



STANDARD INTERPRETATION GUIDELINE 2021-20

SUBMARINE NETWORK CABLE INVESTMENT INCENTIVE INCOME TAX ACT 2015 - INCOME TAX (SUBMARINE NETWORK CABLE INVESTMENT INCENTIVES) REGULATIONS 2021 CUSTOMS TARIFF ACT 1986 – CONCESSION CODE 305

This Standard Interpretation Guideline (SIG) sets out Fiji Revenue and Customs Service's (FRCS) policy and operational practice in relation to the submarine network cable investment incentive which was introduced in the 2021-2022 National Budget of Fiji

It is issued with the authority of the Chief Executive Officer (CEO) of FRCS who is also the Comptroller of Customs and Excise.

All legislative references in this SIG are to the Income Tax Act 2015 and the Income Tax (Submarine Network Cable Investment Incentive) Regulations 2019 (unless otherwise stated)

This SIG is in effect from 1st August 2021 and may need to be reviewed in the event of any relevant legislative amendments.

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PURPOSE

1. The purpose of this Standard Interpretation Guideline (SIG) is to discuss CEO's interpretation and application of the submarine network cable investment incentive which is available under the Income Tax (Submarine Network Cable Investment Incentive) Regulations 2021.
2. The SIG also aims to provide clarity and FRCS position on the application of the provisions under Concession Code 305 which relates to the duty exemptions provided for the importation of capital goods for the purpose of the project.
3. As the incentive is new, the CEO finds it necessary to provide the much needed awareness and clarity on the requirements to qualify for the incentive, the legislated procedural requirements and the tax and duty exemption benefits associated with the incentive.

INTRODUCTION

4. On 16th July 2021, the Honorable Aiyaz Sayed-Khaiyum, Attorney-General and Minister for Economy, Civil Service and Communications stated the following in Parliament during the 2021-2022 National Budget deliberations:

"... we have currently only one submarine cable that lands in Fiji, the Southern Cross Cable that connects Australia to Fiji to the West Coast of North America. All of these zoom meetings that we are having is through this Southern Cross Cable. Of course, if tomorrow there is a volcano in the middle of the ocean in the Northern or Southern Pacific Ocean and the cable goes, we will be completely disconnected. We will only be able to rely on satellite communication, which is also very expensive.

So, Mr. Speaker, Sir, in order to attract more cables to land in this part of the world, we are offering a 30-year tax holiday because these investments runs into tens and millions of dollars with a lot of duty concession packages to any company that lands a network submarine cable, in particular if we are going to invest in the VPO sector. The reason, as I have said, Mr. Speaker, Sir, an existing cable in space in pursuit of a new development is also about building redundancy and bringing faster internet speeds at lower costs throughout Fiji..¹"

5. The policy intent was later captured in the Income Tax (Submarine Network Cable Investment Incentive) Regulations 2021 (Legal Notice 77 of 2021) and the Customs Concession code 305 as found under the Customs Tariff Act 1986 which is discussed henceforth.
6. The incentive is available to companies that are registered under the Companies Act 2015 and it provides for the exemption from paying duty on approved exempt goods and income tax exemptions subject to required capital investment levels.

Furthermore, the capital investment level of the company must be in excess of \$40,000,000 in order to qualify for the submarine network cable investment incentive

¹ Parliament of The Republic of Fiji, 'Parliamentary Debates – Daily Hansard' Friday, 16th June 2021 1915

7. In this SIG, any reference to the term “Minister” is a reference to the Minister responsible for Finance².
8. The examples used throughout this SIG are merely illustrative. They do not cover the infinite number of factual scenarios that may arise. The relevant legislative provisions must be considered and applied to each case on its particular facts.

That is, conclusions should not be drawn by determining whether the facts of a particular case may be analogous with particular examples, but rather on the basis of applying the correct tests established by the law.

9. The full text of the legislative provisions is contained in the Appendix.

LEGISLATIVE ANALYSIS

SUBMARINE NETWORK CABLE INVESTMENT INCENTIVE

10. The Regulations provides the Minister or the CEO the powers to grant or refuse to grant a submarine network cable investment incentive to a company which has completed the relative project³.
11. The investment package is only available to companies which commence the project on or after 1 August 2021⁴. This means that a company that has already commenced with their submarine network cable project or has already completed the project will not qualify for the incentive.
12. A submarine network cable refers to an integrated system of communication cables laid on or below the floor of the ocean or other body of water, that collectively provides data transfer from one land-based location to another⁵.
13. The submarine network cable project includes the establishment of a new submarine network cable business including the construction, renovation or refurbishment of a building, factory or plant into a cable landing station or other associated infrastructure development⁶.
14. The submarine network cable investment incentive is available in two stages:
 - a. Provisional approval; and
 - b. Final approval.

Provisional Approval

15. A company may apply in writing to the CEO for provisional approval to carry out a submarine network cable investment⁷. The application must set out the following:
 - a) the name and registered office of the company;
 - b) the names of all directors and shareholders of the company, including the percentage of ownership of shares in the company;

² Regulation 2 – definition of “Minister”

³ Regulation 3

⁴ Regulation 2 – definition of “project”

⁵ Regulation 2 – definition of submarine network cable”

⁶ Regulation 2 – definition of project

⁷ Regulation 3

- c) a current statement of all assets and liabilities of the company;
- d) the location and description of the proposed project;
- e) a sketch plan showing the proposed project;
- f) the estimated cost of the proposed project;
- g) if the proposed project is to be carried out in stages, a description and the estimated cost, of each stage and details of the proposed timetable;
- h) evidence of the company's ability to undertake the proposed project;
- i) details of the proposed method of financing the proposed project;
- j) estimates of the projected income from the proposed project;
- k) a letter from the Department of Environment confirming—
 - i. that the screening process for an Environmental Impact Assessment has been undertaken and there is no need for an Environmental Impact Assessment to undertake the proposed project; or
 - ii. that an Environmental Impact Assessment has been undertaken and the proposed project has been approved by the Department of Environment;
- l) any other relevant permit, licence, certificate, approval or authorisation for submarine network cable business, construction or development required under any written law, as and when applicable; and
- m) any other information the CEO may require.

16. Upon receipt of the application by the CEO, the CEO may:
- a. approve the application, with or without any condition;
 - b. approve part of the application, with or without any condition, and reject other parts of the application; or
 - c. reject the application⁸

Consideration of Application for Provisional Approval

17. In order to process the application for provisional approval, the CEO will take into account the following:
- a) the ability of the applicant to undertake the proposed project
 - b) the assets and liabilities of the applicant;
 - c) the nature and extent of the proposed project;
 - d) the findings of the Environmental Impact Assessment, if applicable;
 - e) the sustainability of the proposed project;
 - f) the potential contribution of the proposed project to the economy;
 - g) all necessary requirements have been met and all necessary approvals have been obtained; and
 - h) such other matters the CEO may consider relevant to the desirability of the proposed project and the capability of the applicant to complete it.

Rejection of Application for Provisional Approval

18. An applicant whose application has been rejected, including a partially rejected application, may—
- a) make a new application to the CEO;
 - b) amend and resubmit the original application to the CEO; or

⁸ Regulation 4(1)

- c) appeal the decision of the CEO to the Minister.

Acceptance of Application for Provisional Approval

19. Once a provisional approval is granted, the importation of “capital goods” by the company which would be used in carrying out the submarine network cable investment, is exempt from all duties payable in respect of their importation⁹.

“Capital Goods” refers to raw materials, capital equipment, plant, machinery, spare parts and any other goods employed in the submarine network cable business but does not include furniture or motor vehicles¹⁰.

20. The exemption of duty is legislated under Concession Code 305 of Schedule 2 to the Customs Tariff Act 1986. (Refer to Appendix).
21. It is noted that even if a good that is being imported qualifies for the exemption, the applicant must satisfy the CEO that the goods cannot be produced locally. The CEO will then decide whether such goods are to be imported under the exemption¹¹.

For example, a company which has been granted provisional approval intends to import steel of a particular specification for the construction of the submarine network cable project. The company must write to the CEO seeking approval for the importation of the steel demonstrating that the particular specification of steel is not and cannot be produced locally in Fiji.

If such steel can be produced in Fiji, the CEO would not give approval for the importation of the item under the exemption.

22. Moreover, the exemption is only applicable to all duty payable on the importation, which includes fiscal and excise duty only. VAT would still apply on the importation of exempt goods¹².

⁹ Regulation 5(1)

¹⁰ Regulation 2 – definition of capital goods

¹¹ Regulation 5(2)

¹² Regulation 5(3)

The Duty Concession – Concession Code 305

Code Number	Persons or Bodies	Goods Eligible for Duty Concession	Import Duty Rates			Conditions	Certificate to be signed by
			Fiscal	Excise	VAT		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
305	Incentive for investment in network cabling & infrastructure as per the Income Tax Regulations relating to this incentive	Raw materials, machinery, and equipment including spare parts	Free	Free	9%	<p>(a) That a provisional approval for the project is issued by the Minister;</p> <p>(b) That the goods are imported for the establishment of the business;</p> <p>(c) That the goods must be used for the purposes for which the concession is granted;</p> <p>(d) That the disposal or use of the goods for purposes other than that for which the concession is granted be subject to section 17 of the Customs Tariff Act 1986.</p>	The approved company

23. Under the provisions of the Customs Tariff Act 1986, the concession is claimed at the time of importation or at the time of clearance from the bonded warehouse¹³. This means that once the goods have been cleared, the importer cannot claim the concession under any concession codes.

Eligible Goods

24. The goods that can be imported under the concession code are raw materials, machinery and equipment including spare parts, as specified in column (3) but excluding furniture or motor vehicles.

Conditions

25. The goods imported under this concession are for the purpose for which the concession is granted and for the establishment of the submarine network cable business; and not for sale.
26. The disposal or use of approved goods in column (3) for the purposes other than that for which the concession is granted would lead to such goods to be subject to the conditions as provided for in Section 17 of the Customs Tariff Act 1986.

As per Section 17 of the Customs Tariff Act, if within five years from the date of importation, the goods imported are disposed of or used for any other purpose other than that for which the concession is granted, the goods are liable for duty.

27. When any of the conditions are not fulfilled after the goods are cleared from Customs Control, the CEO may disallow the concession and the tax and duty foregone becomes payable

¹³ Note 5 to Part II of Schedule to the Customs Tariff Act 1986

The Submarine Network Cable Project [Timeline to Commence]

28. If a company has been granted provisional approval, the company must commence the submarine network cable project within 24 months from the date the provisional approval is granted¹⁴.
29. If the company is unable to commence the project within the 24-month timeline due to unforeseen circumstances or circumstances beyond the control of the company (natural disasters or unavailability of construction material in the market), the company may write to the Minister for an extension of the time under which the submarine network cable investment incentive must be completed¹⁵.
30. The application for extension must be made within 30 days before the end of the 24 months initially granted under the provisional approval¹⁶. This means that the application must be made on the 23rd month within which the provisional approval is granted.
31. There is no timeline prescribed for the extension of the timeline for provisional approval, therefore the discretion for the extended timeline lies solely with the Minister.
32. If an extension is granted under the Regulations, the company continues to enjoy the duty free concessions provided for the exemption of imported exempt goods during the extended period¹⁷.

Final Approval

33. A company which has been granted provisional approval and has completed the project within the timeline (including extended timeline) may apply to the Minister for final approval¹⁸.
34. The application for final approval must be made in writing and supported by the following—
 - a) copies of invoices and a schedule of expenditure relating to the project;
 - b) an approved plan showing the site, layout and surrounding areas of the project;
 - c) a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable; and
 - d) any other relevant permit, licence, certificate, approval or authorisation for submarine network cable business, construction or development required under any written law, as and when applicable.¹⁹
35. If the Minister is not satisfied that:
 - a. the company has commenced the project within 24 month or the approved extended timeline; and
 - b. has complied with any conditions upon which provisional approval was granted;the Minister may refuse to grant the final approval to the company²⁰.

¹⁴ Regulation 6(1)

¹⁵ Regulation 7(1)

¹⁶ Regulation 7(2)

¹⁷ Regulation 7(3)

¹⁸ Regulation 6(2)

¹⁹ Regulation 6(3)

²⁰ Regulation 6(4)

36. In the event that the application for final approval is rejected, the duty payable for the importation of exempt goods under the provisional approval immediately becomes due and payable by the company²¹.
37. For example, Cable Co was granted provisional approval in order to commence the new submarine network cable project on 1st December 2021. Cable Co was not able to commence the project before 1st December 2023 and did not apply for an extension of the timeline as well. However, during the 2-year period, Cable Co had imported capital goods under the concession code 305 which meant that no duty was levied on the importation of such goods.

Cable Co applied for Final approval on the 15th of March 2024 and this was refused by the Minister as the project did not commence within 24 months.

Consequence: Cable Co would be required to pay the import duty on the capital goods that were imported under concession code 305 during the provisional approval period.

38. The Minister may not grant final approval unless:
 - a) the applicant produces a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable;
 - b) the Minister is satisfied that the applicant has in all respects completed the requirements of the project;
 - c) the Minister is satisfied that the project meets the applicable standards; and
 - d) the project is fully completed.
39. The notice of the decision by the Minister to approve or reject is made by the CEO in writing²².
40. Once final approval is granted by the Minister, the company's income becomes exempt from tax from the first day of commercial operation of the submarine network cable business or any other date as specified by the Minister provided that the capital investment is more than \$40,000,000
41. The tax exemption applies for a period of 30 consecutive years.

Revocation of Submarine Network Cable Investment Incentive

42. There may be instances where the Minister may revoke a submarine network cable investment incentive. This would usually occur in the following circumstances:
 - a) breaches any condition of provisional or final approval;
 - b) fails to setup and install the submarine network cable;
 - c) fails to comply with any of the requirements of the Regulations; or
 - d) is convicted of an offence under any written law relating to taxation, customs or excise,
43. If the incentive has been revoked, any tax or duty foregone is payable. This means that any duty exempted for the importation of capital goods or any income tax exempted following the final approval becomes payable by the company.

²¹ Regulation 10

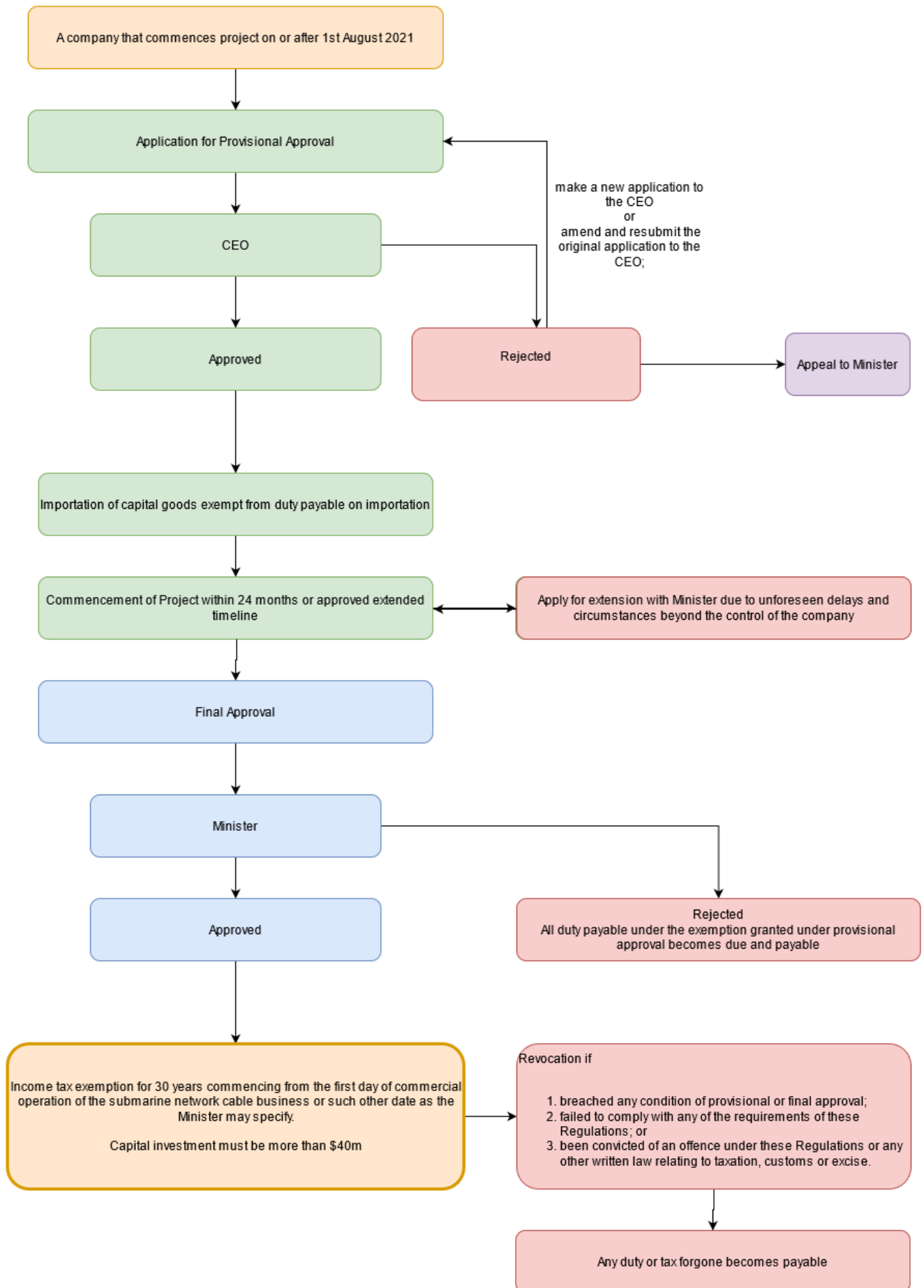
²² Regulation 8(2)

Transferability of package

44. There may be instances where a company which has been granted the submarine network cable investment incentive may sell the submarine network cable business.
45. In such cases, the purchaser or prospective purchaser may apply in writing to the Minister for the transfer to it of any remaining benefits of the submarine network cable investment incentive²³.
46. For further information and clarification in regard to this SIG, please email us at tipu@frcs.org.fj

²³ Regulation 11

APPENDIX ONE: FLOWCHART



APPENDIX TWO: LEGISLATION

[LEGAL NOTICE NO. 77]

INCOME TAX ACT 2015

Income Tax (Submarine Network Cable Investment Incentives) Regulations 2021

IN exercise of the powers conferred on me by section 142 of the Income Tax Act 2015, I hereby make these Regulations—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) These Regulations may be cited as the Income Tax (Submarine Network Cable Investment Incentives) Regulations 2021.

(2) These Regulations are deemed to have come into force on 1 August 2021.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“cable landing station” means the first point at which the submarine network cable is connected or terminated in Fiji;

“capital goods” means raw materials, capital equipment, plant, machinery, spare parts and any other goods employed in the submarine network cable business but does not include furniture or motor vehicles;

“company” means a company registered under the Companies Act 2015;

“final approval” means the approval granted by the Minister under regulation 8;

“Minister” means the Minister responsible for finance;

“project” means a project on or after 1 August 2021 for the establishment of a new submarine network cable business including the construction, renovation or refurbishment of a building, factory or plant into a cable landing station or other associated infrastructure development;

“provisional approval” means the approval granted by the CEO under regulation 4;

“submarine network cable” means an integrated system of communication cables laid on or below the floor of the ocean or other body of water, that collectively provides data transfer from one land-based location to another;

“submarine network cable business” means a business investing in submarine network cables and any associated infrastructure development; and

“submarine network cable investment incentive” means the duty exemption under regulation 5 and the exemption of tax on income under regulation 9 for a submarine network cable business established on or after 1 August 2021.

PART 2—SUBMARINE NETWORK CABLE INVESTMENT INCENTIVE

Application for provisional approval

3.—(1) A company (“applicant”) may apply in writing to the CEO for provisional approval of the proposed project.

(2) The application must set out and be supported by the following—

- (a) the name and registered office of the company;
- (b) the names of all directors and shareholders of the company, including the percentage of ownership of shares in the company;
- (c) a current statement of all assets and liabilities of the company;
- (d) the location and description of the proposed project;
- (e) a sketch plan showing the proposed project;
- (f) the estimated cost of the proposed project;
- (g) if the proposed project is to be carried out in stages, a description and the estimated cost, of each stage and details of the proposed timetable;
- (h) evidence of the company’s ability to undertake the proposed project;
- (i) details of the proposed method of financing the proposed project;
- (j) estimates of the projected income from the proposed project;
- (k) a letter from the Department of Environment confirming—
 - (i) that the screening process for an Environmental Impact Assessment has been undertaken and there is no need for an Environmental Impact Assessment to undertake the proposed project; or
 - (ii) that an Environmental Impact Assessment has been undertaken and the proposed project has been approved by the Department of Environment;
- (l) any other relevant permit, licence, certificate, approval or authorisation for submarine network cable business, construction or development required under any written law, as and when applicable; and
- (m) any other information the CEO may require.

Power to approve applications

4.—(1) The CEO may—

- (a) reject the application;
- (b) approve the application, with or without any condition; or
- (c) approve part of the application, with or without any condition, and reject other parts of the application.

(2) The CEO must take into account the following matters when determining an application under subregulation (1)—

- (a) the ability of the applicant to undertake the proposed project;

- (b) the assets and liabilities of the applicant;
- (c) the nature and extent of the proposed project;
- (d) the findings of the Environmental Impact Assessment, if applicable;
- (e) the sustainability of the proposed project;
- (f) the potential contribution of the proposed project to the economy;
- (g) all necessary requirements have been met and all necessary approvals have been obtained; and
- (h) such other matters the CEO may consider relevant to the desirability of the proposed project and the capability of the applicant to complete it.

(3) An applicant whose application has been rejected, including a partially rejected application, may—

- (a) make a new application to the CEO;
- (b) amend and resubmit the original application to the CEO; or
- (c) appeal the decision of the CEO to the Minister.

Effect of provisional approval

5.—(1) When provisional approval is granted, all capital goods, imported by or on behalf of the applicant and used in the carrying out of the project, are exempt from all duties payable in respect of their importation under concession code 305 of Schedule 2 to the Customs Tariff Act 1986.

(2) Before capital goods are imported by the applicant, it is a condition of importation that the applicant must first provide proof that such goods cannot be produced locally to the satisfaction of the CEO, who decides whether such goods are to be imported.

(3) Nothing in this regulation applies to any tax payable under the Value Added Tax Act 1991.

Commencement of project

6.—(1) An applicant that has been granted provisional approval must commence the project within 24 months from the date on which the provisional approval was granted.

(2) Subject to the other provisions of this regulation, where an applicant has been granted provisional approval and has completed the project, the applicant may apply to the Minister for final approval.

(3) An application under subregulation (2) must be made in writing and be supported by the following—

- (a) copies of invoices and a schedule of expenditure relating to the project;
- (b) an approved plan showing the site, layout and surrounding areas of the project;
- (c) a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable; and

- (d) any other relevant permit, licence, certificate, approval or authorisation for submarine network cable business, construction or development required under any written law, as and when applicable.

(4) Subject to regulation 8, the Minister must refuse to grant final approval if the applicant has failed to commence the project or has failed to comply with any condition upon which provisional approval was granted.

Extension of time for commencement of project

7.—(1) If a company to which provisional approval has been granted is unable to commence the project within the period provided in regulation 6(1) due to unforeseen circumstances or some other act beyond the control of the company, the company may apply in writing to the Minister to extend the time by which the project must commence.

(2) The application must be made within 30 days before the end of the time period provided in regulation 6(1).

(3) If the Minister extends the time under subregulation (1), the company continues to enjoy the duty free concession provided for by regulation 5 during the extended period.

Final approval if completed

8.—(1) An application for final approval must not be granted unless—

- (a) the applicant produces a certificate of completion and permit to occupy issued by a building surveyor in accordance with the Public Health (Building) Regulations 1959, as applicable;
- (b) the Minister is satisfied that the applicant has in all respects completed the requirements of the project;
- (c) the Minister is satisfied that the project meets the applicable standards; and
- (d) the project is fully completed.

(2) The CEO must notify the applicant in writing of the decision of the Minister made under subregulation (1).

Effect of final approval

9. From the first day of commercial operation of the submarine network cable business or such other date as the Minister may specify, final approval entitles the company to a tax exemption for a period of 30 consecutive fiscal years, on the income of the submarine network cable business in the case of capital investment of more than \$40,000,000.

Revocation of submarine network cable investment incentive

10. The Minister may revoke the submarine network cable investment incentive if the applicant—

- (a) breaches any condition of provisional or final approval;
- (b) fails to setup and install the submarine network cable;
- (c) fails to comply with any of the requirements of these Regulations; or
- (d) is convicted of an offence under any written law relating to taxation, customs or excise,

and any tax or duty foregone is payable.

Transferability of package

11. If the company in respect of which a submarine network cable investment incentive has been granted is sold or is to be sold, the purchaser or prospective purchaser may apply in writing to the Minister for the transfer to it of any remaining benefits of the submarine network cable investment incentive.

Specification of particular requirements

12. The Minister may prescribe particular requirements under these Regulations applicable to any particular area of Fiji.

Made this 3rd day of August 2021.

A. SAYED-KHAIYUM
Attorney-General and Minister for Economy
