

Becoming the Pacific's Hub: Fiji and E-Commerce

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Key Points

- The Fijian government has passed a suite of changes that look to assist in the continued modernisation of the Fijian economy.
- Chief among these is Fiji's accession to the UN Convention on the Use of Electronic Communications in International Contracts, and changes to the Electronic Transactions Act and Financial Transactions Act.
- The changes bring Fiji in line with international best practice guidelines with the intent of promoting ease of transactions and transparency.
- The Fiji Commerce Commission has released a Draft Self regulating Guideline for E-Commerce Business in Fiji to help standardise e-commerce trade in Fiji.

Introduction

In February, the Fijian government announced the commencement of various legislative amendments and international instruments, aimed at streamlining the way business is conducted. The changes came off the back of a concerted effort by the Government in 2016 to put modern e-commerce on the policy agenda, including the drafting of the Self Regulating Guideline for E-Commerce Business in Fiji¹. These suite of changes will align Fiji with more developed economies, making it much easier to do business in Fiji and promoting investor security. By aligning economic and business practices with internationally accepted frameworks Fiji has presented established businesses with new opportunities to expand and modernise processes, while also opening the growing economy to foreign enterprises looking for the perfect place to set up shop in the Pacific.

The integration of the *UN Convention on the Use of Electronic Communications in International Contracts 2005 (Convention)*, as well as amendments to Fiji's anti-money laundering legislation confirms that Fiji continues to be compliant with international best standards practices, ensuring businesses and individuals have access to a safe, efficient and transparent marketplace. The changes represent new opportunities for businesses not already trading in Fiji, as well as improving the efficacy of trade for businesses already operating and trading in Fiji.

UN Convention

The United Nations Commission on International Trade Law (**UNCITRAL, Convention**) is the core international legal body under the UN dealing with the systemisation and modernisation of international trade law.

¹ <http://www.commm.gov.fj/wp-content/uploads/2017/03/E-Commerce-SRG-draft-and-Ammended-copy.pdf>

In February, Fiji accented to the Convention. The Convention includes rules for modern practices, including:

- digital signatures;
- defining dispatch of a communication as leaving a server of the originator;
- defining time of receipt as the message being in “capable of being retrieved”;
- automatic computer contracting; and
- human error rectification.

The document allows for simple email signatures to be binding speeding up international commerce and digital transactions, giving digital documentation the same weight as physical copies. Moreover, the document allows computer programs to accept a contract without unnecessary human review.

While this level of automation may seem like a threat to the rights of individuals, especially in a quickening economy where typos and errors are common, the Convention introduces procedures from rectification of input errors through simple digital workflows that must be incorporated in electronic contracts. This first level of review has the aim of removing ironing out bumps in international contracts, ensuring courts are not overwhelmed arbitrating simple errors.

Other inclusions in the Convention are technical in nature, however are integral to streamlining e-commerce across the world and enabling Fijians to trade internationally.

Acceptance of the Convention in Fiji poses a multitude of benefits for local business and foreign entities who seek to set up shop on the island nation. Due to its geographic isolation, Fiji has much to gain from systemised and clear rules of e-commerce allowing for seamless connectivity between its multiple islands that benefit greatly from international tourism and a greater digital closeness with international supply chains.

Electronic Transactions Amendment

The *Electronic Transactions Act 2008 (Act)* was introduced in 2008 to recognise the validity, and promoting the development of, electronic communications in commercial and non-commercial dealings and in dealings with governmental entities. The Act removes any uncertainty about using electronic methods to satisfy various legal requirements about documents and record keeping whilst creating an environment of greater legal certainty for electronic transactions, resulting in enhanced trade and commerce through the internet.

However, over time this Act has fallen out of step with the UNCITRAL. In February the Fijian Government certified the *Electronic Transactions (Amendment) Acts 2016 and 2017 (Amendments)*. The Amendments bring the Fijian position in line with the UN Convention and other major trading partners.

This legal enforcement ensures all parties entering digital transactions in Fiji or with Fijian parties are aware of their rights, minimizing the potential for disputes and protecting rights.

Financial Transactions Amendment

Fiji has also updated requirements for financial reporting, given the realities and risks facing international commerce. The *Financial Transactions Reporting Act 2004 (Act)* acts as Fiji’s main protection against money laundering and terrorism financing. The Act established the Financial Intelligence Unit which is responsible for regulating and controlling the reporting of financial transactions by financial institutions in Fiji.

Following a peer review by the Asia Pacific Group on money laundering, it was found that the Act, as well as its accompanying Regulations, failed to prescribe penalties for certain sections. Consequently, the *Financial Transactions Amendment Reporting (Amendment) Act 2017* was introduced to address these gaps and strengthen the penalty provisions of the Act and the regulations, by inserting a part dealing with penalties alone.

The clarification of penalties ensures not only that Fiji adheres to international standard, but also ensures that Fiji maintains a good standing among other nations and enterprises interested in completing transactions in and with Fiji.

Conclusion

Fiji has passed a slew of laws in line with its key policy objective – to be a hub of e-commerce in the Pacific. In clarifying the rights of parties in transactions and ensuring transparency, Fiji has shown it is a jurisdiction welcoming of international investment and e-commerce. Fiji can ensure administrative systems can be set up to deal with the new compliance requirements, as digital transactions increasingly become the ordinary in an ever globalised economy.

As e-commerce is fast becoming a preferred mode of trading, it is also crucial to note the risks, challenges and responsibilities that accompany such development. In our next newsletter, we will discuss some of the guiding principles being proposed by Fiji Commerce Commission.

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