework for exchange of goods. Freedom of contracting exists in the law and may be used to set up a variety of transactions.

Fiji operates a four-level court system. The High Court of Fiji is the court of originating jurisdiction, with a right of appeal available to the Fiji Court of Appeal and a further right of appeal available, with special leave, to the Supreme Court of Fiji. Less serious civil matters are within the jurisdiction of the Magistrates Court. The court system is also supported by a number of specialist tribunals including the small claims tribunals, which deal with minor civil disputes.

As a result of the abrogation of the Constitution in 2009, the entire judiciary was dismissed and reconstituted. The change has presented significant challenges to the effective operation of the judicial system. Concern was expressed by some private sector participants about the independence and qualifications of the current judiciary.

In addition to litigation through the judiciary, alternative dispute resolution processes are also in place. However, these mechanisms are not used that frequently in dealing with commercial disputes. Exceptions are building disputes, insurance policies and, more recently, labor-related disputes, where mediation has become the primary means of settlement. The Arbitration Act (CAP 38) lays out the procedure for arbitration.

The following reforms have been implemented since 2006:

- The High Court rules were amended to create a magistrate called a master. The reform has enabled judges to focus exclusively on deciding legal disputes. The master addresses all other matters, such as assessing damages after liability has been established and encouraging

settlement before matters go to a judge. Since 2009, the High Court has appointed three masters, one for each division. The chief justice also has discretion to assign additional responsibilities to masters outside Suva in the absence of a judge, in order to speed up court proceedings.

- Electronic scheduling software was introduced in the High Court to support more effective case management. The software has been operational in criminal cases since 2006, but was only adopted for civil cases in 2011.
- A special family court was also introduced. The court has taken family disputes out of the civil system, providing more time for civil court judges to address commercial cases.
- A publicly accessible judicial website that provides information on the workings of the courts was launched, thereby making the system more transparent. Judgments are posted to the website within 24 hours of decision.
- Claim thresholds for commercial cases within the Magistrates Court and small claims tribunals were increased. The maximum claim level in the Magistrates Court increased to F\$50,000 from F\$15,000. In the small claims tribunals, it increased to F\$5,000 from F\$2,000.
- Small claims tribunals within the country were expanded. In addition to those in Suva, small claims referees were appointed in Lautoka in 2006 and in Labasa in 2008. The total number of referees increased from 5 to 12 in this period. In 2011, mobile small claims tribunals were introduced in an effort to reduce delays and costs for parties located in smaller towns such as Ba, Raki Raki, and Sigatoka.

Key outstanding issues on contract enforcement are summarized below:

- **Inaccessible and out-of-date contract law.** The general law of contract is not codified. The general rules of formation, performance, and enforcement of contracts are found only in the reported decisions of courts in various common-law jurisdictions. The volume of these reports is massive and constantly increasing. Case law is often minutely detailed, abstract, and complex. The form in which the rules are stated varies from judgment to judgment, and no single formulation can ever be taken as authoritative or final. This inaccessibility and the time and cost required to apply the law creates difficulties in Fiji, where skilled legal advice is limited. As a result, contract law is poorly understood and ineffectively used by local businesspeople. In cases where legislation exists for specific types of contracts, such as the sales of goods, it is out of date and does not follow international developments.¹
- **Slow processing of commercial cases and substantial backlog in the High Court.** Information on the time it takes to make judgements in commercial cases within the civil division of the High Court is not readily available. The World Bank estimates it takes an average of 242 days to obtain a judgement on a commercial case in Fiji's High Court (filing and service, and trial and judgement).² As a result, there is a backlog of cases. The backlog is estimated to be between 1,000 and 1,500 cases. Through conversation with private sector

¹ For example, the Sales of Goods Act (CAP 230), which is based on the 1893 English Act with some minor modifications, still retains the concept of title transfer, and its specific implied provisions governing merchantable quality and fitness of purpose. Such concepts are outdated compared with modern developments in sale of goods laws.

² World Bank. 2013. *Doing Business* contract enforcement indicator.

business owners, there is some anecdotal evidence to suggest that the biggest constraint to addressing the problem is the quality of the judiciary. The new electronic case management software should provide useful information to help support and monitor implementation of measures to improve the efficiency of the system, including greater use of arbitration. Other basic infrastructure constraints also reportedly contribute to the slowness of the system. For example, electronic court recording is only available for selected large trials; the majority of court judgements are still written by hand. There is also a lack of courtrooms to hear cases, particularly outside of Suva. While the High Court has scope to appoint four more judges, it lacks the physical space to make the most effective use of its current judges, let alone additional ones.

- **Need to strengthen the small claims tribunals.** The tribunals are working well and their use has grown considerably with expansion of the system. Approximately 5,000 claims are lodged annually, reflecting a significant increase in the population's access to the judiciary. However, the system faces several challenges. The quality of referees has reportedly fallen over the years due to limited training opportunities, particularly with respect to commercial cases. This may undermine the quality of decisions. There are also problems in serving documents to respondents. This leads to delays, increased costs, and inefficiencies. The process has also reportedly been overwhelmed by business claims concerning nonpayment of money, suggesting a need for the small claims tribunals to become more strategic in how they deal with this type of claim.³
- **Limited use of arbitration.** There appears to be interest on the part of the government to make more effective use of arbitration, as evidenced by its recent ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.⁴ Moreover, the pool of potential mediators appears to have increased since 2006.⁵ Despite these changes, the use of arbitration does not appear to have expanded significantly. This is because of a lack of sufficient incentives encouraging businesses to use this method for resolving disputes. Part of the problem stems from a perception among the business community that the court system does not actively promote arbitration, and may in fact reverse arbitral decisions brought before it. Neither the High Court nor the Magistrates Court, for example, has procedures in place to refer suitable cases to arbitration. Moreover, under the current legislation, a party to an arbitration agreement may appeal to the High Court on any question of law arising from an award. The High Court may then issue an order to stay or dismiss the proceedings. It is important that once parties elect to use arbitration, they be bound by the outcome. The courts should not overturn awards but should enforce them swiftly; otherwise, arbitration does not provide a path to resolution outside the court system.
- **Lack of expeditious seizure mechanisms.** Effective contract enforcement requires mechanisms to enable low-cost seizure of collateral in the event it becomes necessary. Information on the amount of time it takes to enforce court judgments and arbitral awards

³ G. Chand. 2009. *The Small Claims Tribunal: An Effectiveness Study*. Suva: Consumer Council of Fiji.

⁴ The convention provides for a framework for recognition and enforcement of arbitral awards, which may only be denied by state courts in a limited number of cases. Fiji ratified the convention in September 2010. Fiji Government Online Portal. 2010. *Fiji to Sign and Ratify the Convention on the Recognition of Foreign Arbitral Awards 1958*. 21 September.

⁵ The Fiji Commerce and Employers Federation, for example, recently supported the accreditation of 50 new mediators to Australian standards.

is not available. The World Bank estimates it takes on average 155 days to enforce a high court judgment.⁶ The slowness of the system appears to be a function of the appeal mechanism, which is open to the losing party. While there have been no changes in civil procedure rules, judges have begun to advise parties that they must abide by a judgment before they can make an appeal. The costs of going to the appellate court have also been increased. In the case of disputes resolved by arbitration, Fiji's laws require that the awards be approved and enforced by the courts. This diminishes the benefits of arbitration in producing faster and cheaper contract enforcement.

Recommendations:

- Strengthen the understanding and use of contract law, to include
 - developing a broad codification of contract law that states existing rules of common law and equity in the form of broad principles; and
 - revising the Sales of Goods Act by adopting the United Nations Convention on Contracts for the International Sale of Goods (1988) to draft a modern sales statute governing domestic and international transactions, which cover the formation of contracts for the sale of goods, buyer and seller obligations, and remedies for breach of contract and other contract aspects.
- Further enhance the judicial system and resources for processing commercial cases, which would include
 - at the High Court, ensuring judicial appointments are appropriately skilled and experienced, implementing an electronic scheduling system for civil cases, and increasing the availability of technology to enable electronic recording of all judgments and the number of court rooms; and
 - within small claims tribunals, strengthening referee training by establishing a competency-based program for referees supported by a continuing education program, and improving the system for serving documents.
- Strengthen the framework for arbitration, to include
 - reviewing features of the Arbitration Act to make arbitration decisions binding, set arbitral standards, and reduce the cost of enforcement; and
 - reviewing the courts' case management system with the aim of using it to actively refer suitable cases to arbitration.
- Enforce judicial awards and arbitration decisions automatically or through licensed private agents
 - This may include providing the lender with a legal right to seize a debtor's deposits from their bank account, automatic deduction from checking accounts, harmless repossession, private sale, and ex parte court orders for seizure and eviction when the use of force is necessary, together with simplified and inexpensive police procedures to execute such orders.

⁶ World Bank. 2013. *Doing Business* database.

APPENDIX 6

Taxes and Investment Incentives

Taxes are essential to finance public services. The design of the tax system, however, can have significant economic impacts and influence business decisions on where to invest. Tax regimes with relatively high marginal rates, which include a number of exemptions and allowances, tend to be less economically efficient in relation to encouraging employment, saving, and investment. Such regimes generally also impose higher tax compliance and administration costs. Simpler tax systems promote economic growth and can help achieve a win-win situation for governments and industry.¹

Tax rates and tax administration are typically some of the highest-ranked obstacles identified by enterprises in investment climate surveys. A 2009 enterprise survey conducted in Fiji, for example, ranked tax rates as the fourth most serious business environment obstacle.²

Fiji's total tax rate appears to be relatively high compared with that of its regional neighbors. In 2012, the World Bank estimated Fiji's tax rate, as a percentage of profit, at 37.6%. The rate includes corporate income tax, labor tax and contributions, and other taxes. Fiji's total tax rate was higher than the ones in Vanuatu (8.4%), Samoa (18.9%), Tonga (25.7%), and Solomon Islands (25.3%). Only Papua New Guinea had a higher rate (42.2%).³

Fiji, however, also offers incentives that enable some businesses to reduce their tax burden, as well as the cost of importing selected goods. Incentives include:

- tax holidays for some sectors and regions of the country, including tourism (short life investment package providing 10-year tax holiday for capital investments of F\$7 million or more); agriculture (10-year tax holiday for capital investments of F\$2 million or more); information and communication technology (10-year tax holiday outside Kalabu Tax Free Zone for investments employing 50 people or more and where 60% of total services are

¹ Investment climate surveys conducted by the World Bank identify tax rates and tax administration as major constraints to business. Making it easier for businesses to pay taxes results in cost savings and greater ease of doing business. This encourages the growth of existing businesses and the creation of new ones. A better tax climate also discourages informality. As businesses increase their performance, the government is able to collect higher tax revenues. For a discussion of tax the benefits associated with tax simplification see: World Bank. 2009. *A Handbook for Tax Simplification*. Washington, DC.

² World Bank. 2009. *Fiji Enterprise Survey*. Washington, DC.

³ World Bank. 2013. *Doing Business* paying taxes indicator. The World Bank's methodology uses a case scenario to measure the taxes and contributions paid by a standardized business. The scenario uses a set of financial statements and assumptions about transactions made over the year. In each economy, tax experts from a number of different firms compute the taxes and mandatory contributions due in their jurisdiction based on the standardized case study facts.

exported); renewable energy producers (5-year tax holiday); micro and small enterprises involved in various agriculture and tourism projects (income tax exemption with maximum turnover threshold of F\$300,000); and outlying islands such as Kadavu, Lau, Levuka, Lomaiviti, Rotuma, Taveuni, and Vanua Levu (5- to 13-year tax holiday depending on the level of capital investment);

- investment allowances permitting the deduction of certain capital costs from taxable income, depending on the sector;
- accelerated depreciation on certain types of capital expenditures such as buildings used for agricultural, commercial, or industrial use; and plant and equipment for renewable energy investments;
- employment taxation scheme enabling deduction from taxable income of 150% of salary and wages for new full-time paid employment; and
- duty concessions on the import of raw materials and capital items used in approved manufacturing activities.

A duty suspension scheme is also in place that allows exporters to access inputs without having to pay duties upfront. The scheme is managed by the Fiji Export Council, an organization led by the private sector.

A considerable number of reforms have been implemented since 2006, which include the following:

- The Tax Administration Decree 2010 was introduced, modernizing and simplifying tax procedures in preparation for a shift to self-assessment. The review was done with the support of the International Monetary Fund via the Pacific Financial Technical Assistance Centre. The decree incorporates and harmonizes administrative functions in relation to various taxes. A portal was also introduced enabling tax agents to view and print via the internet certain taxpayer records such as notices of income tax, value-added tax (VAT) assessments, and statements of tax accounts.
- A capital gains tax (Capital Gains Tax Decree 2011) was introduced. Capital gains tax (CGT) is assessed at the rate of 10% on gains on the disposal of certain capital assets, such as land, buildings and improvement to land, vessels over 100 tons, yachts, aircraft, shares and other financial assets, and intangible assets.⁴ Gains below F\$20,000 and on the disposal of an individual's principal place of residence are exempt from the CGT. A person liable to pay CGT must file a CGT return within 30 days of the disposal of the capital asset. In the case of land, the decree prohibits the registrar of titles from registering a transfer until a certificate is issued by the Fiji Revenue and Customs Authority (FRCA) indicating satisfactory arrangements for payment of the CGT. Response from the private sector to the new tax has been mixed. It is viewed positively as a means of reducing the potential for disputes with FRCA with respect to sales of capital assets. Previously, disposals were taxed as income or, in the case of land, via a land sales tax. As of 1 May 2012, a defined process for taxing the sale of capital assets was in place which should, in theory, result in fewer disputes. However, concerns have already been raised by the private sector about the administration of the new tax, particularly in the case of land, where the property's actual purchase date is being

⁴ Assets that are not physical in nature, such as patents, trademarks, and goodwill.

used to calculate the tax liability, rather than a fair market assessment at a particular point in time.

- The corporate and personal income tax rates were significantly reduced. The corporate tax rate has been steadily reduced—falling from 31% in 2006 to 20% as of 1 January 2012.⁵ The 2012 budget also included reductions in personal income tax rates across the board and introduced a scaled “Social Responsibility Levy” for those with incomes over F\$270,000, beginning at 23% of total income and capped at 29% of total income. While the corporate tax rate decrease has been positively received by the business community, some in the private sector felt other tax changes undermined the impact of this reform and added further uncertainty to the business environment. In particular, concerns were raised about changes in the carrying forward of business losses, which have been reduced from 8 to 4 years. The system became effective on 1 January 2012, with businesses losing the ability to apply losses from previous years.⁶ A reform such as this, which suddenly and retroactively changes important tax rules, increases uncertainty in the investment decision-making process.
- Several other taxes were increased to offset the income and corporate tax cuts. This included extending the service turnover tax (formerly called the hotel turnover tax) to other tourism-related services and increasing the rate from 3% to 5%.⁷ In 2011, the VAT was increased from 12.5% to 15.0%, along with increases in resource taxes such as the water resource tax.⁸

In addition, FRCA, with the support of the Pacific Financial Technical Assistance Centre, is in the process of reviewing the Income Tax Act. The stated aim of the review is to modernize the language in the act and simplify procedures for movement to a self-assessment approach.⁹ A draft income tax decree has been circulated for review and feedback. Private sector participants, while supportive of the need for the review, expressed concerns about the consultation process. They were of the view that the draft decree represented significant policy changes—something that public notices related to the review failed to highlight. These included a new presumptive tax aimed at small business, as well as changes to the fringe benefit tax and nonresident tax. They also felt they were not being given sufficient opportunity to raise their concerns directly with the consultant working on the review.

Key outstanding issues on the tax and investment regime are summarized below:

Many of the existing investment incentives are poorly targeted and do not achieve their intended results. Despite the reduction in the corporate income tax rate, the package of investment incentives continues to remain in place. However, there are several problems associated with the incentives. The sector- and region-specific nature of many of the incentives

⁵ Fiji 2012 National Budget Address, 25 November 2012.

⁶ See the Social Responsibility Levy page on the Fiji Revenue and Customs Authority website.

⁷ As of 1 January 2012, the service turnover tax has been applied to hotels, rental car operators, inbound tour operators, bars and nightclubs, home stay operators, bistros, coffee shops and restaurants, and operators of various sports and entertainment activities. The rate increase was introduced in 2008.

⁸ In 2008, the government increased the tax rate for mineral water extraction from F\$0.03 a liter to F\$0.15 a liter. The increase is limited to companies extracting volumes in excess of 3,500,000 liters per month. The tax affects only one producer, which created a perception within the business community that the tax was directed at a specific business rather than at the sector as a whole.

⁹ Fiji Revenue and Customs Authority. 2011. *Public Notice: Public Hearings on Draft Income Tax Decree, 2011*.

distorts the investment environment. The attempt to “pick winners” often leads to a misallocation of resources and wasted investment. Resource allocation is most efficient and long-run growth is maximized when investors are left to identify and exploit business opportunities without guidance from the state. Moreover, tax holidays are the main element of Fiji’s sector and region incentive packages. These types of incentives are badly targeted because they are expectation- rather than performance-based; they also reward the formation of new companies rather than encourage improvements in areas that are really needed, such as increasing productive assets, accessing better technology and enhancing labor productivity. The incentives are also seldom cost-effective. Almost all empirical research¹⁰ suggests very little additional investment results from them, apart from unfettered, short-term investments that, if affected at all, often result in investors leaving or forming a new company after the tax holiday expires. There is also considerable discretion given to the minister of finance in awarding investment incentives. This negotiation-type approach to awarding incentives lacks transparency and can lead to unequal treatment and an uneven playing field. The complexity and negotiated nature of the incentive package also makes it difficult for small businesses to easily and effectively use the incentives. It is also a burden for FRCA to administer. Poor private sector investment performance over 2001–2012 suggests that incentives have not been an effective mechanism for attracting productive investment.¹¹

Recommendations:

- Reduce and simplify investment incentives, to (i) eliminate tax holidays and sector-specific incentives; and restructure the rest into a consistent, transparent package applicable to everyone with clear performance criteria and expiration dates;¹² and (ii) ensure that changes do not retroactively impact investors who have already been awarded incentives.
- Continue with reforms to modernize the Income Tax Act, to make the system friendlier to small businesses while not increasing the total tax burden on investors.

¹⁰ James, S. 2009. *Incentives and Investment: Evidence and Policy Implications*. International Finance Corporation. Washington, DC.

¹¹ See Figure A1.5, which shows private sector investment levels have steadily fallen since 2003, despite the investment incentives.

¹² If investment incentives are going to be used, they should focus on measures such as faster depreciation or other write-offs, tax allowances, or tax credits. These provide better targeting and can operate automatically, giving rewards only if a business undertakes a specific action.

APPENDIX 7

Price Controls

Prices set freely by the market play a crucial role in regulating the economy. Prices let businesses know which products and services are most highly valued by consumers and tell them which management methods, materials, or technologies produce the greatest economic benefit. By offering the prospect of profits, prices give each enterprise an incentive to invest, innovate, and offer products and services that are more highly desired. Prices also inform consumers about the relative scarcity of resources used in producing and providing various goods or services. Prices are therefore important indicators for economic players, leading to the most efficient possible use of scarce resources.

In Fiji, the government has imposed price and rent controls since the mid-1970s. This was originally done by the Prices and Incomes Board established under the Counter-Inflation Act (CAP 73). In 2010, these powers were shifted to the Commerce Commission.

The Commerce Commission Decree 2010 consolidated the role of the Commerce Commission as the key government institution responsible for encouraging competition within Fiji's marketplace. The decree replaces the Counter-Inflation Act (CAP 73), the Fair Trading Decree 1992, and the Commerce Act 1998. It gives the commission an active role in de-monopolizing markets, as well as in removing or controlling practices that restrict competition, such as price fixing and mergers and acquisitions that might result in a firm dominating a particular market. The commission recently played an important role in opening up the telecommunications sector to competition. The decree also gives the commission the authority to regulate prices, when necessary. Under the old system, price control decisions could be challenged by interested parties.¹ Under the new decree this is no longer possible. The private sector expressed concern at the lack of means for contesting price control decisions, and felt the change seriously undermined government accountability.

The commission regulates the price of key monopoly infrastructure services, such as electricity, water and ports, and telecommunications. In addition, it imposes "ceiling prices" in several other sectors. This includes a wide range of products in the food sector, such as milk, butter, corned beef, dried vegetables, edible oils, fish, ghee, noodles, rice, potatoes, flour, and bread. The number of food items under price control since 2006 has reportedly decreased, but the list is still extensive. Moreover, price controls are now being extended into new areas. In 2011, price controls were extended to hundreds of hardware items such as tools, bagged and bulk cement,

¹ Under the previous system, decisions by the Prices and Incomes Board were subject to judicial review.

concrete blocks, roofing products, timber, paint, plumbing supplies, and electrical products.² The commission also regulates rents landlords can charge tenants.

The government's rationale for price controls stems from its view that anticompetitive practices are common in small developing countries such as Fiji. The lack of sufficient competition enables market participants to earn abnormally high profits. The use of price controls is therefore justified by the pretext of protecting the interest of low-income users.

The key outstanding issue on price controls is summarized below:

Price controls distort market signals and discourage investment. In general, price controls distort market signals, discourage investment, and encourage low-quality production. For these reasons, they are best used sparingly and on a temporary basis. Fiji is an open economy. There also appears to be reasonable levels of competition in many of the sectors currently experiencing price controls, such as bakeries, hardware, and pharmacies. These sectors are not limited to only a few participants, and barriers to entry are not overly onerous. In the case food items, many of the items under price control are agricultural products that could be produced in Fiji. Price controls only serve to undermine the development of vibrant and sustainable industries for these products.³ Price controls also create a significant administrative burden for both government⁴ and business. In particular, the range of products covered and the complexity involved in abiding by price controls make compliance a serious challenge for small businesses. The determination of maximum prices, for example, is retailer specific based on their costs and need to be updated, often on a weekly basis. Fines for failing to correctly implement the controls properly are significant.

Recommendations:

- Significantly reduce the number of price controls (limiting to a few basic commodities at most) and provide support to vulnerable groups through other measures, such as targeted transfers, to mitigate the impact of any price increases.
- Review the existing competition framework and the commission's administrative structure and staffing resources, with the aim of further strengthening its capacity as a multisector competition authority.
- Make more effective use of competition policy to restrict or control anticompetitive behavior.

² For example, Price Control Order No. 2 issued on 1 February 2012 by the Commerce Commission for RC Manubhai comprises 136 pages.

³ There is increasing recognition of this issue within the government. For example, in September 2011, the attorney-general announced the removal of price control on what dairy farmers are paid for milk by the local supplier, Fiji Dairy. This was reportedly done in an effort to boost the country's dairy farming industry, reduce dependence on imported milk, and improve supplies to local users. The attorney-general stated, "We have to accept that the price paid to dairy farmers who supply milk to Fiji Dairy is not sustainable and if we were to continue with this price structure then we will find that there are no dairy farmers left."

⁴ The government, for example, had a staff of 22 price inspectors in September 2012.

APPENDIX 8

Infrastructure Services

Good quality infrastructure is essential to an economy that encourages investment, entrepreneurship, and growth. A reliable and low-cost supply of electricity keeps costs down and removes the need for both businesses and individuals to have backup generators, thereby allowing capital to be put to more productive uses. A safe and efficient water supply keeps the population healthy and reduces work absences due to illness. Widespread availability of telecommunication services links remote areas to larger markets. Road networks provide an efficient and cost-effective means of moving people and goods between rural areas and population centers, and to and from ports and airports. Efficient port facilities enable open export-driven economies dependent on maritime trade to move goods in and out of the country easily and cheaply.

In general, Fiji's infrastructure services related to electricity, water and sanitation, telecommunications, roads, and port services compare well with those of its neighbors in terms of access and cost (Table A8). However, despite this good relative performance, there still remains plenty of room for improvement. In particular, there has been a long-standing failure to charge sufficient prices for some infrastructure services. This has degraded the quality of these services over time. Brief summaries of each sector are provided below, including major reforms that occurred during 2006–2011 along with key outstanding issues.

Electricity

Electricity is provided by the Fiji Electricity Authority (FEA), a fully corporatized commercially oriented government-owned utility.¹ FEA operates four grids that supply electricity to all of Fiji's urban population. A substantial number of rural areas, however, are not grid-connected. Many of these communities rely on intermittent and unreliable electricity supplied through stand alone diesel generators, under a government scheme subsidized by the Department of Energy. Approximately 75% of Fiji's population has access to a power supply.

Hydropower² currently provides 48%–65% of the grid-supplied electricity. Oil-based generation provides most of the remainder. Independent power producers provide about 3% of the total

¹ Sources include Government of Fiji, 2011. Electricity Authority. *2010 Annual Report*. Suva. ADB. 2007. *Improving the Delivery of Infrastructure Services in the Pacific*, Final Consultant's Report. Manila (TA 6257-REG); and Dornan, M. and Jotzo, F. 2011. *Electricity Generation in Fiji: Assessing the Impact of Renewable Technologies on Costs and Financial Risks*.

² Monasavu hydro scheme, commissioned in 1983.

Table A8 Infrastructure Services: Selected Indicators

Indicator	Fiji	PNG	Samoa	Solomon Islands	Tonga	Vanuatu
Electricity^a						
Access to electricity (% of total households)	75%	12%	99%	8%	78%	19%
Average end use tariff (\$/kWh)	\$0.22	\$0.365	\$0.422	\$0.555	\$0.50	\$0.50
Water and Sanitation^b						
Access to improved water						
• Urban (% of total population)	95%	87%	100%	94%	100%	96%
• Rural (% of total population)	78%	33%	100%	65%	100%	79%
Average tariff for water and sewerage (\$/m ³)	\$0.39	...	\$0.25	\$0.96	\$1.03	\$0.66
Telecommunications^c						
Fixed line per 100 persons	14.9	1.0	19.3	1.5	28.7	2.1
Mobile subscriptions per 100 persons	83.7	34.2	91.4	49.8	52.6	119.0
Broadband subscriptions per 100 persons	2.7	0.1	0.1	0.4	1.2	0.2
Mobile high usage affordability (cost as % of monthly income)	12.5%	93.3%	14.4%	53.5%	9.0%	19.1%
Roads^d						
Total paved roads (km)	1,692	3,000	532	33	184	256
Total unpaved roads (km)	1,748	6,349	2,005	1,327	496	814
Road density (total km of road network/land area)	0.19	0.02	0.83	0.05	0.95	0.09
Ports^e						
Time to export (days)	22	23	25	24	22	21
Cost to export (\$/container)	\$655	\$949	\$690	\$1,070	\$755	\$1,690
Time to import (days)	23	32	28	20	26	20
Cost to import (\$/container)	\$635	\$1,130	\$775	\$1,037	\$740	\$1,690

... = not available, km = kilometer, kWh = kilowatt-hour, m³ = cubic meter, PNG = Papua New Guinea.

Sources:

^a All information except Fiji % households with access to electricity from ADB. 2012. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Papua New Guinea*. Sydney. Fiji % households with access to electricity from Fiji Electricity Authority website.

^b For Fiji, Water Authority of Fiji and World Bank development indicators; for PNG, World Bank development indicators; for other countries, ADB Pacific infrastructure performance indicators, 2011. Average tariff rates are for 2010, except Fiji for 2011.

^c International Telecommunications Union. ICT Eye Statistics. Statistics are for 2011 for Fiji, PNG, Solomon Islands and Tonga, and 2010 for Vanuatu and Samoa.

^d Central Intelligence Agency. The World Fact Book. Fiji.

^e World Bank. 2013. *Doing Business* report.

from bagasse (sugar industry) and biomass (timber industry). As a result of its significant use of hydropower, Fiji's average tariff rate is one of the lowest in the Pacific region (see Table A9). Price regulation of the grid-connected power supply is provided by the Commerce Commission, subject to review and approval of the Cabinet. Technical regulatory functions are retained with FEA.

FEA's profitability and ability to invest in improvements to the system were compromised by government's decision in 2007 to postpone implementation of the Commerce Commission's proposed electricity tariff rate increases. A series of increases were implemented, beginning June 2010. As of September 2012 the basic tariff rate for commercial and industrial users was F\$0.42, a 46% increase over the rate in effect prior to June 2010.³ The old rate was lower than the marginal cost of oil based power generation. The change has resulted in a significant increase in FEA revenues and profitability.⁴

In an effort to reduce the country's reliance on imported diesel, the FEA is building new hydro electric capacity. The Nadarivatu hydroelectric scheme was commissioned in September 2012. It is anticipated to generate up to 20% of the islands electricity needs. The FEA is also exploring opportunities for hydro projects in the Wailoa River basin.

Key outstanding issues on electricity generation are summarized below:

- **Improvements to rural electrification are happening slowly.** Although the government accords high priority to rural electrification and allocates an annual budget for this purpose, improvements have been slow. This is a function of several factors, including a lack of competition in project design and construction, and weak institutional capacity to construct and monitor rural projects or provide mechanisms for their sustainable operation and maintenance. In 2007 the government began installing solar home systems instead of diesel generators. Some 1,400 solar systems have since been installed. While this has been a cost effective means of rural electrification in many developing countries, the institutional structure used to implement the program in Fiji is failing to provide adequate maintenance.⁵
- **FEA is responsible for technical regulatory functions.** At present, technical regulation and enforcement of the Electricity Act (CAP 180) is the responsibility of the service provider, FEA. The responsibilities include the registration and licensing of electricians and electrical contractors, ensuring industry compliance in accordance with the Electricity Act and Australian and New Zealand wiring standards, approval of imported electrical appliances and fittings used in Fiji, and licensing of new independent power producers. This creates a potential conflict.

³ Fiji Commerce Commission. 2010. Determination of Fiji Electricity Authority Tariff Rates. Suva, and Fiji Electricity Authority website.

⁴ FEA total revenues increased 60% over 2009–2011 (from F\$189 million to F\$305 million). FEA's return on average shareholder equity (ROE) was 11.7%, one of the few SOEs to exceed the government's 10% ROE target. Source: Ministry of Finance, Asset Management Unit data

⁵ The Solar Project is operated under a Renewable Energy Services Companies (RESKO) model. Under this concept, equipment is owned by the Department of Energy (DOE), but installed and maintained by a private company selected competitively by DOE. Each user pre-pays a monthly fee that covers maintenance and component replacement as well as the non-subsidized portion of the initial cost. A 2012 review of the RESKO program identified major flaws relating to incorrect treatment of principal-agent problems, information asymmetries, motivational problems and inadequate resourcing of government agencies. It concluded that further expansion of the program using the existing structure will likely be a failure in the long term. Source: M. Dornan, 2011. "Solar-based rural electrification policy design: The Renewable Energy Service Company (RESKO) model in Fiji", *Renewable Energy*, vol. 36, no. 2, pp. 797–803.

The FEA reportedly fully supports transfer of the regulatory function to an independent entity within the government. In order to facilitate and expedite this transfer, the Regulatory Unit has been encapsulated within the FEA's organizational structure for the past several years.

Recommendations:

- Complete a rural electrification master plan and support its implementation.
- Remove the technical regulation of the electricity sector from FEA.

Water and Sanitation

Water and sewerage services are provided in three operational divisions that cover all urban areas in the country.⁶ Remote isolated rural areas on Fiji's main islands and small outer islands are served by government-subsidized village-based schemes. About 80% of the population have access to treated, delivered water, and 16% are connected to a centralized sewerage system.

Prior to 2007, water and sewerage services were managed by the Water and Sewerage Department. This changed in 2007 with the passage of the Water Authority of Fiji Promulgation, which officially established the Fiji Water Authority (FWA). The corporatization process, however, was not fully completed until January 2010. Price regulation of FWA's water and sewerage services is provided by the Commerce Commission, subject to review and approval of the Cabinet. Regulatory responsibility for water quality rests with the Ministry of Health, while sewerage has been shifted to the Department of Environment following endorsement of the National Liquid Waste Management Strategy in October 2006.

Considerable progress has been made since 2007 to improve the water system, particularly in the Suva–Nausori and Nadi–Lautoka corridors. The improvements included refurbishing pumping stations, reducing leakages in the distribution system, and improving water quality and flow. Less progress has been made on the sewerage front.

Water supply and sewerage services continue to be heavily subsidized to all user groups, including large commercial users. Of the FWA's F\$60 million annual operating budget, more than half (F\$35 million) comes from government.

Key outstanding issues on water and sanitation services are summarized below:

- **Water and sewerage tariffs are too low.** Over the years, the system has deteriorated as a result of inadequate maintenance, due to insufficient funds. Tariff rates have reportedly not increased since the 1990s. Moreover, water rates are exempt from value-added tax (VAT), while FWA must pay VAT on electricity for its pumping stations and other inputs. Recent improvements to the system would have been unsustainable in the absence of significant government support. Ideally, the tariff needs to be adjusted to achieve full cost recovery. This will enable government to redirect scarce funds to other areas. The FWA

⁶ ADB. 2007. *Improving the Delivery of Infrastructure Services in the Pacific*, Final Consultant's Report. Manila (TA 6257-REG); and Secretariat of the Pacific Regional Environment Programme and the Government of Fiji. 2007. *Fiji National Liquid Waste Management Strategy and Action Plan*. Apia.

increased its waste water surcharge from \$100 per ton to \$1,100 per ton in June 2012. Increasing the water rate will require several challenges. The quality of the system has historically been poor, which means that many consumers are likely to view an increase as being unjustified. Moreover, many consumers do not understand how the system works and feel that access to water should be free. Poverty levels in the country also appear to be increasing.

- **Technical regulation of the sector is weak.** Resource constraints limit the capability of the Ministry of Health and Department of Environment to effectively implement their regulatory responsibilities with respect to water quality and sewage disposal. Moreover, with respect to sewerage, there seems to be no formal regulations for effluent standards that FWA must comply with.
- **Sewerage coverage is limited.** Sewerage coverage is much lower than it is for water. Lack of sewerage has a number of negative impacts. It reduces income for FWA and constrains development within an area by limiting building density. This is because septic fields need significant areas immediately alongside dwellings, whereas centralized systems treat the sewage elsewhere. Stand-alone septic systems also pose local environmental problems because of their fragmented management. A key constraint to increasing sewerage coverage is the fact that legislation does not require property owners served by sewers to connect to sewer lines.
- **Delays in FWA corporatization and commercialization mean lost opportunities to partner with the private sector.** The private sector's potential to overcome capacity and services delivery constraints in this sector has not been fully utilized. Creating performance-linked partnerships with the private sector to operate and maintain FWA's physical assets could offer consumers a better overall product, through a contract arrangement which clearly links services performance with return on investment for the private operators.

Recommendations:

- Adjust the water tariff to achieve full cost recovery from all users who can afford to pay, and maintain the existing lifeline tariff for poor households; and enable FWA to charge VAT on its tariffs or exempt it from paying VAT on electricity purchases.
- Strengthen the technical regulation of the water and sewerage system.
- Improve the quality and coverage of the centralized sewerage system.
- Immediately complete the FWA corporatization and commercialization process.
- Consider separating operations and maintenance and service delivery from FWA asset ownership, by engaging private operators through performance-based management contracts to deliver incentive-linked services and more streamlined operations.

Telecommunications

Fiji has a significant advantage in overseas telecommunications services compared with many other Pacific island countries due to its access to the Southern Cross fiber cable, which connects

Fiji with New Zealand.⁷ As a result, it does not need to rely on satellite capacity, which is congested and expensive.

The government introduced new telecommunications legislation in 2008, and completed a settlement deed (Radisson Accord 2008) to remove exclusive rights to government companies. These reforms effectively deregulated Fiji's telecommunications sector.

The revised legislation established the Telecom Regulatory Authority as the technical regulator for the sector and introduced a new licensing regime. The authority was separated from the Ministry of Public Enterprises in 2010. A licensing regime review commenced in 2011, to more clearly define services associated with licenses and simplify the process in line with international good practice. Telecommunication prices are regulated by the Commerce Commission.

Telecommunication services in Fiji are operated by 11 main companies. Telecom Fiji is the sole provider of local and long-distance fixed line telephone services. Fiji International Telecommunications (FINTEL) had been the sole provider of international fixed telephone services. This changed in 2011 when Telecom Fiji negotiated access to the Southern Cross cable, thereby ending FINTEL's monopoly on the international gateway. Telecom Fiji is owned by Amalgamated Telecom Holdings (ATH), of which the government owns 35%. FINTEL is a private company jointly owned by the government (51%) and Cable and Wireless Communications (49%). Two operators offer mobile services—Vodafone, part of the international Vodafone Group and partly owned by ATH; and Digicel, which entered the Fiji market in 2008. There are three internet service providers offering fixed internet access—Connect, a fully owned subsidiary of Telecom Fiji; Unwired, a private Fijian-registered company; and Kidanet, a fully owned subsidiary of FINTEL. Vodafone and Digicel also offer mobile internet services. In addition, Coms provides rural wireless services, Transtel provides calling card services, Xceed Pasifika provides business communication and information technology solutions, and Fiji Directories provides directory services. Coms, Transtel, Xceed Pasifika, and Fiji Directories are all ATH subsidiaries.

Deregulation of the telecom sector has increased competition in the mobile and internet service provider (ISP) sectors. Mobile telephone services have shown significant growth, with penetration more than doubling from 34 subscribers per 100 inhabitants in 2006 to 83 in 2011. Internet uptake has been more modest. Fixed broadband internet remains in its infancy with just 2.7 subscribers per 100 inhabitants as of 2011, although there has been a considerable increase in mobile broadband subscriptions (0.9 subscribers per 100 inhabitants in 2008 to 16.1 in 2011).⁸ The introduction of competition also appears to have prompted a reduction in mobile prices. As it stands, Fiji is one of the most affordable Pacific island countries for both mobile and internet access.

Fixed telephone penetration levels over 2006–2011 remained relatively unchanged (13.8 subscribers per 100 inhabitants in 2006 to 14.9 in 2011). This may become a limiting factor for internet penetration with dial-up and ADSL services dependent on fixed telephone lines.

⁷ Sources include ADB. 2007. *Improving the Delivery of Infrastructure Services in the Pacific*, Final Consultant's Report. Manila; International Telecommunications Union. *ICT Eye Statistics, 2006–2011*. Geneva; and Network Strategies. 2010. *Progress of Competition in Pacific Islands Mobile Markets*. Auckland.

⁸ Government of Fiji, National Broadband Policy, October 2011.

In January 2011, the government introduced a F\$0.03 per minute levy on all incoming international calls. The Telecommunication Promulgation also introduced a universal service fund that operators pay into from their revenues. These funds are used to expand telecommunication services to rural and underserved areas.

Key outstanding issues on telecommunication services are summarized below:

- **Broadband penetration is limited.** Despite increased competition, broadband internet use remains limited. The government recognizes the importance of accessible, quality and affordable broadband internet to Fiji's development. In October 2011, it launched a national broadband policy and action plan to address the problem. The policy establishes a roadmap for future broadband development. Goals include providing all primary and secondary schools with broadband access by 2016, and eventually providing broadband service to 95% of the population. Initially, an affordable broadband service will be made available to people with a basic download speed of 256 kbps. One policy constraint is Telecom Fiji's ownership of the fixed line infrastructure and no current obligation to provide access to competitors. Fiji's small market means that building new fixed line infrastructure is unlikely.
- **Some rural areas remain without telecommunication coverage.** Coverage has improved as a result of deregulation, but there are still areas without service. The government is developing an infrastructure-sharing policy, that would create opportunities for private companies to share capital expenditure in isolated areas with low population densities.

Recommendations:

- Continue to expand telecommunication coverage to include all populated areas, which will involve supporting initiatives that enable companies to share capital expenditures for infrastructure in isolated areas.
- Enhance competition options in broadband internet service, by making the existing fixed line infrastructure available to multiple users under reasonable terms and conditions.
- Use funds from the universal service fund and the levy on incoming international calls to partner in infrastructure-sharing efforts.

Roads

Land transport is the dominant form of transport in Fiji. While the road network is largely complete, a large proportion still consists of low-standard gravel roads, resulting in high vehicle operating costs. These roads impede socioeconomic development, lengthen travel time, and cause damage to transported goods. Existing roads are also inadequate for current traffic loads. Moreover, traffic volume is increasing and heavy vehicles are further damaging the roads.

Historically, road maintenance in Fiji has been poor and underfunded. This has constrained the development of a predictable, long-term market in which the private sector might take an active interest. The Department of National Roads (DNR) was responsible for Fiji's roads up to the end of 2012. Contract management skills within DNR were weak and needed strengthening in order

to make effective use of the private sector. There was a road asset management system in place, but DNR lacked sufficient capacity to effectively use it.

The government introduced a road levy in January 2009 for all vehicles. The levy was decreased by 25% later that year in response to public concern. The amended levy had generated about F\$8.0 million annually for road maintenance. The government introduced the Land Transport (Road Levy) (Amendment) Decree in 2010, which established the new Infrastructure Rehabilitation and Development Fund for the road levies. Previously, road levies went into the consolidated fund. The new fund required the levies to be used only for road development and maintenance. Despite the road levy funds, road maintenance continued to be underfunded.⁹

However, DNR did implement many road related capital projects between 2006–2011, including road and bridge upgrades in the Suva–Nausori corridor, the Kings Highway and Sigatoka Valley. ADB, the China Exim Bank and the Exim Bank of Malaysia funded the bulk of the roadworks.

DNR thereafter underwent a lengthy corporatization process, with the aim of enhancing governance and improving the utilization of road user levies to improve road asset management, planning, and maintenance. In January 2013, DNR was fully corporatized and the Fiji Roads Authority ('the Authority') became responsible for all roads and bridges formerly managed by DNR and municipal councils, and for all public jetties. The Authority's 2013 annual budget is F\$428 million.

Key outstanding issues on the road system are summarized below:

- **The capacity of the former DNR was limited, and the Authority faces similar challenges moving forward.** Following the corporatization process and the opening of the new office in January 2013, the Authority needs to continue to strengthen maintenance of the former DNR's asset register and road maintenance system, as well as to enhance its contract management capabilities. Government-owned road maintenance equipment is in poor condition and should be sold to the private sector.
- **Regulatory oversight has been weak.** Monitoring of road performance and quality standards is presently ad hoc. There is a need for road standards monitoring and enforcement to be separated from direct maintenance activities.

Recommendation:

- Further strengthen the existing road maintenance system and improve regulatory oversight in road and quality standards.

⁹ The Minister for Public Utilities, Works and Transport has indicated the money collected via the road levies was insufficient for road maintenance work. The annual cost of road maintenance work is an estimated F\$24 million, double the annual allocation it currently receives to do this work. Source: *Fiji Times*, Road Dilemma, 29 June 2012.

Ports

Fiji Ports Corporation (FPC) is responsible for the operation and maintenance of Fiji's six declared ports of entry (Suva, Lautoka, Labasa, Levuka, Rotuma, and Nabouwalu).¹⁰ It also oversees other local port facilities. FPC was established in 2004 under the Companies Act, as a government-owned commercial enterprise. Operation and maintenance of the ports are handled by FPC's subsidiary, Ports Terminal. FPC also operates and manages Fiji Ships and Heavy Industries, whose core business is slipping marine vessels, ship repairs, and maintenance and engineering works.

The upgrade of the Suva and Lautoka ports (Fiji's two busiest ports), funded by the Asian Development Bank (ADB), was completed in December 2004. In 2006, FPC purchased three mobile cranes—two for Suva and one for Lautoka. These reforms have led to significant improvements in container efficiency. Prior to the reforms, Ports Terminal was managing 7–10 container lifts per hour. In 2011, they averaged 15 container lifts per hour.

Rates at FPC's ports are set by the FPC board following a consultation process with shipping companies. The proposed rates are then submitted to the Commerce Commission for review and approval by the Cabinet. Tariffs were last revised in 2009. A tariff review was initiated in June 2012, with the final report due in November 2012.¹¹

FPC undertakes many functions at its ports including stevedoring and pilotage. The exception with respect to stevedoring is the Lautoka port, where these services have been contracted out to the private sector for many years. FPC believes that contractor performance is below the level of service provided by the in-house service, Ports Terminal, at the Fiji port. Despite this, FPC continues to explore options for tendering more of its port functions to the private sector in an effort to improve efficiency and reduce costs.

Importing and exporting goods through Fiji's ports involve interacting with several agencies in addition to FPC. This includes the Fiji Revenue and Customs Authority (FRCA) to obtain customs clearance of the goods, as well as the Biosecurity Authority of Fiji for quarantine approval. Shipping agents assist importers and exporters to comply with these requirements. Comparative data available from the World Bank indicate the cost of importing and exporting a 20-foot container to and from Fiji was the lowest in the Pacific region in 2011.¹² These data, however, do not appear to include the "port service surcharge" charged by shipping companies on all containers entering and leaving Fiji. The surcharge has been justified on the basis of the increased costs shipping companies reportedly incur as a result of congestion and poor handling performance at the port. FPC assumed the improved efficiency gains resulting from the infrastructure improvements made since 2004 would eliminate or least reduce the surcharge, but this has not been the case. The surcharge was F\$150 (approximately \$70) per twenty-foot equivalent unit in 2002, F\$250 (approximately \$150) in 2008, and

¹⁰ ADB. 2007. *Improving the Delivery of Infrastructure Services in the Pacific*, Final Consultant's Report. Manila (TA 6257-REG); ADB. 2008. *Completion Report: Fiji Islands Ports Development Project*. Manila; Fiji Ports Corporation. 2009. *Corporate Plan 2010*. Suva; ADB. 2011. *Aide Memoire Ports Development Project Fiji—Independent Evaluation Mission*. Manila; and World Bank. 2012. *Doing Business* trading across borders indicator.

¹¹ Editor's note: By mid-March 2013, an update to the 2009 tariff review had not been made publicly available.

¹² World Bank. 2012. *Doing Business* trading across borders indicator.

increased to F\$350 (approximately \$190) in January 2011. The Biosecurity Authority of Fiji also now requires quarantine clearance for all shipments and substantially increased its fees in 2011.

The Suva port is expected to reach its physical capacity by 2020. FPC, with government support, plans to replace the Suva port with a multipurpose cargo facility at Rokobili.¹³ By September 2012, FPC had received EIA approval along with a 2-year development lease. FPC is reviewing project funding options.

Key outstanding issues on the port operation are summarized below:

- **The speed of port and terminal handling is relatively slow.** The World Bank estimates the average time required for ports and terminal handling of a 20-foot container at Fiji's ports is 9 days for importing and 7 days for exporting. This is slower than Papua New Guinea (7 days and 3 days), and considerably slower than New Zealand (2 days and 1 day).¹⁴
- **Requirements for importing and exporting remain burdensome.** The World Bank estimates it takes 10 separate documents to import and export a 20-foot container to and from Fiji's ports. This is considerably more paperwork than needed in Organisation for Economic Co-operation and Development countries (average of five and four documents for importing and exporting respectively), or in other East Asia and Pacific countries (average of seven and six, respectively). Increased quarantine requirements also have the potential to further increase paperwork in Fiji.¹⁵

Recommendations:

- Benchmark Fiji's ports against a suitable international "best practice" port, to identify practical strategies to speed up port and terminal handling and eliminate the existing port service surcharge.
- Undertake a mapping exercise of the entire process for importing and exporting goods at the Suva and Lautoka ports, to identify bottlenecks, burdensome procedures, and practical solutions.
- Pursue Fiji Ports' proposed Rokobili container and multipurpose terminal project within a public-private partnership arrangement, and encourage quality international operators to invest in the project through strengthened procurement processes.

¹³ The PSDI recommends that this project is pursued under a public-private partnership (PPP) arrangement, using a transparent and robust development process.

¹⁴ World Bank. 2013. *Doing Business Report*.

¹⁵ *Ibid.*

APPENDIX 9

State Ownership of Enterprises

State-owned enterprises (SOEs)¹ play a significant role in the Fijian economy. They include commercial statutory authorities and government commercial companies. In addition, the government has a minority ownership stake in a number of private companies. The government's SOE interests encompass infrastructure services discussed in the previous appendix, as well as other commercial activities such as rice milling, cattle farming, sugar milling, fish processing, coconut milling, telecommunications, and broadcasting. In September 2012, the state owned or had a majority ownership stake in 22 SOEs (Table A9). The portfolio represents about one-fifth of the Fijian economy's total fixed assets.² Portfolio responsibility is split between the Ministry of Public Enterprise (MPE) and the Ministry of Finance. The government is also in the process of liquidating three other SOEs (National Trading Corporation, Shipbuilding Fiji, and Viti Corps Company).

Fiji's SOEs were created in response to a perceived need for the government to deliver goods or services which the private sector was unable or unwilling to provide. In many cases, the lack of private sector investment was not due to true market failure, but a poor investment climate. Where true market failure exists, the government has a legitimate role, and SOEs can play a useful role in addressing the failure. As markets evolve, the role of SOEs and the government as shareholder also should evolve. International experience³ shows that private enterprises, through profitability incentives, sound regulation, and competition, provide most services more efficiently than SOEs. Fiji's private sector has both the ability and desire to supply many of the services currently delivered by SOEs. It is, therefore, in the state's best interest to increase the role of the private sector in providing goods and services currently delivered by SOEs.

Within the region, Fiji has been an early implementer of SOE reform and a leader in public-private partnerships.⁴ Results have included contracting private companies to provide subsidized

¹ An SOE is a corporatized entity with a commercial mandate in which the state holds a controlling equity stake.

² The SOE proportion of total fixed assets in the Fiji economy was estimated to be between 12% and 26% in 2008. Source: ADB. 2011. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Fiji, Marshall Islands, Samoa, Solomon Islands and Tonga*. Sydney.

³ ADB. 2011. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Fiji, Marshall Islands, Samoa, Solomon Islands, and Tonga*. Sydney.

⁴ Public-private partnerships are cooperative ventures between the public and private sectors. They can take a number of forms, but the most common include (i) service contracts, (ii) management contracts, (iii) concessions, and (iv) build-own-lease or build-operate-transfer. Under a service contract, the private sector provides a service such as road maintenance or transport for a fee. Under a management contract, the private sector manages but does not own public assets. Concessions involve the private sector modernizing public assets to deliver a specific output. Under build-own-lease and build-operate-transfer, the private sector builds a new asset such as a hospital or power generation unit, and then the asset is leased back to the public sector (e.g., hospital) or its output (e.g., power) is sold to the public sector or directly to consumers.

Table A9 Fiji State-Owned Enterprises (Excluding Minority-Owned Entities)

	FY2002–2010					FY2011				
	Government Shareholding (%)	Return on Assets (%)	Revenues (F\$ '000)	Net Profit after Tax (F\$ '000)	Total Assets (F\$ '000)	Return on Assets (%)	Long term interest bearing debt (F\$ '000)	Return on Average Equity (%)		
SOE WITH MINISTRY OF PUBLIC ENTERPRISES										
Government Commercial Companies										
1	100	1.5	59,773	12,478	193,343	6.5	13,965	9.2		
2	100	2.4	47,731	5,642	159,074	3.5	55,484	6.0		
3	100	1.4	6,468	768	27,626	2.8	20,132	13.9		
4	100	1.2	4,142	54	6,364	0.8	2,675	2.2		
5	100	1.5	23,726	-476	25,978	-1.8	943	-4.1		
6	100	-11.7	242	-111	1,795	-6.2	1,900	NA		
7	100	4.5	1,251	149	1,091	13.7	0	19.3		
8	100	7.8	3,725	2,084	14,779	14.1	0	15.7		
9	100	5.1	1,307	421	8,346	5.0	0	5.4		
10	90	-1.1	21,252	-220	150,142	-0.1	NA	-0.2		
Commercial Statutory Authorities										
11	100	0.1	305,544	51,910	983,010	5.3	359,929	11.7		
12	100	0.7	16,408	394	174,738	0.2	98,059	0.7		
13	100	14.2	4,286	792	8,442	9.4	1,524	24.7		
14	NA	NA	3,534	-37	2,045	-1.8	1,274	-7.2		
15	100	NA	NA	NA	NA	NA	NA	NA		
Majority-Owned Entities										
16	100	3.6	18,202	-4,264	27,944	-15.3	3,037	-22.3		
SOEs WITH MINISTRY OF FINANCE^a										
Majority-Owned Entities										
17	51	1.9	586,681	25,296	400,672	6.3	5,628	23.4		
18	100	-4.7	63,020	7,521	114,461	6.6	53,836	16.5		
19	51	13.2	27,057	1,064	54,465	2.0	0	2.0		
20	68	-18.1	154,295	-36,624	148,697	-24.6	218,322	NA		
21	51	NA	28,355	1,946	33,240	5.9	0	7.4		
22	94	NA	4,971	-571	10,306	-5.5	1,013	-17.1		
Total Portfolio		0.2	1,381,970	68,216	2,546,558	2.7	837,721	NA		

NA = not available, FY = fiscal year (coincides with calendar year), SOE = state-owned enterprise.

^a The Ministry of Finance also oversees minority government shareholding in five other private companies: Air Fiji (11.45%), Amalgamated Daily Post (46%), Fiji Television (14%), Pacific Forum Line (23%), and Telecom Holdings (34.6%).

^b Editor's Note: In May 2013, the Prime Minister announced plans to completely privatize Copra Millers of Fiji. This process will be managed with ADB assistance.

As of October 2012, audited financial statements for 2011 were available for only 9 of the 22 SOEs (Airports Fiji, Fiji Ports Corporation, Fiji Electricity Authority, Air Pacific, Fiji Pine, Fiji International Communications, Fiji Sugar, and Air Terminal Services). In the case of the other SOEs, the most current audited financial statements range from 2007 to 2010.

Sources: For FY2002–2010 ROA data—ADB. 2012. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Papua New Guinea*. Sydney: For 2011 data—Ministry of Finance, Asset Management Unit.

air and shipping services. Fiji's reform program has been under way since 1990, and formalized with the adoption of the 1996 Public Enterprise Act. In 2001, the government established a policy framework for SOE governance, management and privatization. A corporate governance framework followed in 2003.

While reform progress initially stalled as a result of the December 2006 coup, it picked up in 2009. The Roadmap for Democracy and Sustainable Socio-Economic Development 2009–2014 announced an ambitious plan to accelerate public enterprise reform, including a program of SOE divestment, corporatization of water and roads, and increased outsourcing to the private sector.

Achievements during 2006–2012 include:

- merger of Fiji Ships and Heavy Industries into Fiji Ports Corporation in 2009;
- corporatization of the Water and Sewage Division of the Ministry of Public Utilities into a commercial statutory authority (Fiji Water Authority) in 2010; and
- Fiji Dairy privatization in 2012.⁵

Progress has also been made in other areas. MPE implemented a new strategic analysis system in 2012 to monitor SOE operational and financial performance. Restructuring efforts also began in 2012 to align Fiji Hardwood Corporation's operations with the functions outlined in the Mahogany Industry Development Decree 2011. Eventually, all mahogany re-forestation, harvesting, processing and marketing activities will be done by the private sector. Fiji Hardwood will focus on the core tasks of forest management, licensing and establishing a global brand for Fiji mahogany.

In 2010, the government made a commitment to reform the sugar industry and return the Fiji Sugar Corporation (FSC) to profitability. This included assuming all FSC debt (except the overdraft facility) and assuming 100% company ownership and control. FSC has been operating at a loss since 2006, in large part due to mismanagement of a mill upgrade program that left the company unable to crush the minimum quantity of cane required for profitability. Despite decreases in the quantity and quality of sugar grown in Fiji since the 1990s, the industry remains important to the economy. An estimated 20% of Fijians depend on the industry for their livelihoods (growers, transporters, millers, and associated service providers). In 2011, the government launched a comprehensive strategy addressing farm productivity, mill efficiency and pricing. The reforms were expected to cost F\$300 million over 2010–2012.⁶ Reform program success will depend on a range of factors, including improvements to FSC management and governance. The government should consider divestment of FSC as an option after the reforms have been implemented.

⁵ In 2010, the government restructured the Rewa Cooperative Dairy Company Limited (RCDCL) into two entities: Fiji Dairy (processing company), and Fiji Cooperative Dairy (farmers cooperative). The government sold its 80% share in Fiji Dairy to Southern Cross Foods (SC Foods) for F\$10 million on 30 August 2012. Under the conditions of the sale, SC Foods will purchase all the milk produced by the FCDL for the next 10 years. It also ensures that the 20% Class B shares in Fiji Dairy held by the farmers will not be diluted. Source: Fiji Live, 23 August 2012. *Fiji Dairy Ltd sales to SC Foods formalized*.

⁶ Government of Fiji. 2010. *Proposed Sugar Industry Reform Framework*. November. Suva.

SOE reform priorities over 2012–2014 include: reviewing the Public Enterprise Act; completing the corporatization process for at least three government departments; privatizing a number of SOEs; and encouraging greater outsourcing of government services to the private sector. A 10-month ADB technical assistance project⁷ commenced June 2012. The project is assisting the government to strategically implement its SOE reform priorities. The status of reforms in these priority areas in September 2012 was as follows:

- **Legislation:** Reviews of the Public Enterprise Act and the Public Private Partnerships Act were completed in July 2012 and reform recommendations are under consideration. MPE had targeted the end of 2012 for passing revisions to the Public Enterprise Act.
- **Corporatization:** One government department—the Department of National Roads—is actively undergoing corporatization. Two other departments are also being considered for corporatization: Biosecurity Authority of Fiji and the Maritime Safety Authority of Fiji. The ADB project has recommended that government not expend its scarce resources on corporatizing additional non-commercial entities. Instead, it recommends that the reform should focus on more substantive measures directed at existing SOEs, particularly improving corporate governance, strategic planning, and privatization.
- **Privatization:** MPE has indicated its intention to privatize nine SOEs: Fiji Meat Industry Board, Food Processors (Fiji), Post Fiji, Airports Fiji, Fiji Ports Corporation, Fiji Broadcasting Corporation, Rewa Rice, Yaqara Pastoral Company, and Pacific Fishing Company. Food Processors (Fiji) was initially advertised for sale in early 2012, but was quickly withdrawn. Tenders for valuing six of these SOEs were also launched early in 2012. As of September 2012, no contracts for this work had been issued. There is still no privatization policy in place to guide valuation, tendering and other matters, although work is under way to address this gap.
- **Outsourcing:** An Outsourcing Committee was established in 2011 to identify government functions that could be outsourced to the private sector. MPE has requested budget support in 2013 to hire a consultant to work with the Committee to address issues of contracting and monitoring, and assess existing contracts between government departments (not SOEs) and the private sector.

Key outstanding issues:

- **Continued substantial presence of the state in running businesses is harming the private sector and reducing overall economic growth.** Despite reforms, the government still maintains a sizable investment in SOEs which provides a low return on investment.⁸ In

⁷ ADB. 2012. *Technical Assistance to the Government of Fiji for Implementing Reforms of State-Owned Enterprises*. Manila.

⁸ The return on equity for Fiji's total SOE portfolio over 2002–2009 was 0.7%, far below the government's minimum target of 10%. Breaking down the portfolio by SOE type, the return on equity for infrastructure services SOEs was 2.0% and for commercial SOEs it was –1.0%. The returns would have been even lower if the SOEs had paid commercial, rather than subsidized, rates of interest on their debt. If that had been the case, the return on equity for infrastructure services SOEs would have been 0.8%, and for commercial SOEs it would have been –1.9% (Source: ADB. 2011. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Fiji, Marshall Islands, Samoa, Solomon Islands and Tonga*. Sydney). In 2010, Fiji's total portfolio had a return on equity of –11.4% (Source: ADB. 2012. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Papua New Guinea*. Sydney). Financial data provided by the Ministry of Finance for 2011 (Table A10) indicates the financial performance of the portfolio has improved. In 2011, 7 of the 22 SOEs managed to achieve or exceed the government's minimum ROE target of 10%, whereas in both 2009 and 2010, the target was achieved by only three SOEs.

2008, the SOE portfolio's contribution to GDP per US dollar of investment was \$0.19.⁹ In contrast, the contribution to GDP per US dollar of investment in the non-SOE sector for this same period was \$1.26—about 6.5 times greater than the SOE sector. This reduced Fiji's economic growth rate in 2008 by between 0.11% and 0.33%. Over time, the consistently lower productivity of the SOE sector amounts to a significant drag on economic growth.

Fiji's SOEs also crowd out private investment. Where SOEs enjoy monopoly rights, the absence of competition often results in substandard service delivery and high costs. Because many of these monopoly rights exist in core infrastructure services essential for private sector competitiveness, SOE inefficiencies can have a direct impact on private sector growth. Where they do not have monopoly rights but compete with private sector companies, they often have preferred access to government contracts and can raise capital at subsidized rates. Investment in underperforming SOEs also has opportunity costs, because it absorbs funds that could generate higher returns through more productive activities. In 2002–2009, the government provided F\$42 million in new funds to underperforming SOEs. In turn, these SOEs generated profits of F\$33 million, which fell well short of government-targeted returns of F\$406 million. This earnings shortfall, together with new investment in SOEs, totalled F\$414 million—equivalent to almost 75% of total government expenditures on health over the same period.¹⁰

- **Capacity to implement ambitious reform plans is limited.** The government's plan to significantly improve SOE performance and reduce its presence in commercial enterprises is a very positive policy decision. However, it faces significant capacity constraints in implementing this agenda. For example, MPE operated with just six staff until 2012 as a result of a civil service hiring freeze. It received additional resources in its 2012 budget and, at September 2012, had increased its staff to 17. Additional employees are only part of the solution—staff also need to be appropriately skilled and experienced, and effectively managed. Unfortunately, MPE lost several senior staff in 2012, and the majority of its new recruits have little experience with SOE reform.¹¹ As a result, technical capacity, which has slowed or undermined reform progress, will likely remain a challenge in the foreseeable future.¹² In addition to capacity building, there is a critical need to develop a realistic implementation plan that focuses on a few priority areas to achieve real, sustained benefits from SOE reform efforts. Given SOE responsibility is split between MPE and the Ministry of Finance, close coordination between these agencies will be required to ensure scarce government resources are effectively used.
- **SOE and public–private partnerships legislation is outdated.** Robust SOE legislation underpins SOE reform. Similarly, well-designed public–private partnerships legislation

⁹ Fiji's results are better than three of the four Pacific island countries included in the ADB SOE study—the Marshall Islands, Samoa, and Solomon Islands. The contribution to GDP per \$1 of investment in SOEs in these countries ranged from \$0.07 in the Solomon Islands to \$0.13 in Samoa. Only Tonga's SOEs, with a contribution of \$0.27 per \$1 of investment, performed better.

¹⁰ ADB. 2011. *Finding Balance: Benchmarking the Performance of State-Owned Enterprises in Fiji, Marshall Islands, Samoa, Solomon Islands and Tonga*. Sydney.

¹¹ By contrast, staff of the Ministry of Finance's Asset Management Unit, which oversees SOEs from a fiscal perspective, is more experienced.

¹² For example, efforts were made by MPE to initiate privatization processes for several SOEs during 2011 and 2012, but none were successful (the sale of Fiji Dairy was overseen by the Ministry of Trade and Industry). Other sensible initiatives, such as outsourcing of cleaning services at the Ministry of Health, were also undertaken. Unfortunately, they failed to result in expected efficiency improvements and cost savings due to a lack of experience in managing competitive tenders.

provides a foundation for effective cooperative ventures between the state and private businesses. Fiji's Public Enterprise Act has weak provisions dealing with governance, transparency, and accountability. Fiji's Public Private Partnerships Act lacks transparent decision criteria for awarding tenders and includes excessively burdensome provisions, such as the requirement to establish a public private partnership controlling company to oversee any cooperative venture. Reviews of both Acts were completed in July 2012, and include recommendations to bring them in line with best practice.

Recommendations:

- Continue to implement planned SOE reforms in a prioritized and strategic way in line with available resources, as follows:
 - Increase capacity within the Ministry of Public Enterprises to manage the reform process;
 - Develop a policy framework to guide privatization efforts;
 - Revise the Public Enterprise Act and the Public Private Partnerships Act to bring them in line with best practice;
 - Review the roadmap's SOE reform strategy, with the aim of developing a practical implementation plan based on existing technical gaps and implementation constraints;
 - Impose hard budget constraints on commercialized SOEs, similar to what firms in the private sector face; and
 - Review the current SOE monitoring policy, which is split between the Ministry of Public Enterprises and the Ministry of Finance, with the aim of consolidating it within one agency.

APPENDIX 10

Access to Land

Land plays two important roles in economic development. It is an input to economic activity, and also used as collateral by businesses in order to access financing. No country has managed to achieve sustained prosperity without stable, clearly defined, and well-protected land property rights.

Most land in Fiji is under communal land tenure

The majority of land in Fiji is “iTaukei land”, which is registered in the Vola ni Kawa Bula (Register of iTaukei Land Owners) (Table A10). Ownership is vested in the *mataqali* (tribal group) rather than the individual. Individual membership in the *mataqali* is recorded in the Vola ni Kawa Bula. iTaukei lands cannot be sold, and any dealings or works to be done on or with respect to iTaukei land requires the approval of the majority of the members of the *mataqali* who are over 21 years of age. Because iTaukei lands were not oriented for individual enterprises these were not initially surveyed and mapped accurately. A small amount of land is also held individually or corporately in fee simple, as well as by the state.

Table A10 Land Allocation in Fiji

Land Classification	% of Total Area	Details
State Land	4	Approximately 7,500 state leases for varied specific uses administered by the director of lands
Freehold Land	8	Over 20,000 titles under Torrens system
iTaukei Land	88	Involves a mix of customary use and formal and informal lease arrangements: <ul style="list-style-type: none"> • Land farmed by iTaukei landowners and in areas designated as iTaukei Reserve • Informal <i>vakavanua</i> leases • Formal leases administered by iTaukei Land Trust Board under the Native Land Trust Act (CAP 134) and Agricultural Landlord and Tenant Act (CAP 270) (about 35,000 leases) • As of 2011, formal leases through the Land Use Bank under the Land Use Decree 2011, administered by the Ministry of Lands

Sources: Pacific Islands Forum Secretariat. 2008. *Fiji Country Case Study in Review of Financial Management of Customary and Other Land in the Pacific*. Suva; Government of Fiji, Department of Lands and Survey, Ministry of Roads and Mineral Resources. Undated. *Land Tenure Systems in Fiji*. iTaukei Land Trust Board website.

Accessing iTaukei land must be done via leasing

While iTaukei lands cannot be sold, these can be officially leased with the consent of the *mataqali* landowners. Until recently, the basis upon which iTaukei land could be leased was dictated by requirements set out in the iTaukei Land Trust Act (CAP 134) (ILTA), formerly the Native Land Trust Act and the Agricultural Landlords and Tenants Act (CAP 270) (ALTA). ILTA sets out the framework for managing iTaukei lands, while ALTA deals specifically with the leasing of areas designated as agricultural land. ALTA applies to all leases of agricultural land that are more than a hectare in area. It therefore applies to iTaukei land, state land, and freehold land.

The iTaukei Land Trust Board (TLTB), formerly the Native Land Trust Board, has in the past been the key to leasing. Under ILTA, the board is authorized to grant leases on portions of iTaukei land not included in iTaukei reserves.

TLTB's head office is in Suva, and it also maintains four regional offices around the country. There are four basic steps involved in leasing land from TLTB:

1. **Identify potential areas of land available for leasing.** TLTB maintains a database of iTaukei land showing its location and status.
2. **Complete and submit an application along with supporting documentation to the closest regional office.** There are separate forms for agricultural leases and purposes other than agriculture. Supporting documentation includes: a locality plan of the area being applied for; a business plan or feasibility study; evidence of project financing; the principals' resumes for the principal investors demonstrating their business experience; and a proposal of how landowners will benefit from the project.
3. **Meet with landowners to present the project and negotiate the conditions of the lease.** This is normally done once TLTB has confirmed that the proposed land is available and unencumbered, and site inspections have been done by the Department of Town and Country Planning (DTCP) and appropriate local authorities. The purpose of the inspections is to obtain the views of the planning authorities on the proposed development.
4. **Agree on lease conditions with TLTB.** If the offer is acceptable, the lessee pays the required fees to TLTB. TLTB then issues a letter formalizing the lease agreement.

iTaukei land leases are only issued by TLTB once these have complied with the following conditions: (i) the subject land is surplus to the needs of the landowning unit; (ii) the proposed development does not encroach into the activities and boundaries of the village site and will not adversely affect historical or archaeological sites or any legal and customary encumbrances including fishing rights; (iii) the development must be consistent with national and sectoral development plans, and have received approval in principle from the DTCP and local authorities; and (iv) the lessee is willing to meet landowner requirements related to the project (i.e., equity participation, employment opportunities, education fund, etc.) and is able to demonstrate access to sufficient financial resources to implement the project.

Obtaining an "agreement to lease" from TLTB generally takes 4–5 months, following a submission of a complete application. Lessees are able to proceed to obtain subdivision and re-zoning approvals from the DTCP, if required, using the agreement to lease. Application for a building permit, however, requires a registered lease.

Leases issued can vary from 30 years for agricultural uses to 99 years for other purposes.

Since 2006, TLTB has made selected areas of iTaukei land available for lease through a tender process. Under this program, TLTB identifies land with high development potential and completes all the necessary preparatory work toward issuing the lease. Investors are then invited to submit offers for the land. Tenders are awarded to the highest offer, as long as it meets a specified minimum level.

Rents on leased iTaukei land are prescribed by the respective legislation. In the case of agricultural land, ALTA sets rents at a maximum of 6% of unimproved capital value (UCV) of the land. ILTA, on the other hand, requires use of a market value approach to setting rents. Because of a lack of a market for inalienable customary land, TLTB has adopted the UCV approach for all of its leases. While TLTB has strived to set rents at 6% of UCV, in practice the rates have reportedly been lower (2.5% to 3.0%). In part, this is because the government, as a matter of policy, has collected as much under its ALTA and Crown Lands Act leases.¹

TLTB has authority under ILTA to deduct an amount up to 25% of the rental income as an administration fee. The administration fee has been set at 15% since early 2000. Up until 2011, the remainder of the rental income was distributed unequally between landowners, with chiefs receiving a disproportionate share.² Many landowners, unhappy with the amount of the rent and its distribution, opted not to renew their leases. This is particularly the case with agricultural leases. It also caused some landowners to bypass TLTB and negotiate informal leases directly with tenants through *vakavanua* leases. They avoid paying TLTB administration overhead costs but their leases, which are not supported by the state, are less secure.

It is also important to note that there is no easy way for customary landowners to directly mobilize iTaukei land as a wealth resource. They must first lease the land to themselves, after which the lease can be used as collateral.

Two important reforms have been initiated since 2006 with respect to the leasing of iTaukei land, which include the following:

- The composition of the TLTB was changed through the introduction of the Native Land Trust (Amendment) Decree 2010. The decree shifts power from the Great Council of Chiefs to the government through the minister for iTaukei affairs (currently the Prime Minister). The minister is now the chair of the board (the previous chair was the President of Fiji, who was appointed by the Great Council of Chiefs) and appoints 7 of the remaining 10 board members. The decree also gives the minister (previously the President) the authority to set aside land as iTaukei reserve.
- In response to the large area of iTaukei land sitting idle and unproductive, a competitive mechanism for leasing iTaukei land through the Land Use Decree was introduced in 2010. The decree established the new Land Use Unit within the Ministry of Lands. The unit is responsible for operating the Land Use Bank, where iTaukei landowners (as well as the

¹ Pacific Islands Forum Secretariat. 2008. *Review of Financial Management of Customary and Other Land in the Pacific*. Suva.

² iTaukei Land Trust Board retained 5% of the income in a collective trust fund. Of the remaining 80%, iTaukei Land Trust Act requires 30% to be distributed between the chiefs. As a result, only 56% of the total income was available for distribution to landowners.

government with respect to state land) can voluntarily register land for the government to administer. Inclusion in the Land Use Bank requires iTaukei land to be free from encumbrances and supported by 60% of landowners. If these tests are met, the Prime Minister can release the land from TLTB and include it in the Land Use Bank. Once the land has been “designated,” the Land Use Unit is responsible for undertaking cadastral surveys, assessing land capabilities, valuing the land, and publicly advertising its availability. The Land Use Bank offers iTaukei landowners more beneficial terms than TLTB, which include:

- higher rental rate (10% of UVC versus a 6% target maximum under TLTB);
- higher rental payments and more control over distribution (100% of the total rental payment goes to landowners versus only 85% in the case of TLTB, plus landowners are given full control over how the proceeds are distributed versus no control over distribution under TLTB); and
- longer lease periods (up to 99 years regardless of the type of lease versus a maximum of 30 years for agricultural leases due to ALTA in the case of TLTB).

The Land Use Unit became operational in late 2010. By June 2012, over 4,000 hectares had been deposited in the Land Use Bank and 15 leases issued.

Neither of the above reforms appears to have undergone thorough consultation, particularly with respect to Fijian landowners. As a result, there has been criticism of the changes from within this stakeholder group. More specifically, concern has been voiced about the Native Land Trust (Amendment) Decree and the view that it undermines the Great Council of Chiefs. With respect to the Land Use Decree, concerns have been raised about the legality of bypassing TLTB.³

It is important to raise a word of caution with respect to the Land Use Bank. While it has successfully met its initial targets, it accounts for a very small portion of total iTaukei land.⁴ It is also in the very early stages of developing the institutional capacity necessary to substantially increase its leasing activity. Perhaps the most significant impact of the Land Use Decree has been its impact on TLTB. The reform has motivated TLTB to relook at its operations to find ways to improve the competitiveness of its services. For example, it quickly revised the ILTA regulations with respect to distribution of rental income. Effective 1 January 2011, lease monies, net of the administration fee, are being distributed equally between all living members of the landowning unit.

Formal dealings in land must be registered

The Land Transfer Act (CAP 131) requires that any new formal right in real estate, such as a lease of iTaukei land⁵ or sale of freehold land, must be registered with the Office of the Registrar of Titles (ORT).⁶ Stamp duty on the transaction must be paid prior to registration and is charged at the rate of 2% and 1% of the market value of the property on real property transactions and documents (mortgages), respectively. The capital gains tax, introduced in May

³ Section 4 of ILTA gives the TLTB the legal right to administer all iTaukei land for the benefit of the Fijian owners.

⁴ For example, in 2011, TLTB reportedly issued about 1,000 leases, as compared with a handful in the case of the Land Use Bank.

⁵ In addition to the agreement to lease issued by TLTB, a lessee of iTaukei land must have a registered surveyor complete a cadastral survey of the subject property. The survey must then be approved by the director of lands before it can be registered at the Office of the Registrar of Titles.

⁶ The ORT also maintains the Register of iTaukei Lands.

2011 and equivalent to 10% of profit, must also be paid on all purchases of freehold land prior to registration.

The ORT is based in Suva and has a total of 13 staff, supplemented by 5 staff from the Office of the Attorney-General.⁷ It maintains a paper-based system that requires the physical binding of all land dealings. Attempts have been made at various times to create databases of title numbers to facilitate staff access to the associated paper records. There are currently three such databases covering different periods of time.⁸ The piecemeal nature of the system means staff may need to check each database in order to obtain a complete listing of all dealings with respect to a parcel of land. They then must do a physical search of the binders to obtain details of the dealings. Binders are spread out across three different offices in Suva.

Registering a new title at the ORT takes on average 1 month, while registering a land dealing reportedly takes about 2 weeks.

Clients interested in obtaining information from the registry about dealings in land must physically visit the Suva head office and make a written request. They must rely on ORT staff to compile the information and are then required to pay for photocopies of the registry documents in order to look at the information.

There have been minimal changes to the land registration process since 2006. The most significant change involved the relocation of the ORT to a better office space.

Key outstanding issues on accessing land are summarized below:

- **ALTA is not effectively meeting landowner or tenant needs.** ALTA leases currently cover most of the prime agriculture land in Fiji. Provisions of the act fix rents at a maximum of 6% of UCV; and also require landlords to provide compensation on approved improvements to land, which often exceed the rental income paid to landowners during the tenancy term. As such, the act provides little incentive to landowners to renew agricultural leases. Many ALTA leases expired in the decade to 2011, and more will expire in the coming years.⁹ ALTA also does not serve tenants' interests well. The setting of a 30-year lease term and the lack of a renewal provision fail to provide sufficient security for development activities. The provisions also require tenants to obtain permission from TLTB as well as from lessors before making any improvements on the land. This is a time-consuming procedure. As a result, it was often not done. This in turn has created disputes over compensation for unapproved improvements on expiry of the leases. The government provides a subsidy to landowners to increase the rental payment on leases up to 10% of UCV. The current subsidy scheme is scheduled to end in 2013. The subsidy is being used as a way of encouraging landowners to renew existing ALTA leases. The Land Use Decree introduced in 2010 reportedly supersedes other land use legislation and therefore could be a way around these problems, but its

⁷ Another four project officers from other government agencies (one each from TLTB, Ministry of Lands, Fiji National Provident Fund, and Housing Authority) are also based at the ORT. These officers support the work of their parent agencies.

⁸ Title and Deeds Registration System covering the period since 2006, the Fiji Land Information System covering 1994–2005, and a card-based system prior to 1994.

⁹ A total of 3,300 leases are due to expire over 2011–2018 and another 1,200 leases will expire between 2019 and 2028. Source: Naidu, V. and Reddy, M. 2002. *ALTA and Expiring Land Leases*. Suva: University of South Pacific.

application to ALTA leases remains unclear. Moreover, most agricultural leases are issued by TLTB under ALTA.¹⁰ If TLTB wishes to remain competitive with the Land Use Bank, a more flexible and equitable system for issuing agricultural leases on iTaukei land is needed.

- **TLTB lease procedures and conditions need strengthening.** The breaking of TLTB's monopoly position with respect to leasing iTaukei land is pushing the board to improve its leasing system. To remain competitive with the Land Use Bank, TLTB will need to address a number of issues. First, it must streamline its leasing procedures and reduce the time it takes to negotiate a lease. It would be useful to establish a system for tracking how long it takes to arrive at an agreement to lease to help monitor the extent to which improvements have occurred. Second, it must develop strategies to reduce the high amount of rents chronically in arrears.¹¹ Third, it must provide more flexible lease terms in line with development needs and provide landowners with more attractive rents. Finally, it needs to find a practical solution to the failure of existing leases to provide clear provisions regarding ownership of improvements on the land. Many of these issues are defined in ILTA. TLTB is hoping to commence a review of ILTA in the near future, with the aim of addressing these issues.
- **A modern land registry is needed.** Making property rights public, and establishing a priority ranking of claims, are the main roles of a registry. The current paper-based system is inefficient. It makes entering information into the system, and getting useful information out of it, time-consuming. The manual piecemeal nature of the system also increases the chances of errors and lost paperwork. There are also problems with the underlying legal framework. First, the Land Transfer Act assigns priority from the date of filing. This can create conflict—for example, when two or more parties file an interest on the same day. A better approach is to grant priority by date, minute, and second. However, the act does not provide for a modern computer system for assigning priority in this way. Second, the act sets out many requirements whose costs outweigh their benefits. For example, it requires the entire sales agreement to be filed instead of only a notice of the transaction. It also stipulates filing by paper using original signatures. Third, the act provides for a real estate registry administered by government, which is in turn run as a monopoly. Other countries effectively use private and semiprivate models for delivering registry services.¹²
- **Nonresident dealings in freehold land are restricted.** The Land Sales Act requires nonresidents purchasing freehold land greater than one acre in area to obtain consent from the Minister of Lands. The rationale for the policy appears to be a concern over foreign citizens accumulating extensive areas of land. The minister has absolute discretion in giving consent. The process is reportedly time-consuming and uncertain.

¹⁰ TLTB currently administers 14,400 agricultural leases on iTaukei land covering approximately 174,000 hectares. This represents about 38% of the total area under TLTB leasing arrangements. Source: iTaukei Land Trust Board website.

¹¹ At the beginning of each year for the past 10 years, TLTB has carried forward arrears totaling F\$12 million—a considerable portion of the total rent roll of around F\$33 million. At the beginning of 2011, arrears were reportedly F\$24 million. Sources: Pacific Islands Forum Secretariat. 2008. *Review of Financial Management of Customary and Other Land in the Pacific*. Suva; and the iTaukei Land Trust Board website.

¹² For example, the Land Registry in the Province of Ontario, Canada, or the system of privately-run registries in Romania and Spain.

Recommendations:

- Review ALTA with the aim of creating a more flexible and equitable leasing regime for agricultural land.
- Strengthen TLTB management and administration of iTaukei leases, to include:
 - streamlining leasing procedures and introducing more effective strategies for collecting rents in arrears; and
 - reviewing ILTA with the aim of making conditions more competitive with those of the Land Use Bank.
- Introduce a simple, accurate, computerized land registry system that is quick and inexpensive to use, to include:
 - using a notice-based system via the internet rather than one that uses the entire sales agreement;
 - considering private sector operation of the registry based on a clear legal framework regulating the competitive provision of registry services; and
 - reviewing and revising the Land Dealings Act to ensure it provides an effective framework for the system.
- Relax restrictions on nonresident dealings in freehold land (Land Sales Act) and make the process more transparent, to include:
 - increasing the minimum land area to 10 acres; and
 - introducing into regulations a transparent set of decision criteria for use by the Minister of Lands in issuing consent.

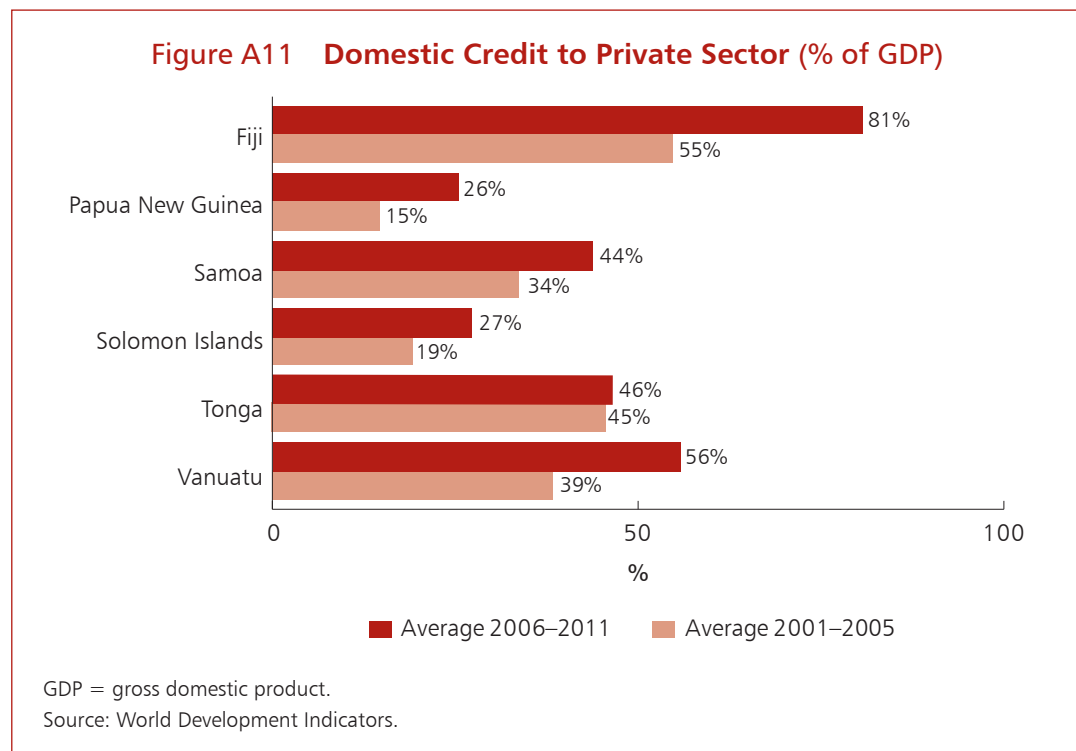
APPENDIX 11

Financial Markets

Well-functioning financial markets are essential for promoting economic growth. Without access to finance, businesses cannot start or grow. Well-functioning financial markets provide investment finance to large businesses, as well as working capital for small businesses, loans to farmers and others in the rural sector to improve crops and access new markets, mortgages for home buyers, financing for automobile purchases, and loans for education to improve human capital.

Access to finance is low

Access to finance in Fiji, while better than other Pacific island countries, is considerably below countries with developed financial markets. Figure A11 compares the ratio of private sector credit to GDP within the Pacific region. Fiji's ratio averaged 81% over 2006–2011, while that of its neighbors ranged between 26% (Papua New Guinea) and 56% (Vanuatu). Developed



financial markets typically have ratios of 100% or more. For example, Australia's ratio averaged 125% over this period and New Zealand's ratio averaged 142%.

Despite the limited access to finance, there is no shortage of liquidity within the banking sector.¹ Much of this is attributable to a perceived lack of lending and investment opportunities for banks and foreign exchange restrictions preventing or delaying outflows.

Access to financial services is also low

Access to financial services is equally important, especially to lower-income members of the community who are forced to hold cash but face the risk of loss through theft and other causes. It includes the means to save in a secure way for investment and unexpected expenses, efficiently transfer funds for both personal and commercial purposes, and secure assets through insurance. In Fiji's case, an estimated 220,000 people, approximately 65% of economically active persons employed in the informal sector, may lack access to formal banking services. Access is particularly low in rural areas.²

Supply of financial services is among the most developed in the Pacific region

Fiji has one of the most developed and extensive financial markets in the Pacific region. Formal financial institutions include six commercial banks,³ three credit institutions, and seven insurance companies. All are licensed by the Reserve Bank of Fiji. In addition, there are a number of smaller nonbank financial institutions (NFIs) that provide various financial services. The NFIs are semiformal in nature or regulated under legislations different from the formal financial institutions. They include microfinance institutions largely created under the National Centre for Small and Medium Enterprise Development (NCSMED), savings and loan cooperatives, credit unions, nongovernment organizations, and moneylenders. There is also a national provident fund (Fiji National Provident Fund), a government-operated development bank (Fiji Development Bank), several fledgling venture capital firms, and a small capital market.

Fiji's commercial banking sector is dominated by two banks, ANZ and Westpac, which account for some 65% of total bank assets and liabilities. The sector overall is sound and profitable. This has enabled it to withstand the global financial crisis without significant shocks to its financial systems, or considerable government intervention or financial support. Lending decisions are typically based on a range of factors, including the quality of the financial statements of the business, its credit history and business plan, and the availability of collateral. A 2010 review by the Pacific Financial Technical Assistance Centre found Fiji's average lending rates and

¹ The ratio of excess liquidity to deposits was 10.4% at the end of 2010. The ratio continued to rise in 2011, reaching 18% in July–August 2011, and has since declined as result of moral suasion by government. The ratio was 13.7% as of March 2012. The excess liquidity refers to the excess reserves commercial banks hold above reserves they are required to hold by the Reserve Bank of Fiji. Source: Jayaraman, T. and Choong, C. 2012. *Implications of Excess Liquidity in Fiji's Banking System: An Empirical Study*. Munich.

² Pacific Financial Inclusion Programme. 2009. *Fiji Financial Services Sector Assessment*. August.

³ It includes the Asset Management Bank of Fiji, which acts as an asset recovery agency and is not involved in lending.

interest spreads were some of the lowest in the region and in line with comparable economies (Table A11). It also found the sector was highly profitable, in large part due to foreign exchange income and other noninterest flows.

Table A11 Pacific Islands Banking Sector Average Interest Ratios and Profitability, 2000–2009 (%)

Indicator	Fiji	PNG	Samoa	Solomon Islands	Tonga	Vanuatu	Australia
Loan yields	7.9	7.6	13.5	15.0	11.3	12.5	7.8
Cost of deposits	1.6	1.1	4.6	1.4	4.3	3.6	4.6
Simple interest spread	6.3	6.5	8.8	13.7	6.9	8.9	3.2
Return on assets	3.7	5.0	5.9	7.6	3.8	3.5	1.2
Return on equity (post tax)	34.4	32.7	24.7	30.4	17.1	36.1	15.2

PNG = Papua New Guinea.

Source: Pacific Financial Technical Assistance Centre. 2011. Davies, M. and Vaught, J. *Interest Rates and Bank Profitability in the South Pacific*. Suva.

Credit information is an important determinant in lending decisions. It allows lenders to more accurately evaluate risks and therefore avoid bad loans. Fiji has had a credit bureau since 2001. Data Bureau, a privately owned Fijian company, provides information about the financial status and personal attributes of individuals to 160 subscribers including all the banks and most other major financial institutions.⁴ The system includes information on more than 300,000 individuals and most companies operating in the country. The company extended its operations into Tonga and Vanuatu in 2011.

Many of the nonbank institutions offer microsavings and credit products. However, most of these institutions are small, have limited coverage, and are currently unsustainable and likely to remain so in the foreseeable future based on their business models. For example, the nine NCSMED microfinance institutions had, as of June 2009, a total of 15,000–20,000 depositors and 2,400 outstanding loans.⁵ While there is a mixture of lending types, most microloans take a savings-first approach and rely predominantly on members completing some type of training and providing their savings as collateral. Most microloans carry a flat rate of 25% per annum. With weekly repayments, this can add up to an effective rate of more than 50%.⁶

The Fiji National Provident Fund (FNPF) is a retirement savings scheme funded by contributions from members and employers to provide financial security for workers when they retire at age 55. It also provides benefits for permanently incapacitated workers and to survivors of members in the event of death. Over the years, the fund has added a number of preretirement member benefits such as home ownership, health care, and education. FNPF operates as a monopoly regulated by the Reserve Bank of Fiji. It has assets equivalent to about 60% of Fiji's GDP. Due to exchange control restrictions, its ability to invest funds overseas has been constrained. As a

⁴ The system is comprehensive in scope and includes loan and mortgage history from financial institutions, information on defaults on city/town rates and utilities, and history of bankruptcies.

⁵ ADB. 2010. *Microfinance in Fiji: Challenges and Opportunities*. Manila.

⁶ Pacific Financial Inclusion Programme. 2009. *Fiji Financial Services Sector Assessment*. August. Suva.

result of limited options, the fund has historically been a major purchaser of government and state-owned enterprises bonds. It also lends to the private sector.

The Fiji Development Bank (FDB) is an autonomous government-owned nonbank financial institution. Up until 2007, the FDB operated primarily with a commercial focus, targeting larger companies and charging interest at market rates. In January 2007, the government directed it to focus on resource-based sectors and development of small and medium-sized enterprises. This necessitated adoption of a new risk management approach, new lending policies and procedures, and nonfinancial support services. Its primary focus currently is on agricultural loans (up to F\$50,000), small and medium-sized enterprises (up to F\$500,000), and corporate lending (above F\$500,000). Due to its restricted license, FDB is not allowed to take deposits. Up until 2009, it also offered microloans at subsidized rates, but the program was discontinued as a result of high arrears. Overall, the FDB's asset quality is significantly impaired. Its nonperforming asset ratio (percentage of loans in jeopardy of default) rose to 28% at the end of 2009. The government guarantees about 20% of FDB's loan portfolio and all bonds issued by FDB to fund its lending operations.⁷

Fiji has a small capital market. It includes an equity market, a unit trust market, and a bond market. Over 2006–2009, the capital market was dominated by the bond market, which accounted for approximately 72% of the total value. By the end of 2010, this had risen to 77%. Fiji government debt instruments make up 86% of the value of total bonds issued. The total value of bonds outstanding in 2010 increased by 7% from the 2009 figure, to \$3.2 billion. Outstanding bonds accounted for 77.2% of total funds in the capital markets at 31 December 2010. The equity market accounted for about 24% of the total capital market value over 2006–2009, falling to 20.1% in 2010. As at 31 December 2010, there were 16 companies listed on the South Pacific Stock Exchange with a market capitalization of F\$778.24 million (down from F\$901.5 million in 2009). The unit trust market comprises the three trust units, which managed a total of F\$112.3 million at 31 December 2010. This represents a 2.8% decrease from the end 2009 total of F\$115.5 million.⁸

Significant financial market reforms have occurred since 2006, which include the following:

- **Introduction of directives on microfinancing and interest rate spreads.** In 2009, the Reserve Bank of Fiji required all commercial banks to establish specialized microfinance centers in their branches by January 2010 and limit average interest rate spreads to a maximum of 4%. The interest rate spread requirement was rescinded a few months after it was introduced. By the end of 2010, all the commercial banks had established microfinance operations.
- **Establishment of the Financial Inclusion Task Force in 2010 based at the Reserve Bank of Fiji.** The task force's goal is to extend financial services to 150,000 unbanked clients by 2014. A number of achievements were realized between 2010 and 2012. All commercial banks have opened up new microsavings accounts. This included a beneficiary payment agreement between Westpac and the Department of Social Welfare that created bank accounts for 22,000 low-income people. New technologies were also introduced that

⁷ International Monetary Fund. 2011. *Republic of Fiji: 2010 Article IV Consultation—Staff Report and Public Information Notice on the Executive Board Discussion*. Washington, DC. Editor's note: FDB's nonperforming asset ratio was not updated in International Monetary Fund. 2012. *Republic of Fiji: 2011 Article IV Consultation*. Washington, DC.

⁸ Reserve Bank of Fiji. 2011. *Capital Markets Annual Report 2010*. Suva.

increased financial services accessibility. This included SMS banking by Bank South Pacific and the launch of new services by mobile telephone companies (M-PAiSA by Vodafone and Digicel Mobile Money), which allowed people to send and receive money anywhere in Fiji using a mobile phone, without the need for a bank account. Financial competency programs were also introduced throughout the school system. As of 30 June 2012, 60% of the target 150,000 unbanked clients had received some form of financial service.⁹

- **Introduction of the Capital Markets Decree 2009.** The decree ceased the operation of the Capital Markets Development Authority and shifted responsibility for the development of Fiji's capital markets to the Reserve Bank of Fiji.
- **Adoption of a reform plan in April 2010 to put FNPF on a sound financial and actuarial footing.** The plan includes implementing steps to reduce the pension conversion rate from 15% per annum to a sustainable level of 10%, rehabilitating some non-performing assets to ensure they are correctly valued, modernizing the FNPF Act, and diversifying its investment portfolio. The reduction in the pension rate is essential to make FNPF financially sustainable. A new age-based, actuarially sound pension rate was implemented on 1 March 2012. Revised FNPF legislation was introduced in November 2011. FNPF has also been advocating greater diversification in its investment portfolio and more profitable investments. Fiji government securities account for nearly two-thirds of its portfolio. Funds not in government bonds have been invested in low-yielding domestic tourism and real estate projects. In 2011, FNPF received approval from the Reserve Bank to invest up to F\$150 million (or about 4%) of its F\$3.7 billion assets in overseas markets. FNPF has responded by securing the services of an Australian fund manager and has commenced making overseas investments. It is advocating increasing the overseas limit to up to 20% of its total assets on a long-term basis. In March 2011, the government raised a \$500 million sovereign bond in the international markets rather than relying on FNPF for financing.

Other changes affecting the financial market included implementation of a real-time gross settlement system for large payments in 2007, entry of a new microfinance institution into Fiji's marketplace (South Pacific Business Development) in 2010, and increased Electronic Funds Transfer at Point of Sale interoperability throughout the country. As of September 2012, the Reserve Bank of Fiji had prepared a draft national payments system decree to govern new types of financial transactions, such as mobile money transfers currently not addressed by existing payment regulations. Cabinet approval was expected by the end of 2012.

In early 2012, the government also made the following two additional reforms in an effort to encourage greater commercial bank lending to the private sector:

- **Established a Small and Medium Enterprise (SME) Guarantee Scheme.** The F\$3.0 million scheme was launched on 1 January 2012 and is managed by the Reserve Bank. It is aimed at facilitating small and medium enterprise access to credit through the commercial banking system. The ANZ Bank commenced participation in the scheme in April 2012. The scheme will pay 50% of the principal on defaulted SME loans up to a limit of F\$50,000 per enterprise. International experience suggests that credit guarantee schemes can play a role in expanding credit to SMEs, although the exact nature and size of their impacts is unclear. They can help alleviate collateral deficiencies, which are one of the main reasons small

⁹ Fiji National Financial Competency Workshop. Workshop Communique. Suva. 5–6 September 2012.

firms are unable to obtain credit. It will be important to also take steps to directly address deficiencies in the underlying collateral framework (discussed below and in Appendix 12).

- **Imposed sectoral growth targets on commercial banks.** Effective 1 March 2012, commercial banks are required to hold 4% of their deposits in loans to the agriculture sector (including forestry and fishing), and 2% of deposits in loans to the renewable energy sector. They have been given 12 months to achieve these targets. While the government's interest in increasing private sector access to finance is understandable, the directive distorts bank lending decisions and could lead to reductions in asset quality.

Key outstanding issues in the Fiji financial market are summarized below:

- **The institutional framework for secured lending is inadequate.** Regardless of who is providing credit, all lenders want to be assured that they will be repaid. Collateral (i.e., property of the debtor pledged to the creditor to secure payment) provides an important part of the assurance that lenders require. Credit flows more freely when the law and supporting institutions for collateral are strong and inexpensive. Land, land leases, and buildings are the favored collateral for banks. Many people in Fiji, however, do not have ownership of or rights to these types of property, in a form which lenders can use as collateral. Further, nonbank lenders such as equipment dealers and suppliers who provide credit, leasing companies, and microfinance institutions, generally do not take collateral in the form of mortgages on land. With proper legal support, movable property in the form of equipment, inventory, accounts receivable, crops, livestock, shares, and the like may serve effectively as collateral. While Fiji's legal framework does allow creditors to enter into a secured loan by creating a security interest against a debtor's property, it is deficient in many areas (see Appendix 12 for a detailed review of the current framework and its deficiencies). As a result, the potential benefits of a secured lending framework for movable property are not being realized. This is an important contributing factor behind why many Fijian businesses continue to have difficulties in accessing finance.
- **There are gaps in the supply of sustainable microfinance.** Building financial inclusion through the provision of microfinance services presents a challenge in Fiji, given the small and dispersed nature of the market. Efforts to date have generated some initial successes, but none has yet reached the scale and sustainability needed to provide permanent, affordable financial services to large numbers of excluded people. Moreover, there has been insufficient regulatory supervision of the sector, along with a lack of long-term technical assistance to improve the capacity and outreach of microfinance institutions. Operational inefficiency and inadequate systems within NCSMED microfinance institutions, for example, have led to the practice of using client deposits to cover operating shortfall. If clients subsequently lose their deposits, this will hurt not only them, but also the reputation of microfinance in general. While commercial banks have established microfinance windows, there is little evidence they are genuinely interested in downscaling into microcredit. A recent review of Fiji's microfinance sector by the Asian Development Bank (ADB) concluded that the establishment of a new microfinance bank was the best option for enhancing financial inclusion.¹⁰ It also noted potential for credit unions and cooperatives to play an expanded

¹⁰ This was based on the assumption that building an effective financial system covering lower-income groups requires sound domestic intermediaries that can mobilize and recycle domestic savings. The assessment noted that a substantive number of Fijians currently remain unbanked. This provides an economically viable market opportunity that existing participants appear poorly placed to address. The existing microfinance providers are small and operate

role in microfinance provision, but this will require the introduction of new monitoring and supervisory structures.¹¹

- **A legal framework for credit reporting is lacking.** The most pronounced legal risk for credit bureaus is liability for erroneous information in their reports on consumers, which would give the aggrieved consumer a cause of action for defamation. While Fiji has a defamation act, its provisions are limited in scope because these relate mainly to newspaper publications. The credit reporting system provided by Data Bureau, the Fiji credit bureau, appears to be quite extensive and well run. It voluntarily bases its operating procedures and code of conduct on the New Zealand law governing credit reporting. While the bureau has not faced legal challenges, it reportedly faces ongoing questions from consumers and consumer advocate groups, such as the Consumer Council of Fiji, about the legality of the information it provides. It would therefore be prudent to create a more conducive legal framework for credit reporting.

Recommendations:

- Introduce a secured transactions framework to enable a more effective and widespread use of movable property as collateral.
 - See specific recommendations in Appendix 12.
- Continue to provide support to achieve greater financial inclusion by:
 - including household financial literacy training and financial competency programs in the school curriculum;
 - creating a strategy for rescuing deposits at NCSMED microfinance institutions and ensuring that the practice of using client deposits to fund operational shortfalls ends, and establishing an appropriate regulatory framework to prevent this from happening again;
 - exploring the establishment of a new microfinance bank under the Banking Act with lean operations, low fixed assets, and a heavy reliance on technology to service clients where they live and work; and
 - developing suitable monitoring and supervisory structures for microfinance expansion by credit unions and cooperatives.
- Introduce a credit bureau legislation, which could:
 - cover all consumer credit bureaus, grant a qualified privilege to licensed credit bureaus as long as they restrict distribution of information, and provide a method of resolving disputes about information that does not require litigation; and
 - consider following the North American model of legislation (either the United States or Canadian model) because it has produced a successful credit bureau industry without overregulation.

unsustainable business models. Regulatory requirements also prevent nongovernment organizations from accepting deposits. At the other end of the market, mainstream commercial banks have had limited success servicing this group in the past and do not seem genuinely interested in pursuing it.

¹¹ For a more thorough discussion of the issues, see ADB. 2010. *Microfinance in Fiji: Challenges and Opportunities*. Consultant's Report. Manila (TA 6353-REG).

APPENDIX 12

Secured Transactions Framework

Introduction

There is extensive evidence that sustained economic growth requires financial markets that can fund investment and entrepreneurship.¹ While this conclusion applies to all types of entrepreneurial activity, from the largest companies to the smallest sole proprietorships and traders, studies have found that more underdeveloped financial markets particularly fail to provide funding to the lower end of the business size spectrum (micro, small, and medium-sized enterprises).

Large operations in Fiji are able to attract financing without a great deal of difficulty. Banks are usually willing to lend to well-established companies and the stock market is available for those on a rapid expansion path that have built up a track record. Smaller enterprises, however, are far less able to attract funding. In most countries, including Fiji, lenders are reluctant to finance start-up operations. However, once a business has successfully survived its initial phase, well-developed financial markets generally provide finance. This does not happen for many smaller businesses in Fiji, where most sources of funds except equity, retained earnings, and trade credit are unavailable to many businesses that wish to expand. This, in turn, reduces the growth rate of the economy as a whole. Moreover, it reduces the efficiency and competitiveness of many smaller Fijian companies that are forced to economize on inventory and on investment in capital equipment to a greater extent than efficiency considerations would dictate if access to credit were widespread. As a result, entrepreneurial talent often goes to waste. Business prospects for many local Fijians are especially constrained because of the difficulty of using traditionally-held land and communal assets as collateral. Ownership of land by local Fijians cannot be translated into collateral as effectively as the ownership of a lease, which is an asset that lenders can take as security.

Consequently, improving lenders' ability to use collateral as security for loans through reform of the secured transactions framework is one of the most important means by which access to credit can be broadened. It allows businesses, partnerships, and sole proprietorships to use business assets as collateral against loans. It also provides lenders with more security because their ability to repossess collateral that has been pledged increases to the point where recovery and sale become relatively easy and inexpensive. Lending then increases, as does the ability

¹ The following analysis is based on ADB. 2006. *Financial Market Development and Collateral: An Analysis of the Secured Transactions Framework for Lending in Fiji Islands*. Manila.

of entrepreneurs and investors to fund their businesses. Furthermore, once the collateral framework has been improved through effective secured transactions reform, the potential for other types of financing increases. Even though commercial banks are the primary first-tier financial institutions, their ability to make secured loans will lead to expansion of lending by other types of lenders.

The legal framework in Fiji ostensibly lets creditors enter into a secured loan by creating a security interest against a debtor's property. The company charge under the Companies Act, the bill of sale under the Bills of Sale Act, and crop liens under the Crop Liens Act provide a legal basis for securing movable property. However, the economic benefits of a secured lending framework are not realized because Fiji's legal system does not meet some essential requirements. These include:

- **Creation.** It is the process by which the creditor establishes a security interest in property (the collateral). Creation must cover all economically important property, transactions, and agents, and the law must permit creation at a low cost relative to the value of the transaction. This process includes the lender ensuring that the borrower has legal ownership over the property and that the assets are sound.
- **Priority.** It is the process by which the lender establishes the priority of the security interest against all other claims to the property. A well-functioning system must provide unambiguous priority rules and protect the secured party from hidden claims by third parties, including other secured creditors, unsecured creditors, a trustee in bankruptcy, some purchasers of collateral, labor claims, and government tax claims.
- **Publicity (Registration).** It covers the legal process that makes public the ranking of the priority of the security interest. It must let a potential lender establish a ranking of priority in the collateral by filing a notice of security interest in a publicly available archive (registry). It must also let a potential lender search the archive easily, quickly, and inexpensively to determine whether other claims exist against a borrower's property.
- **Enforcement.** It involves the process by which, upon the debtor's default, the creditor seizes and sells the collateral to satisfy the secured claim. The speed of the process must be sufficiently rapid to prevent compromising the economic life of the property, and the cost must be relative to the value of the transaction secured by such property.

The legal framework in Fiji for secured transactions does not pass these essential economic and legal tests. In every area, problems prevent the secured transactions process from functioning in a way that gives confidence to lenders that in the event of default they can seize the property and sell it to satisfy the debt. These problems are analyzed below.

Problems with the Creation of Security Interests

Taken together, Fiji's laws indicate superficially that a wide range of property might serve as collateral to secure a loan. However, the opposite is true. Gaps in the coverage of transactions and types of people or businesses limit the use of secured transactions in the following ways:

- The company charge can only secure assets of a registered company, leaving most small businesses and individual entrepreneurs outside the existing framework for using collateral.

Unincorporated businesses in Fiji, therefore, do not have a security interest under which they can use their inventory or accounts receivable as collateral.

- The Bills of Sale Act, which applies to unincorporated businesses, generally applies to securing only the purchase of new goods. In many cases, it makes more sense for small businesses, which are often unincorporated, to purchase used equipment or vehicles, but these cannot be financed in Fiji except at interest rates exceeding 30% from some used car dealers. Furthermore, bills of sale have to be renewed every 5 years.
- The Crop Liens Act has limited application to financing the production of crops and it sets out very strict requisites for using future crops as collateral. The result is that the use of crop liens for private sector finance is extremely limited. Their main use is as backup security by the Fiji Development Bank to finance sugarcane farmers, once it already has a lien over the land lease of the farmer doing the borrowing.

Most security interests in Fiji are costly. For example, a business must incorporate to use the company charge to finance its inventory. For unincorporated businesses, a bill of sale must always incur the costs of attestation and registration. Failure to follow this requirement voids the bill of sale transaction.

Problems in the operation of the company charge, modeled after that of the United Kingdom, have been well documented. In Fiji, concerns about risks arising from problems with the secured transactions system results in the almost exclusive use of the company charge. This leads to an overcollateralization of present and future assets to one lender. Under a well-functioning secured transactions system, different lenders could secure different assets of the business. This arrangement would promote increased competition between lenders. Because changing lenders in Fiji involves high fixed costs (because of the complex documentation and registration requirements as well as, in some cases, stamp duty payments on the value of the new charge), competition is limited. As in other countries in the Pacific region, limited competition is a central problem in Fiji's finance sector, with commercial banks enjoying high return on equity.

Further costs and risks arise from the enforcement of the company charge because of the bias it creates in the debtor/creditor arrangement in favor of creditors. Under the company charge, creditors can obtain possession of all the properties that have been pledged as collateral, even if the default is small. Since lenders in Fiji require the pledging of property that has value equivalent to a multiple of several times the value of the debt, potential losses by the debtor are large. Borrowing risks are also substantially increased.

Recommendation:

- Design a system that integrates all functionally identical security devices (leasing, trust, pledges, chattel mortgages, hire purchase, and assignment of rights) into one comprehensive legal framework and filing system:
 - The system should include broad coverage of all property, transactions, and lenders to assure the most beneficial economic impact;
 - The law should not restrict lenders or descriptions of collateral, and should allow either individuals or companies to create security interests;
 - To permit and facilitate inventory financing, the new legal framework should permit parties to choose a security interest against "generally described" collateral. The law

- should not require that the security agreement or the court be required to identify items of collateral specifically; and
- To meet standards for fast collection, which is crucial for the greatest economic benefit, the law should permit *continuation in proceeds* and set out clear rules for their recovery. These should supersede old restrictive rules for tracing proceeds.

Problems with the Prioritization of Security Interests

Priority plays an essential role in a secured transactions system: it establishes the order by which the enforcement procedure will satisfy claims against the property serving as collateral. The creditor with the first priority will have its claim satisfied, on sale of the collateral, before a creditor with second priority. Priority problems lie at the heart of a legal system for secured transactions because of insurmountable difficulties in determining the value of the property as collateral. In a fragmented framework, each law states that registration in some registry gives priority. Where conflicts of priority exist, secured financing will not take place at all. Fiji law embodies ambiguous rules on the ranking of priority of creditors against movable property. With the exception of the security interest in future crops under some provisions in the Crop Liens Act and the Bills of Sale Act, the law says little about the conflict between creditors under different laws. For example, uncertainty arises regarding whether the assignee of a company's accounts receivable prevails against the creditor with a company charge against the company's inventory and its proceeds. Further uncertainty arises as to which will prevail between a company charge and a mortgage against a land fixture. Under Fiji law, this is an extremely complex question and potentially involves substantial legal fees.

Fiji law grants priority by notice and does not provide a ranking of priority by registration for accounts receivable financing. This situation severely limits accounts receivable financing because a potential borrower may show accounts free of an existing assignment to a second potential lender. These legal problems undercut Fiji's financial laws. Modern legal frameworks that promote financial market development rest on unequivocal legal rules on the ranking of priority of creditors, based on the time of registration in a publicly available archive. Such a requirement applies to all secured transactions and all transfers of accounts receivable.

Finally, for both movable and real estate property, Fiji's laws, generally, provide for a ranking of priority of security interests only from the day of registration. This rule minimizes conflicts over priority. At other times, however, such as in the case of a company charge, Fiji law grants priority from the time of creation. However, the law allows for a charge to be filed within 42 days of creation, which could cause disputes regarding who has priority. This raises the possibility of conflicts of priority and goes against systems that follow a "first-to-file" rule that specifies priority based on the date and time of filing.

Recommendation:

- Incorporate the priority rules into one law that applies to any and all interests in property.
 - This arrangement will cover all types of security interests, including financial leases, consignments, and sales with retention of title.
 - The replacement of existing special instruments is not envisaged but would make the priority among them clear and unambiguous.

Problems with Publicity (Registering Security Interests)

Problems associated with Fiji's company registry have already been discussed in the business start-up section of this report (Appendix 3). As a result of the registry's poor condition, lenders tend to view company assets as no more than secondary security, with much more weight being accorded to land and buildings, which are the common forms of primary collateral security.

A further extension of the reform to improve the company registry that has already been recommended would include the following:

- The company registry is separate from a system of recording security interests. For this, a filing archive is recommended to simply record security interests.
- All security interests in the filing archive are recorded, regardless of whether the party providing the security is a sole proprietor, a company, or an individual. Documentation should not be required for filing security interests; rather, only a notice of the security interests should be filed, leaving it up to the lender to examine the documentation.
- The laws that govern the operation of registries in Fiji are revised. There are common legal issues that emerge from the various acts that govern registration of mortgages, company charges, and bills of sale. This issue is discussed at greater length below.

Registry versus notice filing archive. Within a framework of making public a security interest, differences exist between an approach that registers the agreement and one using a notice filing archive. In a system that registers the agreement, a lender registers the entire security agreement or a lengthy abstract of it. The registry staff will typically undertake some check of the legal correctness of the security agreement. In practice, however, this check is of little value because the registry staff do not have the skills necessary to detect irregularities in the documents. By contrast, in a system of notice filing, the lender files only a "notice" of the existence of the security interest. The notice filing archive takes responsibility only for correctly entering the information provided by the lender in the notice, and for maintaining the database and public access to it. The parties to the security agreement are responsible for the correctness of the underlying document and for keeping copies of any agreements.

Fiji law follows a registration system that calls for filing of the entire agreement. Registering the entire agreement costs more: the costs of filing the entire agreement are greater and are not standard, and checking is complex and time-consuming. Moreover, because so much information is filed, both filers and administrators have incentives to restrict public access. This defeats the purpose of the filing system: making public such data. In addition, searching the Fiji registry requires visiting the registry and physically examining the company file.

The notice filing system is much less costly, requiring only that creditors file a notice of the existence of the security agreement. This notice contains the smallest amount of information necessary to permit third parties to learn that the creditor has created a security interest in certain property. Such a notice might include the names and domiciles of the parties and a description of the collateral. Because the law requires simple and standardized information, simple databases can readily store it and make it accessible to registered users over the internet. Potential lenders can check existing security interests and other encumbrances on property by searching the filing system themselves.

Manual operation. Manual operation is the only method of registration that the existing legal framework supports for mortgages and bills of sale. Manual filing systems are less secure and many times more expensive than electronic filing systems. Electronic registry filing systems, however, require essential legal provisions that validate the electronic evidence of registration before any dispute. Such features are not present in Fiji law. Revised legal provisions that allow such registration need to be part of a new secured transactions law.

Private versus public operation. There are many ways to organize the management of a filing archive that records security interests. Many different examples exist around the world and range from management by a consortium of private operators to those operated entirely by the state. Hybrid management systems also exist, in which the filing archive is managed by a nonprofit user group that includes associations (such as the association of banks, chamber of commerce, and association of lawyers) and overseen by the Ministry of Justice. This approach has been followed in Colombia and Romania with great success. Canada has experimented with a monopoly private franchise with less success. The United States has kept a state-operated core registry system with many private points of entry, allowing lenders to check whether security interests have been registered against property that is being pledged as collateral. Regardless of how such registries or filing archives are managed, the core criteria for effective operation are:

- Information on the existence of charges is readily available at low cost, both for particular assets and for particular persons, organizations, or companies;
- It is simple to record security interests in collateral;
- The system easily and reliably ranks priority over pledged assets; and
- Information is available remotely from wherever internet connections exist.

Recommendation:

- Remove the function of recording security interests from existing registries and replace it with an electronic filing archive, as described in the preceding sections of this appendix.
 - Removing the function of registering security interests from the company registry will allow the system for recording security interests to focus on enforcing provisions of the Companies Act.
 - Consideration should be given to allowing a private sector organization or nonprofit association consisting of users of the system and the attorney-general's office to run the secured transactions registry.
 - No documents would be filed when security interests are recorded. The filing archive would indicate that a security interest of a particular amount has been registered against a particular piece of property by a lender as security for a loan to the identified borrower. This is sufficient information for other lenders to be able to ensure that if they are separately making loans to the same borrower, they have notice of the property already pledged as collateral.

Problems with Enforcement

Integral to any secured transactions system is the ability of the creditor, in the event of default by the debtor, to repossess and then sell the property that the debtor gave as collateral. Any rational lender or credit seller will focus on the value of the collateral after the costs of sale and seizure, not on its nominal market value when it is pledged. Lenders who face slow and expensive enforcement will simply adjust the size of the loan downward relative to the value of collateral realized after the costs of sale and seizure. Alternatively, lenders will not make loans under circumstances where repossession is overly costly or uncertain.

Enforcement has three steps: notice of default and opportunity to remedy, repossession, and sale. For movable property, should the debtor dispute collection, Fiji laws do not grant creditors a right of self-help repossession. This means that creditors may not repossess the pledged property themselves. Nor does Fiji law permit prompt use of state-controlled law enforcement officials. It is not possible to contact an officer of the law to receive assistance with repossession. Instead, Fiji laws leave most secured transactions to be enforced in the judicial system. As discussed in the section on contract enforcement (Appendix 5), the collection process is lengthy—if the debt is contested, it can take months or even years. In case there is delay, the value of most collateral deteriorates. As a result, lenders insist on holding collateral that has a value several times larger than the loan. Since the value of the collateral to the borrower is much higher than the realized sale value to the lender, the risks of borrowing rise substantially.

Recommendations:

- Permit nonjudicial repossession (when possible without disturbing the peace) and specify rapid ex parte court orders for forcible repossession.
 - If the borrower agrees to repossession, or if it could be done without disturbing the peace, such activities should be carried out by private agents.
 - If the circumstances under which repossession takes place could lead to violence, then the involvement of law enforcement officials is necessary. These methods should be administered by the courts but can be carried out with a minimum of delay and without recourse to judicial hearings or other procedures that could further delay execution. However, if lawlessness and violence are the norm, repossession will be difficult, costly, or even impossible, just like the enforcement of any contract. There is no ironclad method of repossession that occurs under circumstances where law enforcement is not possible. Such circumstances greatly weaken the benefits of any reform of the law. Private enforcement is only a partial substitute for official enforcement under conditions of lawlessness. However, such circumstances do not exist in Fiji—rather it is the slowness of proceedings that arises because of the legally specified method of repossession under the current system.
- Allow collateral to be sold through creditor-administered sales conducted under commercially reasonable standards.
 - There should be no prohibition on any form of sale, as long as there is no collusion in the selling process. Creditors that have repossessed property should have the right of private sale without the need to advertise; and should not have to go through court-mandated procedures such as auction, compulsory valuation, use of court-specified sellers, and other mechanisms that are common in unreformed secured transactions

systems. The essence of repossessed property sale reform is quick and inexpensive collection mechanisms. However, consumer protection principles should be observed in such seizure and sale. Critical criteria for this process are as follows:

- » In the event of default, creditors should be able to obtain the pledged collateral rapidly and inexpensively.
- » There should be no legally mandated process for the sale of the collateral—for example, the law should not specify that the property should be auctioned or that the sale has to be publicized.
- » Compensatory damages and penalties for the abuse of repossession and sale should be proportional to the damage suffered, to strongly discourage abuse of the secured transactions framework by unscrupulous lenders.

APPENDIX 13

Legal Framework for Business

In 2006, the Asian Development Bank (ADB) completed an economic assessment of Fiji's business laws.¹ The resulting report recommended reforming many existing acts, as well as introducing new legislation. Much of the analysis from that report has been incorporated into this update.

Table A13 provides a summary of business legislations that were identified in 2006 as requiring reform, changes that have been made since then, and recommendations for further reform.

Table A13 Progress toward Implementing Legal Reforms Proposed in 2006

Legislation	Status/Recommendations
Business laws	
1. Companies Act (CAP 247)	<ul style="list-style-type: none">• Currently under review and a draft law has been prepared.• Recommendation: Complete review to modernize legislation in line with good practice.
2. Business licensing laws—various	<ul style="list-style-type: none">• Some changes made (new licenses issued and old ones revised).• Recommendation: Conduct a comprehensive review of the business licensing regime and establish a process to assess regulatory impacts prior to introducing new regulations (see discussion in Appendix 3).
3. Arbitration Act (CAP 38)	<ul style="list-style-type: none">• No change• Recommendation: Review features of the Arbitration Act and economic impact of different options for Fiji (see discussion in Appendix 5).
4. Sales of Goods Act (CAP 230)	<ul style="list-style-type: none">• No change• Recommendation: Adapt the United Nations (UN) Convention on Contracts for the International Sale of Goods (1988) to draft a modern sales statute to govern domestic and international transactions (see discussion in Appendix 5).

continued on next page

¹ ADB. 2006. *Improving the Legal Business Environment in the Pacific Region*. Consultant's Report. Manila (TA 6162-REG).

Table A13 *continued*

Legislation	Status/Recommendations
5. Bills of Exchange Act (CAP 227)	<ul style="list-style-type: none"> No change Not addressed in this report; however, an ADB legal assessment of Fiji (2006) recommended revising the act.^a
6. Electronic Transactions Law—none	<ul style="list-style-type: none"> Passed Electronic Transactions Promulgation (ET) in 2008, but not yet implemented. Recommendation: Review other legislations impacted by the ET to identify consequential amendments, and implement both the ET and consequential amendments (see discussion in Appendix 3).
7. Consumer laws—Consumer Act 1999 and Fair Trading Decree 1992	<ul style="list-style-type: none"> Introduced Commerce Commission Decree 2010 amalgamating consumer laws, and created the Commerce Commission as the key government institution responsible for competition. Recommendation: Eliminate price controls and strengthen the commission's capacity to act as a multisector competition authority (see discussion in Appendix 7).
8. Secured Transactions Law—various	<ul style="list-style-type: none"> No change Recommendation: Introduce a secured transactions framework to enable more effective and widespread use of movable property as collateral (see discussions in Appendixes 11 and 12).
9. Credit reporting laws—none	<ul style="list-style-type: none"> No change Recommendation: Introduce credit bureau legislation (see discussion in Appendix 11).
10. Bankruptcy Act (CAP 48)	<ul style="list-style-type: none"> No change Not addressed in this report; however, an ADB legal assessment of Fiji (2006) recommended revising the act.^b
Business Property Rights	
11. Warehousing and bailment—Indemnity, Guarantee and Bailment Act (CAP 232)	<ul style="list-style-type: none"> No change Not addressed in this report; however, an ADB legal assessment of Fiji (2006) recommended creating a new warehouse operators and receipts law and warehouse receipts filing archive.^c
12. Ship and aircraft transport laws—Marine Act 1986 and Civil Aviation Act (CAP 174)	<ul style="list-style-type: none"> No change Not addressed in this report; however, an ADB legal assessment of Fiji (2006) recommended amending the Marine Act and Civil Aviation Act to lower the costs associated with registering ship and aircraft assets.^d
13. Telecommunication Act	<ul style="list-style-type: none"> Introduced Telecommunications Promulgation in 2008 and completed a settlement that deregulated Fiji's telecommunications sector (see discussion in Appendix 8).

^a ADB found that the act lacked many of the features that promote development of secondary financing markets. It recommended revising the act by adopting the UN Convention on International Bills of Exchange and International Promissory Notes (1988).

^b ADB found that the bankruptcy process takes 4 years on average. Proceedings have to occur through the official receiver at the Office of the Registrar of Companies (ORC) who has no legal training and who generally focuses on one case at a time. There is also no central registry at the ORC regarding companies that have closed or had orders issued against them. Lenders therefore have trouble identifying bankruptcy cases.

^c ADB found that Fiji's laws do not provide the essential requirements for the security of property in a warehouse or other forms of deposit. Improved warehousing has the potential to improve access to credit in Fiji, particularly

in the rural sector. For warehouses to function efficiently, Fiji needs to make it simple to establish and operate a warehouse with basic requirements. Operators should have a burden of care for the goods deposited with them and be required to insure those goods. The law needs to recognize warehouse receipts so the ownership of goods cannot be challenged and businesses can trade by paper or electronic warehouse receipts. In addition, businesses should be able to assess the warehouse operator's insurance prior to depositing their goods and be assured that in the event of damage, they can make a claim with the warehouse operator's insurance company. Finally, there should be a warehouse receipt archive database freely available via the internet that provides definitive information on whether the goods are in storage and the names of the parties to the deposit.

- ^d ADB found the costs of creating, prioritizing, publicizing, and enforcing interests in ship and aircraft assets are high. If costs were lower, property rights in these assets could be better secured. It recommended reducing registration fees, introducing an enforcement mechanism specifically tailored to these types of assets, and establishing an efficient modern registry available via the internet.

Re-invigorating Private Sector Investment

A Private Sector Assessment for Fiji

This private sector assessment reviews Fiji's private sector environment in 2006–2012, against recommendations made in ADB's 2005 *Promise Unfulfilled: Private Sector Assessment for Fiji*. While Fiji has made considerable reform progress in a number of areas (including tax reforms, encouraging telecommunications competition, and reducing barriers to foreign investment), it still faces considerable challenges in responding to a range of macroeconomic shocks following the global economic crisis, and political and policy uncertainty at home.


About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.7 billion people who live on less than \$2 a day, with 828 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

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