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## Chapter 6: Investment Climate

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### Openness to Foreign Investment

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In light of political events in Fiji and concerns about the treatment of some established foreign investors by Fiji authorities, potential investors should exercise considerable caution. In 2006 the armed forces commander, Commodore Voreqe “Frank” Bainimarama, overthrew the elected government in a bloodless coup d’etat. In January 2007 the interim military government was replaced by a nominally civilian interim government (“the interim government”) headed by Bainimarama as prime minister. After the Appeal Court declared the December 2006 coup and the interim government appointed in January 2007 unlawful, the 1997 Constitution was abrogated and a state of emergency imposed on April 10, 2009. Bainimarama and his government established rule by decree after the abrogation. The Fiji government repeatedly assured local and foreign investors that Fiji remains a safe place to invest and do business. However, in 2007, the long-term investment tax concession for one major U.S. investor was unilaterally and abruptly withdrawn. Fiji’s tax authority also blocked exports of a renowned mineral water in a dispute with the bottler over transfer pricing.

Government interference with business affairs has generally decreased since the months following the December 2006 coup. However, the validity of contracts or other agreements entered into with the current interim government may be subject to later interpretation by a court of law.

This report reflects the longer-term investment climate and notes where the coup has impacted it.

Generally, government restrictions and conditions are designed to ensure that investment is desirable for Fiji's development and the use of its resources. Fiji has a tradition of a strong judiciary where contractual rights are generally upheld. However, post-coup, the independence of the judiciary has come into question, raising concerns about due process of law.

Fiji's economy is shifting from a reliance on sugar and textiles to a focus on tourism and related industries. The once large textile industry now comprises a small but stable component of Fiji's exports. In the sugar industry, production is in decline and earnings lower since the reduction of inflated preferential prices paid by the European Union by 36% from 2006 to 2009.

In 2009, the economy declined by 2.5 percent largely as a result of the global economic conditions and flash floods in early 2009 that caused extensive damage to infrastructure and agriculture. A modest recovery of 1.8% is expected in 2010.

The Fiji Trade and Investment Bureau (FTIB) is responsible for the promotion, regulation and control of foreign investment in the interest of national development. FTIB pursues this task in conjunction with relevant government ministries. Government approval is required for all foreign investment in Fiji.

All businesses or enterprises with a foreign-investment component in their ownership are required to apply to the Chief Executive, Fiji Islands Trade and Investment Bureau, for the issuance of a Foreign Investment Registration Certificate (FIRC) and also pay a requisite application fee of F\$2,812.50. Applications for a FIRC are available on-line and the following documents must accompany the application:

1. A copy of the Shareholders Agreement and a copy of the Declaration of Shareholders, witnessed or certified by a justice of the peace, lawyer and/or chartered accountant, are to be submitted if local equity contribution is required;
2. A certified copy of the passport bio-data page, together with a recent colored passport size photo of all those associated with the business;
3. A police clearance report from the country of residence in the last 12 months or more; and
4. Proof of company registration abroad (if applicable).

Contact: The Chief Executive, Fiji Islands Trade & Investment Bureau, P.O. Box 2303, Government Buildings, Suva; Telephone: (679) 3315-988; Fax:(679) 3301-783; email: [ftibinfo@ftib.org.fj](mailto:ftibinfo@ftib.org.fj); website: [www.ftib.org.fj](http://www.ftib.org.fj)

The Foreign Investment Act stipulates that the approval process for investment applications should take no longer than 5 working days. Depending on the nature of the business, however, investors may also be required to obtain permits and licenses from other relevant authorities and should be prepared for delays.

Foreign investors are required a minimum equity level of investment of F\$250,000 (about US \$125,300) in cash to be brought in from offshore on or before the operational date of the business. Furthermore, certain types of investment are subject to additional restrictions. Investment areas that have been reserved for Fiji Island nationals include small scale businesses such as cafeterias, taxis, handicrafts, tailoring, repair of personal/household goods, plumbing/electrical, plant nurseries, day-care, bakeries, backpacker, nightclub and liquor bar operations. With the exception of fishing

enterprises, which must have at least 30% local equity, investors must meet certain minimum investment thresholds prior to investment in restricted industries. Full listings of reserved and restricted areas can be found at: <http://www.ftib.org.fj/invest-fiji-foreign-act.cfm>.

Foreign investors can acquire real estate. However, the land situation in Fiji is complex and only a small percentage of land is available for purchase. If the property is larger than one acre, the Minister of Lands must approve the purchase. There are industry-specific incentives for tourism, mining, filmmaking and audio-visual activities, boat building, fishing, logging and saw milling operations, and bus building.

Measure	Year	Index/ Ranking
TI Corruption Index		
Heritage Economic Freedom	2008-2009	61 (80)
World Bank Doing Business	2010	7 (
MCC Government Effectiveness	2008	7 (16%)
MCC Rule of Law	2008	0.43 (66%)
MCC Control of Corruption	2008	0.01 (59%)
MCC Fiscal Policy	2008	-3.43 (21%)
MCC Trade Policy	2008	61.8 (31%)
MCC Regulatory Quality	2008	-0.23 (38%)
MCC Business Start Up	2008	0.956 (32%)
MCC Land Rights Access	2008	N/A
MCC Natural Resource Management	2008	58.07 (10%)

## Conversion and Transfer Policies

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The Reserve Bank of Fiji (RBF) tightened foreign exchange controls in April 2009, following the devaluation of the Fiji dollar, aimed at relieving pressure on Fiji's foreign reserves and increasing liquidity in the banking system. Previously, foreign investors bringing in funds or equipment to invest in Fiji and who fulfilled all regulatory requirements were guaranteed repatriation of their investment profits and capital. The controls impose regulatory requirements and limit the amount of investment profit and capital that may be repatriated. At the start of 2010, some of the controls were relaxed and the delegated limits of specific exchange control transactions raised.

Although the Fiji dollar remains fully convertible, the Reserve Bank has not removed its suspension of offshore investments by non-bank financial institutions, companies and individuals. It has rescinded commercial banks' delegated authority to process a number of typically larger types of transactions such as profit remittances and has placed limits on a number of transactions over which the banks retain authority. Transactions above these require express Reserve Bank permission. The Reserve Bank has also introduced a credit ceiling on lending by individual commercial banks, although no limits were placed on individual customers. The Reserve Bank has said it will consider individual lending requests above the new limits on a case-by-case basis.

Provided all required documentation was submitted, the processing time for remittance applications is approximately three working days, Remittance through parallel markets continues to require prior approval by the Reserve Bank.

## **Expropriation and Compensation**

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Under the Foreign Investment Act, a foreign investor has the same protection against compulsory acquisition of property as any other person. The foreign investor has the same right as a national enterprise of recourse to the courts and other tribunals of the Fiji Islands in respect of the settlement of disputes.

Expropriation has not historically been a common phenomenon in Fiji.

## **Dispute Settlement**

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The legal system in Fiji developed from British law. Fiji maintains a judiciary consisting of a Court of Appeal, a High Court, and magistrate courts. The Fiji Court of Appeal is the final court of appeal. Both companies and individuals have recourse to legal treatment through the system of local and superior courts. Laws govern all aspects of commercial transactions, including bankruptcy law, and the courts have generally enforced these laws in a transparent and consistent manner. A foreign investor has the right of recourse to the courts and other tribunals of Fiji with respect to the settlement of disputes.

Following the December 2006 coup, however, the military appeared to intercede in a dispute over the closure by a foreign investor of a major Fiji gold mining operation. The mine's workforce appealed to the military commander, calling on the interim government to investigate the foreign owners' claims the mine was no longer viable. Army troops occupied the mining company property for several days, and the interim government established a committee to investigate the company's closure decision and recommend response options for the government. In January 2007 it was reported that the military had taken files from the Fiji company registry without warrants as part of its self-initiated investigation into possible corruption.

Past investment disputes have often focused on land issues, particularly in the logging and tourism sectors. Such disputes have been resolved through labor-management dialogue, government intervention, referral to compulsory arbitration, or through the courts.

Fiji is a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.

## **Performance Requirements and Incentives**

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To support the implementation of newly approved investments, the FTIB's Investment Division - Facilitation Unit has established a monitoring system to assist companies in obtaining necessary approvals to commence operations. The investing firm must ensure

that commercial production begins within 12 months for investments below \$1.25 million (F\$2.5 million) or within 18 months of the date of approval of the project for investments above \$1.25 million (F\$2.5 million).

Foreign investors can apply for incentives following registration with the FTIB ([http://www.ftib.org.fj/uploaded\\_documents/2008%20Investment%20Incentives.pdf](http://www.ftib.org.fj/uploaded_documents/2008%20Investment%20Incentives.pdf)). Information on incentive packages for investors can be obtained from FTIB. Incentives offered include preferential tax treatment and duty free or low duty treatment of imported materials and equipment. The incentives reflect the Fiji Government's long-term concerted efforts to encourage exports and develop priority sectors, including tourism, commercial agriculture, fisheries, forestry, the filmmaking and audio visual industry, and the information technology industry. In 2009, Fiji introduced new incentives to encourage bio-fuel and renewable energy initiatives and the establishment of a tax free region in the northern and maritime island regions of the country.

Tourism incentives include tax-related investment allowances on approved expenditures on tourist boats/ships and approved building and expansion projects. The 2009 tourism incentive package provides for 55 percent investment allowance on total expenditure and a hotel incentive package, whereby large tourism development projects with capital investments of more than F\$7 million may qualify for a 10-year tax holiday. Filmmaking and audio-visual incentives include an increase in the film tax rebate from 15 percent to 35 percent.

The Ministry for Industry, Tourism, Trade and Communication and the Ministry for Foreign Affairs, International Cooperation and Civil Aviation control import and export policy. Commercial import policy includes consideration of tariff measures, import restrictions, quota arrangements and other policies designed to assist development of local industries.

Most imports are subject to import duty, which is levied at various rates in accordance with the Customs Tariff Act of 1986. Such duties may be waived or reduced upon eligibility for investment incentives. Most goods may be imported without an import license. However, there are restrictions on the import of a number of products to protect local industries or for the purposes of quarantine. The restrictions are absolute for some products, while others may be imported subject to conditions imposed by statute or under license from the Ministry of Industry, Ministry of Primary Industries, or other relevant ministries or departments. Quotas may be placed on imports of particular products, such as motor vehicles.

## **Right to Private Ownership and Establishment**

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Foreign investors are discouraged from acquiring controlling interest in, or taking over established, locally owned enterprises in Fiji. Permission may be given, however, if such an acquisition or takeover is deemed to be in the national interest. Foreign investors typically operate through a branch or a local subsidiary in Fiji. Formation of both public and private companies is possible, the process taking about two weeks. Registration costs are nominal. The South Pacific Stock Exchange and authorized banks in Fiji are allowed to approve investments by non-resident individuals and businesses in publicly listed companies and in fixed deposit accounts for amounts up to US\$2.6 million ( F\$5

million) per investor, per annum. Investments above US\$2.6 million (F\$5 million) must be approved by the Reserve Bank of Fiji. A public company must have a minimum of seven shareholders, with no maximum; a private company must have a minimum of two shareholders and a maximum of 50. There are no nationality or residence restrictions on shareholders, but applications for the issue of new or additional shares for increased capitalization should be submitted to the Reserve Bank of Fiji for processing before share certificates may be issued to non-residents.

## Protection of Property Rights

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### Intellectual Property

Fiji's Copyright Laws are in conformity with World Trade Organization (WTO) Trade Related Aspects of Intellectual Property (TRIPS) provisions. However, while copyright laws adhere to international laws, and provisions are available for companies to register a trademark or petition for a patent in Fiji through the Office of the Administrator General of Trademark, Patents, Designs and Copyrights, the enforcement of these laws remains inadequate. Illegal materials, and illegal reproductions of films, sound recordings and computer programs are widely available throughout Fiji.

Contact: Administrator General, Trademarks, Patents, Designs, Copyrights P.O. Box 2226, Government Buildings, Suva; Telephone: (679) 3312-798; Fax: (679) 3300662; and

Fiji Audio Visual Industry Association, G.P.O. Box 16353, Suva; Telephone: (679) 3318912; Fax: (679) 3318910; Email: [favia@iFiji.com](mailto:favia@iFiji.com)

### Land Rights

Land ownership and usage is a highly complex and sensitive issue in Fiji society. In late December 2006, the post-coup interim government imposed a temporary ban on all land sales after receiving reports of alleged irregularities in the development and sale of land to foreigners but the ban was lifted in 2007.

Land in Fiji falls into three categories: Native land, Crown land, and Freehold land. Native Land refers to the 87.75% of the land held by indigenous Fijians under communal tenure relationships. This land, which is reserved for the special use of its owners, may not be sold, only leased. The Native Lands Trust Board (NTLB) is the statutory body responsible for managing native land, including leases. In its post-coup anti-corruption drive, the interim government dismissed several NTLB officials and undertook a major investigation of the board's past practices. Government plans a major reform of the NTLB and the regulation of land usage, which could affect investors.

Crown Land refers to the 3.95% of the land in Fiji owned by the government. Like NTLB land, Government (Crown) land may not be sold. The availability of crown land for leasing is usually advertised. This does not, however, preclude consideration being given to individual applications in cases where land is required for special purposes.

Freehold, private land accounts for 8.06% of total land area. Investors may lease land, though each lease category has different conditions and terms. Leases may be sold,

transferred and amended, but such dealings are subject to the consent of the NLTB and Lands Department.

Government leases for industrial purposes can be up to 99 years with rents reassessed every 10 years. NLTB leases for land nearer to urban locations are normally for 50-75 years. Annual rent is reassessed every 5 years. The maximum rent that can be levied in both cases is 6% of unimproved capital value. Leases also usually carry development conditions that require lessees to effect improvements within a specified time. Investors need to be mindful of the interim government's investigations into the NLTB for fraud, mismanagement and corruption, as these may affect future dealings and the lease of native title land.

Apart from the requirements of the NLTB and Lands Department, town planning, conservation and other requirements specified by central and local government authorities affect the use of land. Investors are urged to seek local legal advice in all transactions involving land.

Contacts: Permanent Secretary, Ministry of Lands and Mineral Resources, P.O. Box 2222, Government Buildings Suva; Telephone: (679) 3211-556; Fax: (679) 3302-730  
General Manager, Native Land Trust Board, P.O. Box 116, Suva; Telephone: (679) 3312-733; Fax: (679) 3229-696

### **Transparency of Regulatory System**

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Although the government has made some positive efforts, there is a perception among foreign investors of a lack of transparency in government procurement and approval processes. Some foreign investors considering investment in Fiji have encountered lengthy and costly bureaucratic delays. Investment disputes involving the government in 2007 and 2008 have raised serious transparency concerns.

Prior to the coup, proposed laws frequently were not submitted for public comment. However, a parliamentary committee process was in the process of development. Since the coup, legislation has been by presidential decree.

### **Efficient Capital Markets and Portfolio Investment**

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Fiji has a well-developed banking system supervised by the Reserve Bank of Fiji. The RBF regulates the Fiji monetary and banking systems, manages the issuance of currency notes, administers exchange controls, and provides banking and other services to government. In addition, it provides lender-of-last-resort facilities and regulates trading bank liquidity.

There are four trading banks with established operations in Fiji: ANZ Bank, Bank of Baroda, Bank South Pacific, and Westpac Banking Corporation. The Bank of the South Pacific purchased the Colonial National Bank in December 2009. Non-banking financial institutions also provide financial assistance and borrowing facilities to the commercial community and to consumers. These institutions include the Fiji Development Bank, Fiji National Provident Fund, Housing Authority, Credit Corporation, Merchant Finance, and

insurance companies. As of August 2009, total assets of commercial banks amounted to US\$2.127 billion (F\$4.245 billion).

A slow emerging capital market exists with 16 companies listed on the Suva-based South Pacific Stock Exchange. Previously, the Capital Markets Development Authority (CMDA), formed in 1998, was responsible for the development of capital markets and the regulation and supervision of market participants. Since August 2009, the operations of the CMDA have been consolidated into the RBF.

## **Political Violence**

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Fiji has suffered four coups d'état in its history: two in 1987, one in 2000 and one in December 2006. There was, in addition, a mutiny within the Fiji military in November 2000. In May 2000, then Prime Minister Mahendra Chaudhry and members of his government were held hostage by a group of Fijian nationalists. In the end, Fiji's military intervened, removed the coup leaders, and installed an interim government that remained in power after 2001 general elections. Largely the same government was again returned to office following elections in May 2006.

Fiji remained relatively stable from 2000 to 2006. Mounting tensions between the government and the military peaked in December 2006 when the military staged a repressive but relatively bloodless coup. Parliament was dissolved, the prime minister deposed and effectively exiled to an outer island, and the vice president, government ministers and senior bureaucrats removed from office. In January 2007, the military named an interim government to govern until national elections can be held, with the military commander as prime minister. The military committed numerous human rights violations in attempting to silence critics of the overthrow. It declared a state of emergency and eliminated or restricted many civil rights. In April 10, 2009, following the Appeal Court ruling that the December 2006 coup and the interim government appointed in January 2007 were unlawful, the 1997 Constitution was abrogated. A state of emergency which permits the censorship of the media by the Government remains.

## **Corruption**

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Credible allegations regarding misuse of government funds or abuse of public office have been raised repeatedly over recent years, especially in the annual Auditor General's reports. The limited accountability for corruption, inefficient government systems and lack of effective disciplinary processes pose major challenges to Fiji's fight against corruption. Fiji's relatively small population and limited circles of power often lead to personal relationships playing a major role in business and government decisions.

Alleged corruption in government and the civil service was cited by the military as a major justification for its overthrow of Fiji's democratically elected government in 2006. The military itself, however, has suffered from a lack of a transparent budgetary process and has itself evaded the Auditor General's investigations. In 2007, the government established by proclamation an independent commission against corruption, the Fiji Independent Commission Against Corruption (FICAC), with broad powers of investigation.

Fiji has accessed to the UN Convention Against Corruption in 2008.

The media, Transparency International Fiji, and the non-governmental Pacific Center for Public Integrity (PCPI) play limited roles in raising anti-corruption issues.

## **Bilateral Investment Agreements**

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Fiji has negotiated double taxation agreements with the Australia, Japan, Malaysia, New Zealand, Papua New Guinea, the Republic of Korea, and United Kingdom. Fiji has not entered into a bilateral investment agreement with the United States or any other country.

Fiji is party to a number of regional and international trade arrangements, including the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA), an Economic Partnership Agreement (EPA) with the EU, and the Generalized System of Preferences (GSP). Under SPARTECA, Fiji has broad, duty-free access to the markets of Australia and New Zealand for its exports, subject to certain exceptions and limitations. In November 2007, Fiji signed an interim EPA on trade in goods, replacing the trading section of the Cotonou Agreement, which secures preferential access to the EU market for some Fiji exports. Fiji is also party to the Melanesian Spearhead Group (MSG) and the regional Pacific Island Countries Trade Agreement (PICTA) but is presently excluded from participation in the Pacific Agreement on Closer Economic Relations (PACER) Plus trade negotiations..

## **OPIC and Other Investment Insurance Programs**

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The U.S. Overseas Private Investment Corporation (OPIC) provides investment insurance in Fiji for qualified applicants. The risks of currency convertibility and expropriation are safeguarded under Fiji's foreign-exchange regulations. OPIC provides political risk insurance and loans for qualified projects. Fiji is not a member of the Multilateral Investment Guarantee Agency.

The Fiji dollar is pegged to a basket of currencies of Fiji's principal trading partners, chiefly Australia, New Zealand, the United States, the European Union and Japan.

## **Labor**

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The workforce in 2007 was estimated at 326,988, of which about 58.8 percent are in formal, paid employment. Nearly 93 percent of the workforce has been educated to a secondary school level, and four percent have received a university-level education or post-secondary school technical training.

Fiji continues to face a "brain drain", with many skilled and professional workers migrating overseas for better working and living conditions. Acute shortages are found in the medical field, with half the annual nursing graduates migrating each year.

The Ministry of Employment and Industrial Relations has responsibility for the administration of labor laws and the encouragement of good labor relations. A new Employment Relations Act was promulgated by decree in April 2008. This legislation consolidates and updates Fiji's labor and employment laws. The new legislation mandates that labor disputes be resolved through soon-to-be-established mediation courts and tribunals.

Fiji has been a member of the International Labor Organization since 1974 and has ratified 25 ILO conventions.

## Foreign-Trade Zones/Free Ports

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To encourage development in the northern and maritime regions of Fiji, each has been declared a Tax Free Region (TFR). Businesses that are established in such a region and meet the prescribed requirements will enjoy a 13-year corporate tax holiday and import duty exemption on raw materials, machinery and equipment.

## Foreign Direct Investment Statistics

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Since 2006, there has been a downward trend in the value of foreign direct investment registrations. According to data provided by the Fiji Islands Trade and Investment Bureau, total foreign direct investment approved in 2008 totaled US\$229.9 million (F\$405.5) million. Approval is a precondition but does not necessarily mean that an actual investment will be made.

## Web Resources

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Fiji Islands Trade and Investment Bureau (FTIB), [www.ftib.org.fj](http://www.ftib.org.fj)

Fiji Government, [www.fiji.gov.fj](http://www.fiji.gov.fj)

Fiji Government – Ministry of Foreign Affairs, International Co-operation & Civil Aviation, [www.foreignaffairs.gov.fj](http://www.foreignaffairs.gov.fj)

Fiji Government – Ministry of Lands, Mineral Resources & Environment, [www.lands.gov.fj](http://www.lands.gov.fj)

Reserve Bank of Fiji, [www.rbf.gov.fj](http://www.rbf.gov.fj)

Capital Markets Authority of Fiji, [www.cmda.com.fj](http://www.cmda.com.fj)

Native Land Trust Board (NLTB), [www.nltb.com.fj](http://www.nltb.com.fj)

Mineral Resources Department, [www.mrd.gov.fj/qfiji/](http://www.mrd.gov.fj/qfiji/)

Fiji Islands Customs & Revenue Authority, [www.frca.org.fj](http://www.frca.org.fj)

Secretariat of the Pacific Community (SPC), [www.spc.org.nc](http://www.spc.org.nc)

Pacific Islands Forum Secretariat, [www.forumsec.org.fj](http://www.forumsec.org.fj)

OPIC, [www.opic.gov](http://www.opic.gov)

ILO, [www.ilo.org/public/english/region/asro/suva/](http://www.ilo.org/public/english/region/asro/suva/)

Bureau of Statistics, [www.statsfiji.gov.fj](http://www.statsfiji.gov.fj)

Asian Development Bank – South Pacific Subregional Office, [www.adb.org/SPSO/](http://www.adb.org/SPSO/)

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