FIJI ACCESS TO CAPITAL BILL 2024

STAKEHOLDER CONSULTATIONS

BRIEF OVERVIEW MEMORANDUM

Background

Small and medium-sized enterprises (SMEs) require access to finance to start, grow, and sustain their businesses. However, access to simple and affordable forms of finance remains a key challenge for SMEs. In the Pacific region, including in Fiji, finance is typically sourced through traditional financing mechanisms; for example, bank loans, as well as debt and equity funding, both privately and sometimes through the capital markets. Many SMEs in the Fiji are unable to access traditional forms of finance without a proven revenue stream, monetization strategy, credit history, or collateral. This has created a significant financing gap, which hinders the growth of the SME sector.

Purpose

There is an opportunity to narrow this funding gap through alternative sources of financing, including small-scale offers (or "small offers") regimes as well as equity crowdfunding (ECF) and Peer-to-Peer Lending (P2PL). These forms of innovative financing can provide a "lower barrier" in accessing finance. The purpose of the Access to Capital Bill 2024 (Bill) is twofold. First, it aims to enable private companies in Fiji to readily raise equity capital by way of a small offer regime. Second, it makes provision for investment-geared crowdfunding, in particular, ECF and P2PL in Fiji.

> **Small offers regime** – Small offers regimes enable companies to raise funds through a limited number of investors without the costly and onerous disclosure obligations, which are required when making a public offer to invest in securities while aiming to increase the use of such mechanisms through increased investor protection.
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> **ECF and P2PL** – ECF raises funds through issuing company shares to a large number of investors in return for small to medium-sized investments via a licensed platform, which the Bill refers to as intermediaries. Similarly, P2PL via a licensed platform is a debt-based crowdfunding model that connects borrowers directly with people who choose to lend some of their money, and the borrower commits to repaying the loan at a particular interest rate and within a certain time frame.

These legislative innovations will provide new ways for SMEs in Fiji to raise equity and access credit. The Bill will offer a new, cost-effective means of capital raising for Fijian SMEs, assist domestic capital formation and increase employment opportunities and productivity. Culturally, Pacific nations have a strong sense of community, which indicates large entrepreneurial potential for community-based projects and social groups with an opportunity to formalize funding mechanisms around them.

Objective

The utility and overall success of such forms of finance in the Pacific require the introduction of an appropriate legal and regulatory framework, intermediaries who have the expertise to manage such new mechanisms, as well as a locally sourced pool of investors who have sufficient investment knowledge and a willingness to invest. It is critical to balance the need to provide new avenues for SMEs to raise capital with the need to protect investors. Under small offers regimes, ECF and P2PL, there are various eligibility and disclosure requirements as well as fundraising ceilings. Regulatory oversight is therefore critical to ensure that both the companies raising capital and any intermediary supporting them are appropriately supervised.

Part 26 of the Companies Act 2015 allows for some exemptions that might allow SMEs to raise small amounts of capital. However, these exemptions have not led to an increase in such capital raisings. This Bill establishes a modern small offers regime and introduces ECF and P2PL mechanisms, as well as including comprehensive investor protection arrangements and regulatory oversight.

Key Contents

New Zealand provides the most useful precedent for Fiji for MSME funding reform. The New Zealand reforms were part of the New Zealand government's "Business Growth Agenda" which included concessions for small-scale fundraising (small offers) and a crowd funding regime for debt and equity securities. These initiatives were realised in 2013. New Zealand introduced a small offers regime in the Financial Markets Conduct Act, 2013 (NZ) (FMC Act). The FMC Act also enabled ECF and P2PL allowing the raising of up to NZD2 million in a 12-month period.

There are four parts to the proposed Bill. Part 1, Preliminary, includes introductory clauses. Part II, Small Offer comprises six Clauses (ss. 6 – 11) and contains a regime enabling private companies to make small offers. Clause 6 is the enabling Clause and states the qualifying criteria and other matters.

Part III, Offer Through Intermediary contains the new regime for ECF and P2PL in Fiji. It is modelled on the New Zealand provisions appearing in the FMC Act, 2013 (NZ). Division 1 enables companies to make an offering of equity and debt through a licensed intermediary and sets caps on retail investment and the size of the capital raising in a 12-month period. It also requires that an intermediary be licensed. Further licensing and regulatory requirements are included in proposed Regulations. Division 2 ensures adequate disclosure is made to investors, while Division 3 creates and appropriate licensing regime. Part IV of the Bill makes provision for offences (see Cl, 24-26), regulations and amendments to the Companies Act.

The draft Bill, draft Regulations including Business Information Package Regulations, and an Explanatory Memorandum are included with the distributed information. We also include a broader, Pacific wide policy brief on innovative financing mechanisms developed by ADB/PSDI for your background and information.