

REPUBLIC OF FIJI

ACCESS TO CAPITAL (PRIVATE COMPANIES) BILL [2024]

(BILL NO. 00 OF 2024)

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A BILL

FOR AN ACT FACILITATING THE RAISING OF CAPITAL BY PRIVATE COMPANIES

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY

Short title and commencement

- 1(1) This Act may be cited as the Access to Capital (Private Companies) Act 2024.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

- 2 In this Act, unless the context otherwise requires—
- basic information package** means the information package prescribed under section 28 or, if none is prescribed, the basic information package from time to time approved by the regulator under section 30;
- Companies Act** means the Companies Act 2015;
- crowd funding service** has the meaning set out in section 15;
- debt security**—
- (a) means a right to be repaid money or paid interest on money that is, or is to be, deposited with, lent to, or otherwise owing by, any person; and
 - (b) includes—
 - (i) a security commonly referred to in the financial markets as a debenture, bond, or note; and
 - (ii) a convertible note; and
 - (iii) a redeemable share in an entity that would otherwise be an equity security (except a share redeemable only at the option of the entity);
- equity security**—
- (a) means a share in a private company; but
 - (b) does not include a debt security;
- file** means to apply, give, submit, send or lodge, and includes to file by electronic means;
- financial product** means a debt security or an equity security;
- form** includes format;
- format** includes digital format;

intermediary means a person through whom a private company offers financial products;

licence means a securities industry licence issued or renewed by the Reserve Bank under Part 24 of the Companies Act read with sections 21 and 22 of this Act;

licensed intermediary means an intermediary holding a licence;

Minister means the Minister with responsibility for this Act;

offer means an offer by a private company for the issue by it of a financial product;

offeror means a private company that makes a small offer;

offeree means a person to whom a small offer is made;

peer-to-peer lending service has the meaning set out in section 16;

personal offer has the meaning set out in section 7;

prescribed means prescribed by regulation;

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

Registrar—

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

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

regulation means a regulation made under this Act;

regulator means the Reserve Bank;

Reserve Bank means the Reserve Bank of Fiji established under section 3 of the Reserve Bank of Fiji Act (Cap. 210);

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

service disclosure statement or **SDS** means the disclosure statement that is required by section 18;

small offer means the offer of a financial product in accordance with section 6;

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

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

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

(c) a bank;

(d) an insurer;

(e) the Government or a Government agency;

(f) a local authority;

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

Purpose of this Act

3(1) The purpose of this Act is to facilitate raising business capital by private companies carrying on business in Fiji.

(2) Responsibility for achieving the Act's purpose lies with the Reserve Bank (the **regulator**).

Application

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

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

Act binds the State

5 This Act binds the State.

PART 2—SMALL OFFERS

Private company may make small offer

- 6(1) A private company (the **offeror**) may make an offer for the issue by it of a financial product if the offer is a small offer.
- (2) An offer is a small offer if—
- (a) it is a personal offer (see section 7); and
 - (b) it does not breach the 40–investor limit (see section 8(1)); and
 - (c) it does not breach the \$2 million limit (see section 8(2)); and
 - (d) it does not breach the retail investor limit (see section 8(3)); and
 - (e) the offer document complies with section 9; and
 - (f) the offeror has filed a basic information package under section 10(1).
- (3) An offeror must not make more than 1 offer (including an offer through an intermediary under Part 3) in any 12–month period.
- (4) A small offer is not an offer to the public for the purposes of section 16(1)(c) or section 282 of the Companies Act.

Meaning of personal offer

- 7 For the purposes of section 6, an offer is a personal offer if it is an offer that is made to, and may only be accepted by, an offeree who—
- (a) is likely to be interested in the offer, having regard to—
 - (i) previous contact between the offeror and the offeree; or
 - (ii) some professional or other connection between the offeror and the offeree; or
 - (iii) statements or actions by the offeree indicating that the offeree is interested in offers of that kind; or
 - (b) has an annual gross income of at least \$200,000 for each of the person’s 2 most recently completed income tax years before the making of the offer.

When offer breaches limit

- 8(1) An offer breaches the 40–investor limit if the number of persons to whom financial products are issued under the offer exceeds 40.
- (2) An offer breaches the \$2 million limit if the amount raised from the issue of financial products under the offer exceeds \$2 million.
- (3) An offer breaches the retail investor limit if the amount raised from the issue to a retail investor of financial products under the offer exceeds \$20,000.

Offer document

- 9 A small offer must be made in an information memorandum that—
- (a) is in the approved form (if any); and
 - (b) contains a basic information package; and
 - (c) is complete.

Calculation of current 12–month period

- 10(1) For the purposes of section 6(3), the 12–month period begins on the date when the offeror files a basic information package with the regulator and the Registrar.
- (2) The regulator may require a fee to be paid for filing a basic information package.

Offeror must file list of equity or debt security holders

- 11(1) An offeror under a small offer that results in the issue of a financial product to 1 or more persons must file a full list as at completion of the offer of—
- (a) its equity security holders, in the case of an offer of an equity security; or
 - (b) its debt security holders, in the case of an offer of a debt security.
- (2) The list must be—
- (a) filed with the regulator and the Registrar; and
 - (b) filed in the approved form (if any); and
 - (c) filed within 15 days after the conclusion of the small offer; and
 - (d) accompanied by the prescribed fee (if any).

PART 3—OFFER THROUGH INTERMEDIARY

Division 1—General

Private company may offer financial products through intermediary

- 12(1) A private company may make an offer through an intermediary for the issue by it of a financial product if—
- (a) the intermediary is a qualifying intermediary; and
 - (b) the offer is made by way of—
 - (i) a crowd funding service; or
 - (ii) a peer-to-peer lending service; or
 - (iii) any other service prescribed by regulations for the purpose of this section; and
 - (c) the offer is not concurrent with, and does not overlap with, a small offer by the private company under Part 2; and
 - (d) the offer does not breach the retail investor limit (see section 8(3)); and
 - (e) the offer does not breach the \$5 million limit (see section 13); and
 - (f) in the case an offer made by way of a crowd-funding service, the constitution of the offeror does not—
 - (i) confer rights of pre-emption over the equity securities that are the subject of the offer; or
 - (ii) otherwise restrict the transferability of those equity securities.
- (2) An offer under this section is not an offer to the public for the purposes of section 16(1)(c) or section 282 of the Companies Act.
- (3) In subsection (1)(f), **constitution** includes articles of association.

When offer breaches \$5 million limit

- 13(1) An offer under this Part breaches the \$5 million limit if it results in the amount being raised from the issue of securities by the private company through a qualifying intermediary exceeding \$5 million in any 12-month period.
- (2) For the purposes of subsection (1), the 12-month period begins on the date when the offer is first posted on the intermediary's website.

Who is qualifying intermediary

- 14 A qualifying intermediary is a person who is licensed in accordance with section 21 to provide the service in question.

Meaning of crowd funding service

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

Meaning of peer-to-peer lending service

- 16 A person provides a peer-to-peer lending service if—
- (a) that person provides a facility for the offer of debt securities by a private company; and
 - (b) the principal purpose of the facility is to facilitate the matching of lenders with borrowers who are seeking loans for personal, charitable or small business purposes.

Division 2—Disclosure by intermediary to retail investor

Interpretation for this Division

- 17 In this Division—
- intermediary** means the provider of a service;
 - service** means a service listed in section 12(1)(b).

Disclosure must be made to retail investor

- 18(1) An intermediary who provides a service to a retail investor must ensure that a service disclosure statement relating to the intermediary's service is given to the investor before the investor makes a transaction using the service.
- (2) The service disclosure statement must—
- (a) must be given to an investor in accordance with section 19; and
 - (b) comply with the requirements of section 20.
- (3) If an intermediary fails to make disclosure to a retail investor as required by this Act—
- (a) the retail investor may cancel the transaction by written notice to the intermediary within 20 days after making the transaction; and
 - (b) the intermediary must, within 10 days after receiving the notice, repay any money paid by the investor arising out of the transaction.

When and how service disclosure statement must be given

- 19(1) A service disclosure statement must be given to a retail investor—
- (a) in sufficient time before the investor makes a transaction using the service for the investor to take professional advice; or
 - (b) if it is not practicable to comply with paragraph (a), as soon as practicable after the investor makes the transaction.
- (2) A service disclosure statement must—
- (a) be given to the retail investor directly; or
 - (b) if the investor has specified an address (including an electronic address for communication by the provider), be delivered or sent to that address, or
 - (c) in the investor has not provided an address, state the retail investor's last known address; or
 - (d) be delivered or sent to an address (including an electronic address) specified by the investor for receiving the disclosure statement.

Requirements for service disclosure statement

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

Division 3—Licensing for crowd funding, etc

Reserve Bank may license crowd funding, etc

- 21(1) A person must not carry on the business of providing 1 or more of the services listed in section 12(1)(b) unless—
- (a) that person holds a securities industry licence issued under Part 24 of the Companies Act as modified by section 21; and
 - (b) the licence specifies that the holder is licensed under that licence to provide the service or services in question.
- (2) Regulations may be made—
- (a) prescribing criteria for the issue of a licence in addition to any criteria that apply under Part 24 of the Companies Act; and
 - (b) prescribing conditions or additional conditions that must be included in the licence of a provider of a service listed in section 12(1)(b) or to which that licence is subject.
- (3) The Reserve Bank must not issue or renew a securities industry licence that specifies, and must not amend an existing licence to specify, that the holder is licensed to provide 1 or more of the services listed in section 12(1)(b) unless the Reserve Bank is satisfied that the licence holder also meets the prescribed additional criteria.

Modification of Part 24 of Companies Act

- 22(1) This section modifies Part 24 of the Companies Act for the purposes of the issue or renewal under that Part of a licence for a service listed in section 12(1)(b).
- (2) In section 275—
- (a) the term “this Act” must be read as including this Act; and
 - (b) the reference in subsection (1)(c) to ceasing to qualify for a licence includes ceasing to qualify under the additional criteria prescribed under section 20(2) of this Act.
- (3) The following provisions are modified in the case of a provider that is a body corporate—
- (a) section 278(1)(b) (applicant must be a member of a securities exchange approved under Part 23 of the Companies Act) does not apply;
 - (b) section 278(1)(c) (applicant must be a company incorporated under the Companies Act) does not apply;
 - (c) in section 278(1)(d)(ii) and (iii), the term “company” must be read as a body corporate where ever incorporated;
 - (d) in section 278(1)(e), the term “prescribed” must be read as “prescribed by regulations made under the Access to Capital (Private Companies) Act 2024”.
- (4) The following provisions are modified in the case of a provider who is an individual—
- (a) section 278(2)(b) (applicant must be a member of a securities exchange approved under the Companies Act) does not apply;

- (b) in section 278(2)(c), the term “prescribed” must be read as “prescribed by regulations made under the Access to Capital (Private Companies) Act 2024”.

PART 4—MISCELLANEOUS

Meaning of document in sections 24 to 27

23 In sections 24 to 27, **document**—

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

False or misleading statement

24(1) A person commits an offence who—

- (a) makes or authorises the making of a statement in a document that to the person's knowledge is false or misleading in a material particular; or
 - (b) omits or authorises the omission of any matter or thing without which a document is to the person's knowledge misleading in a material respect.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$000.

False or misleading information

25(1) A person commits an offence who—

- (a) makes or authorises the making of a statement in a document that is based on information that to the person's knowledge is false or misleading in a material particular; or
 - (b) has omitted from a statement in a document that is based on information a matter or thing the omission of which to the person's knowledge renders the information false or misleading in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$000.

Failure to take reasonable steps to ensure document not false or misleading

26(1) A person commits an offence who—

- (a) either—
 - (i) makes or authorises the making of a statement in a document that is false or misleading in a material particular; or
 - (ii) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect; and
 - (b) did not take reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$000.

Effect of approval of document

27(1) This section applies for the purposes of sections 24 to 26.

- (2) A person is taken to have authorised the making of the statement or the omission of the matter or thing, whichever applies, if—
- (a) at a meeting, the person votes in favour of a resolution approving, or otherwise approves, a document; and

- (b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect.

Regulations

- 28(1) The Minister may make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.
- (2) Regulations that may be made under subsection (1) include (but are not limited to) regulations—
 - (a) prescribing when a fee is payable under this Act or the regulations, and the amount of that fee;
 - (b) prescribing additional criteria under section 21(2)(a);
 - (c) prescribing conditions or additional conditions that must be included in the licence of a provider of a service listed in section 12(1)(b) or to which that licence is subject (see section 21(2)(b));
 - (d) prescribing requirements for a basic information package, for example, requirements related to form, content and accompanying documents;
 - (e) prescribing a different sum for the purposes of [\$2 million limit];
 - (f) prescribing a different number for the purposes of [40–investor limit];
 - (g) prescribing a different sum for the purposes of [retail investor limit];
 - (h) prescribing a different sum for the purposes of [\$5 million limit];
 - (i) prescribing minimum entry requirements and examinations for the issue of a licence to an individual;
 - (j) prescribing a person, a group of persons or a class of person as a wholesale investor;
 - (k) prescribing the circumstances in which the regulator may reject a document that has been filed with it;
 - (l) prescribing an information event or circumstance requiring a notice to be filed with the regulator, for example the withdrawal or conclusion of an offer;
 - (m) requiring the information that must be filed for a specified information event or circumstance;
 - (n) prescribing any other matter relating to the form of, or the procedure for, making an offer;
 - (o) prescribing requirements for a service disclosure statement, for example, requirements related to form, content and accompanying documents;
 - (p) prescribing requirements for reporting transactions to investors.

Approved forms

- 29(1) The regulator may approve forms for use under this Act or the regulations.
- (2) The regulator may approve forms for use in—
 - (a) hard copy format; or
 - (b) digital format accessible via an approved website; or
 - (c) both.
- (3) Unless regulations or the regulator specifies otherwise, the approved form or format for filing a notice or document with the regulator or the Registrar is the format comprising the data field contained in the online registry maintained by the regulator or the Registrar for that notice or document.
- (4) If the regulator approves forms in hard copy format only, it must publish its approved forms on an approved website.

- (5) For the purposes of this section, an approved website is a website—
 - (a) that is maintained by the regulator or on its behalf; and
 - (b) to which the public has free access.

Regulator may approve basic information package

- 30(1) The regulator may approve the form and requirements of a basic information package for use under this Act if none has otherwise been prescribed.
- (2) The regulator must publish the approved form and requirements on an approved website.

Companies Act amended

- 31(1) This section amends the Companies Act.
- (2) In section 3, definition of “Offer to the Public”, repeal paragraph (b) and substitute the following—
 - “(b) a small offer by a private company that complies with [section 6(2)] of the Access to Capital (Private Companies) Act 2024;”.
- (3) In section 16, renumber as subsection (1) and add the following as subsections (2) to (4)—
 - “(2) The requirement in subsection (1)(a) that the right to transfer shares be restricted does not apply in the case of shares issued as a result of an offer of equity securities made by way of a crowd funding service under the Access to Capital (Private Companies) Act 2024.
 - “(3) Nothing in subsection (2) otherwise affects the rights of shareholders in a private company.”
 - “(4) In subsection (1)(b), the reference to a limit of 50 members does not include persons who become members of the company as a result of an offer of equity securities made by way of a crowd funding service under the Access to Capital (Private Companies) Act 2024.”
- (4) Repeal section 283(3)(a).

Offering securities in breach of Companies Act

- 32 In section 667 of the Companies Act, “Act” must be read to include this Act.