



PERSONAL PROPERTY SECURITIES BILL 2017

SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS BY ACTING GOVERNOR, ARIFF ALI ON 2 AUGUST 2017

I. Introduction

- Thank you, Honourable Chairman, Deputy Chairman and Members of the Standing Committee on Justice, Law and Human Rights for this opportunity to the Reserve Bank of Fiji to provide our views and comments on the Personal Property Securities Bill 2017.
- Honourable Chair, let me first take this opportunity to thank the hard working team from the Solicitor General's Office, led by their Deputy Solicitor General, Ms Tracey Wong in assisting with the drafting of this piece of legislation.
- As the Reserve Bank of Fiji has been at the forefront of this Bill, I will not comment on each and every clause in the Bill, but rather give a general overview of this legislation.
- Honourable Chair, at the onset, we would like to highlight that we support this Bill as it is an important development for our financial system. It is the cornerstone of our reform agenda commonly referred to as the "Secured Transactions Reform" to address the current financing gap and unlock access to finance for private sector growth.
- The basic purpose of the Personal Property Securities Bill is to increase economic activity. It does so by making it easier and less expensive to obtain credit. Increase in access to credit is directly correlated to higher economic activity which in-turn leads to job creation, reduction in poverty and higher tax collection which is then channeled back to all Fijians through improved or better services. In this regard, Honourable Chair, this Bill is very much in line with our vision at the Reserve Bank which is "**Leading Fiji to Economic Success**".
- Honourable Chair, there has been a lot of debate about the level of debt and debt in general over the past few months. Debt is not a bad thing if it is managed well and within sustainable levels. One point that I have often stressed when the issue of debt is raised is "***How many of us would have bought our home or car without taking a loan? How many of our citizens would not have a TV, fridge or bed, if they could not have access to hire-purchase credit?***"
- This Bill, in simple terms, allows those without land holdings to obtain credit. If such credit goes for productive purpose, it is our strong view it will assist in more inclusive economic growth.

II. Background

- Honourable Chair, please allow me to begin with how this Bill has come about. The Reserve Bank of Fiji had been the main driver for this reform and the bringing about of this piece of

legislation. For almost three years, we have been working with the support of the Technical Assistance provided by Asian Development Bank's Private Sector Development Initiative to develop this Bill. In late 2014, the Reserve Bank formed the Secured Transactions Taskforce to begin this work and guide the policy decisions required to come up with a draft that is suitable for Fiji.

- Key agencies from the public sector such as the Ministry of Economy, Ministry of Industry, Trade & Tourism, and Solicitor General's Office formed part of the Taskforce. Other strategic private sector stakeholders that were part of the Taskforce included the Association of Banks in Fiji (ABIF), Finance Companies Association (FCA), Fiji Development Bank (FDB), Public Service Credit Union, Women in Business and the Fiji Council of Social Services.
- Honourable Chair, I am pleased to inform you that since 2015, the Taskforce met seven times and the Secretariat has held extensive bilateral consultations with the commercial banks, credit institutions, other lenders not licensed by the RBF, law firms, Land Transport Authority, Fiji Revenue and Customs Services, Companies Office, ABIF Technical Committee, etc. to introduce the reform and/or to discuss the 2015 draft.
- I wish to highlight that at the time of the initial consultation, the 2015 draft had not included the sugar cane industry in the Bill and therefore it did not have the full consequential amendments to address the interaction of the Bill with other existing laws in Fiji.
- However, since then we have consulted with all the key representatives of stakeholders in the Sugar Industry which included the Fiji Sugar Corporation, Sugar Cane Growers Fund, Sugar Cane Growers Council, Fiji Development Bank and the Ministry for Sugar and completed the consequential amendments. We have worked extensively with the ADB-PSDI team and the Solicitor General's Office and believe that the Bill is now fit for purpose.
- Honourable Chair, I would like to re-iterate that this Bill has been extensively discussed and deliberated by the stakeholders and includes their views and comments. I am therefore pleased to highlight that while the Reserve Bank has been the main driver for this legislation, the Bill has been unanimously supported by all the stakeholders. In fact, so much so that some of the key stakeholders have been following up on when this Bill will be passed by Parliament and come into effect.

III. Is Fiji the first country to have legislation on Personal Property Securities Bill?

- Honourable Chair, the answer is a simple **NO**. In fact, we are one of the last in the South Pacific to develop this legislation. The principles in this Bill were first developed in America in the 1940s and implemented state by state in the 1950s and 1960s. Canadian provinces followed in the 1960s and 1970s. In the 1990s electronic registries were introduced to take advantage of new technologies. This reform has spread to other parts of the world including China, Asia and Europe.
- In the South Pacific, the legislation was first adopted by New Zealand in 1999 and spread to other island states. Fiji is the 11th jurisdiction to introduce this legislation with Australia introducing the Personal Property Securities Act in 2009. Fiji's draft closely follows New Zealand Personal Property Securities Act 1999 and is structured closely after the Papua New Guinea Personal Property Security Act 2011 in terms of complexity and detail.

- Honourable members, as such, we are not reinventing the wheel, but introducing a reform and its cornerstone legislation that has been tried and tested for over half a century. Common names of this legislation include Personal Property Security Act, Secured Transactions Act. In the United States it is known as the Universal Commercial Code Revised Article 9.

IV. Key Features of the Bill

- Honourable Chair, while the Bill has many useful features, I will focus on what we believe are the three key features.
- Firstly, the Bill provides for filing of notices for priority lending and provides clear rules surrounding listing and enforcement.
- Secondly, it establishes an online Collateral Registry that lists out security interests over personal properties and flags that a secured party is claiming a security interest against the personal property of a debtor.
- Thirdly, the bill expands the collateralisation base from just fixed assets of land and building to what is termed as movable assets. Movable Assets include vehicles, industrial/agricultural machinery and equipment, commodities, agricultural products (crops, livestock, fisheries, etc.); minerals and timber to severed; inventory; intellectual property rights; negotiable instruments; accounts receivables; and bank accounts and insurance policies.

V. What are the Benefits of this Legislation?

- Honourable Chair, I had mentioned that Fiji is not the first country to adopt such legislations. Some of the benefits noted for countries that have undertaken secured transactions reform include: -
- Firstly, and as highlighted earlier, this legislation will enable increased access to credit. Firms and individuals who in the past could not access loans because of the lack of acceptable collateral (usually land & buildings) will now be able to access finance by easily pledging previously unacceptable personal property as security for their loans.
- Honourable members, this stands to benefit our Micro, Small and Medium Enterprises (MSME) sector which accounts for almost 97 percent of all businesses but most of whom do not have land or building but have other forms of collateral. Access to credit for the MSME sector has always been a challenge and this legislation will greatly assist in over-coming that.
- The second benefit that we envisaged is that not only will access to credit improve, but cost of credit is likely to fall and new financial products and services are likely to be introduced.
- Thirdly, there will be efficiency gains. For example, previously a lender would need to complete a Bill of Sale and physically register this at the Titles Office. Now, this will be registered on the Online Registry without delay within a matter of minutes. In addition, the Registry is a publicly searchable registry with no cost. When buying goods, searching the register helps buyers make informed decisions because a quick check on the Registry will ascertain whether the same valuable goods are free from any prior claims. Under the existing legal and financial sector framework, this process is quite cumbersome and costly.
- For example, A person intending to buy a car (from his neighbour) has to either hire a lawyer or personally search for preexisting security interest in the form of a Bill of Sale or a Mortgage. The legislation and registry would allow the buyer to simply go to the registry's website

and search the vehicle's registration number in order to determine if the vehicle is free from security interest.

- When issuing credit, properly registering a security interest can protect a lender's interest should the debtor default on repayments. If you have registered your security interest, you are in the best position to get your goods, or their value back.
- Finally Honourable Members, since this legislation greatly assists businesses access credit, once this legislation is approved by Parliament and comes into effect, it will improve our Ease of Doing Business ranking which has a flow on effect on overall business confidence for Fiji.

VI. The Personal Property Securities Registry

- The Act provides for the establishment of a "virtual filing office", the Personal Property Securities Registry, where Notices of security interest may be filed to publicise the secured party's claim of its interest in a debtor's collateral. The purpose of the Registry is to: -
 - a) To enable the registration of a security interest by a creditor, which in turn is publically searchable; and
 - b) To establish priority between secured creditors
- The functions of the Registry include: -
 - a) Registration – filing of Notice by lenders.
 - b) Renewal – renewing a notice if the debt repayment period is extended.
 - c) Amendment – changing details of the debtor or description of the collateral.
 - d) Search – allows public search of all notices filed.
 - e) Discharge – removing of security interest in collateral if debt obligation has been cleared by the debtor.
- By publicising its security interest, the secured party establishes its priority as of the date and time of filing. In practical terms, the Registry consists of a web-enabled, electronic registry into which Notices are entered by the secured party. In modern implementation there is no paper filing involved. All filings into the registry are completed by the users, and all Notices filed in the Registry are public records and may be searched via the internet.
- The legislation does not require that the full loan documents be filed. Instead, the basic concept is that the registry should collect enough information to give notice to a searcher that a particular debtor and particular property may be subject to a security interest.
- Filing Notices within the registry will be straightforward and intuitive, and with minimal training. Users will be able to easily navigate their way around the registry interface.
- Honourable Chair, the Reserve Bank has agreed to act as the Registrar in the initial years to guide the implementation of the reform and provide credibility to the process. Stakeholder consultations indicate that licensed banks and credit institutions that form the bulk of Fiji's credit market are comfortable with this financial sector approach with some lenders championing this cause.

VII. Transition Period

- Honourable Chair, you will note that there are pre-existing transactions that will now fall within the ambit of this legislation. These must be migrated into the registry in a fair way so as not to prejudice the rights of the parties in these earlier secured credit transactions. To cater for this, transition period of six months has been agreed to allow for the filing of these Notices.

VIII. What do we need to do next?

- The following is a list of activities towards the implementation of the legislation and launch of the Online Registry: -

- a) Enactment of the PPS Act;
- b) Raising Public Awareness;
- c) ADB-PSDI team to procure the Online Registry and will need to customise it;
- d) ADB-PSDI team to train financial institutions on product development and lending;
- e) Training and walkthrough of RBF on Registrar role;
- f) Setup/launch of Online Registry;
- g) Training the financial institutions on the use of Registry;
- h) Commencement of the Act and
- i) Six month transition period.

- We are confident that this Bill will have the support of all sides in Parliament and have therefore already started discussions with ADB PSDI to procure the online registry and start with the customisation.

- We are of the view that the Online Registry will be up and running before the end of next year.

IX. Concluding Remarks

- Honourable Chair and members of the Standing Committee, the Personal Property Securities Bill works by providing an efficient means by which moveable property may serve as collateral for a loan. This Bill therefore has the potential to unlock the value of moveable assets owned by Fijians which otherwise would go unused. If it is easier for lenders to make loans secured by moveable property, more Fijians will have the opportunity to participate in the economy.

- We at the Reserve Bank of Fiji and most of our stakeholders in the Taskforce strongly believe that this is a powerful piece of legislation or reform since many of our people do not have land or may have land that is communally owned which cannot be pledged as collateral.

- In view of the number of benefits highlighted in the submission, Honourable Chair, the Reserve Bank of Fiji fully supports the enactment of the Bill.

- Again I take this opportunity to thank the Parliamentary Standing Committee for allowing the Reserve Bank to present its views on the Personal Property Securities Bill 2017 and welcome any questions or clarification.