

Foreign Investment into Fiji?

Things to consider

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Background

When it comes to business and commercial activities, Fiji is often regarded as the 'hub' of the Pacific.

Whether you are in the business of tourism, manufacturing, mining, food processing or in a services-based sector, your market entry strategy into Fiji is by now probably well-defined. While Fiji represents an attractive and relatively stable investment and operating environment, you will need to give some consideration to the legal processes surrounding entry into the Fiji market.

These are a few tips we have picked up along the way.

1. What structure should I adopt?

You will need to carefully consider the type of legal structure you are going to adopt. It's important to note that there has been a substantial legislative change in Fiji which has impacted upon the requirements of public (and publicly listed) and private companies in Fiji. These changes are in the form of a new *Companies Act 2015*, which has replaced the *Companies Act [Cap 247]* (**Companies Act**), and the *Capital Markets Decree 2009* (among others).

The key changes mean that Fiji's corporations' law is now aligned with the principles which are commonly found within Fiji's traditional trading and investment partners.

Some of the most common ways businesses choose to enter a foreign market is through:

- **a wholly-owned subsidiary:** is a separate legal entity incorporated in Fiji, but wholly owned by its foreign parent company. The *Companies Act (2015)* permits a company to have sole directors (as long as one director is ordinarily resident in Fiji) and sole shareholder(s).
- **registering as an overseas (foreign) company:** is essentially creating a branch office of your existing overseas company, so that it is recognised in Fiji. While there are arguably less administrative burdens associated with this type of structure, it does not afford the advantages and shield-like protection of a separate legal entity.
- **entering into a joint venture with a local Fiji organisation:** a joint venture is when two or more business collaborate and combine resources to achieve a purpose. Joint ventures can be either incorporated or unincorporated (usually via a contractual relationship). A joint venture can utilise local expertise and experience better, although can be susceptible to failure where (for example) there is poor communication about the objectives of the business or an imbalance of experience.
- **entering into a distribution agreement:** if you're in a goods business a distribution arrangement can be a low risk method of entering the Fiji market. While this method is low cost (by removing some of the administrative burden of establishing a physical presence), there is a lesser degree of

control over the distributor and distributors usually charge higher margins which can affect product pricing/profits

Evidently, while there are advantages and disadvantages to each of these types of models, the structure you choose to adopt will necessarily be influenced by the business needs and objectives of your organisation and what you are specifically setting out to achieve in Fiji.

2. Do I need foreign investor approval?

Foreign investment in Fiji is governed by the *Foreign Investment Act 1999* (Fiji), as amended by the *Foreign Investment Amendment Act 2004* (Fiji) (together “**FIA**”). The FIA lays down the guidelines under which a foreign investor can and must invest in Fiji and is administered by Investment Fiji.

Essentially a ‘foreign investor’ must not ‘carry on business’ in Fiji unless the Chief Executive of Investment Fiji has granted the foreign investor a Foreign Investment Registration Certificate (**FIRC**), and the FIRC remains in force.

Under the FIA:

- ‘foreign investor’ means an enterprise, other than a national enterprise, engaged or intending to be engaged in carrying on business in a relevant activity in Fiji; and
- ‘business’ is defined broadly, and includes a business not carried out for profit.

It is best to obtain advice on whether the provisions of the Act are triggered by your proposed business activity or structuring in Fiji, given the wide ambit of the legislation and the consequences of non-compliance.

3. It’s all about the money (and tax)!

Whether you like it or not, tax is a fundamental driver for most business operations and how to structure holdings when entering a foreign market.

There are various types, and rates, of taxes in Fiji, which may impact on the structure of a business, or the business activities operated in a manner outlined in this article. The Fiji Revenue and Customs Authority (**FCRA**) is the key tax regulatory in Fiji.

The important thing is to seek advice early, rather than establish operations, or continue trading for a period, and then finding that certain tax consequences (or approvals) are going to impact on profits, remittances of capital or dividends from Fiji, payment of royalties from Fiji for the use of IP, the payment of head office management fees, and the like. It is wiser to invest in obtaining advice at the offset, than trying to reverse engineer your operations or structure when the tax position becomes less negotiable.

The Tax Identification Number (**TIN**) issued by FRCA is all important in Fiji. As an example, a local Fiji bank will require an entity or person (whether foreign or local) who wishes to open a Fiji based bank account to provide a TIN before an account may be opened.

4. Foreign Exchange Control

Similarly, when structuring your operations, it’s important to keep in mind that Fiji maintains foreign exchange control laws. The *Exchange Control Act [Cap 211]* (**ECA**) regulates foreign exchange dealings in Fiji.

The general rule, for exchange control purposes, is that the remittance of funds from Fiji offshore (above certain amounts) must be approved by the Reserve Bank of Fiji before that remittance can be made by a Fiji registered bank. It is also important to note that outward payments require a tax clearance certificate from FRCA before payments are authorised.

5. If a Fijian subsidiary is preferred?

If you are planning on setting up a wholly-owned Fijian subsidiary you will need to register an entity on the Companies Registrar. Here are a few things to consider when setting up a wholly-owned subsidiary:

- The new *Companies Act 2015* permits sole shareholder/sole director companies, however the requirement is that the director must ordinarily reside in Fiji;
- There are certain reserved activities for Fijian nationals only, and you may find that your business activity prompts the need to have a Fijian as an equity holder in the Fiji subsidiary.

Again, timely advice is important and it is best to engage assistance when you commence negotiations with a local investor, not when the relationship turns sour.

More questions?

The key to successful entry into a new market in any type of business or industry is a comprehensive business plan that addresses not only business-related aspects of the strategy, but also the legal (and accounting) processes for market entry.

If you've got more questions or need assistance, feel free to contact Feizal Haniff or Tom Tuitoga. We have a team of dedicated lawyers who can assist you with all aspects of your business in Fiji and across the Pacific.

Disclaimer

The information set out in this article is a general guide only about the laws in Fiji and is not intended as specific legal advice.

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