

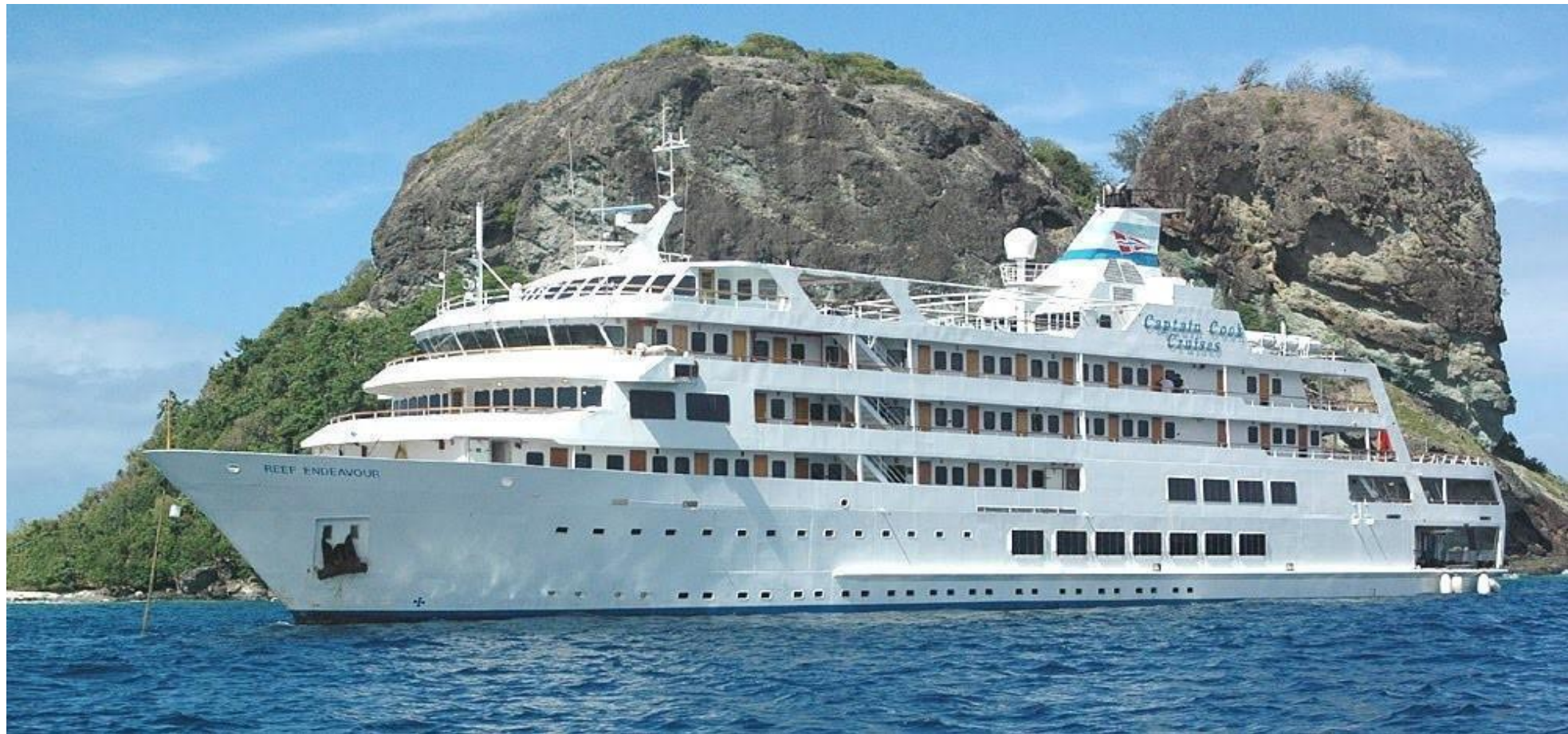
Enhancing private sector and local content in Pacific infrastructure

Business considerations for new entrants

Glenis Yee

Friday, 25 March 2024

MV?



Hydroelectric Project



Power station site – 1979



Source: *Energy Fiji Limited website*

Structuring

Getting it right at the outset

- Offshore companies – no substitute for local knowledge
- Develop relationships with stakeholders including potential partners
- In terms of structuring –foreign investment laws and potential project vehicles
 - Fiji –Investment Act 2021 – minimum \$300,000
 - Double edged sword – customer will want experience, while the project vehicle may want to create a new entity to insulate risk, particularly local sovereign risk
- Price bids accordingly – risk of disputes – inefficient court processes



Structuring

Getting it right at the outset [cont...]

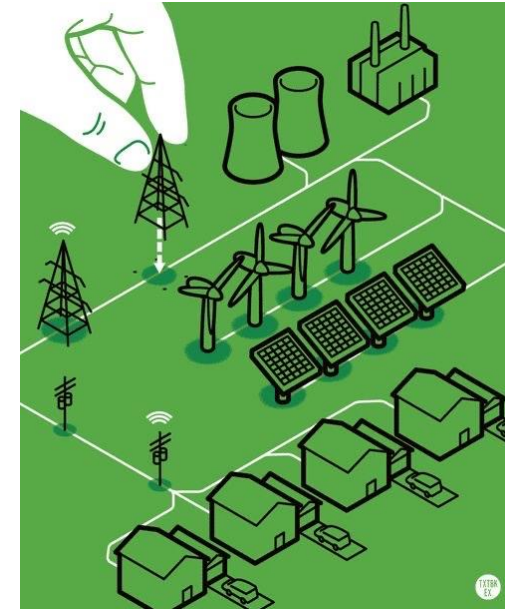
- In terms of potential vehicles
 - Company registration – new company
 - Partnership/trading trusts
 - Joint venture – 2 companies create a JV (either incorporated or unincorporated) – share risk/increase capacity/bundle skills/finances
- Incorporated structure (benefit of limited liability) – new entity in Fiji responsible for employment – FNPF obligations, immigration (employer)
- Understand obligations – funding/decision making/most importantly who will be doing the work



Structuring

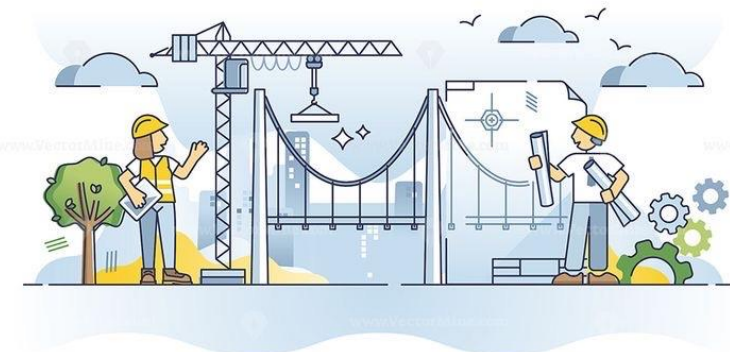
Getting it right at the outset [cont...]

- Unincorporated JV – different business/trading name
 - Potential liability
 - Tax consequences
 - Administrative issues – who is on the ground
 - Intended duration
 - Exit
- All about relationships
- Look closely at dispute resolution clauses and governing law/forum



Other important considerations

- Tailor projects to local conditions: cyclone resilience, climate change sustainability and cultural sensitivity in implementation
- Land issues
 - Freehold and leasehold structure – approx. 87% of land in Fiji is native – ensure you are dealing with the right people (TLTB)
 - Build relationships with landowners and comply with lease terms
- Insurance/financing
 - adequate levels of insurance cover – locally available?
 - political risk insurance
 - contingency planning for natural disasters



Other important considerations [cont...]

- Fiji is an exchange control jurisdiction
 - Reserve Bank of Fiji (**RBF**) approval
 - ability to remit funds offshore or deal with foreign currencies is limited – currency controls enforced by the RBF with delegated authorities to banks – generally remitter needs to obtain tax clearance so pending matters may impede remittance
- Taxation
 - provisional taxes deducted
 - withholding taxes (tax clearances and RBF approvals)
 - Tax registrations if entity is registered in Fiji
 - Tax incentives [eg ICT infrastructure investment, hotel projects, medical industry, warehouse construction etc subject to conditions] – generally available only to Fiji incorporated companies

Other important considerations [cont...]

- Investment regulations
 - Minimum investment threshold
 - Reporting obligations
 - Ministerial consent for projects with effects on critical infrastructure (energy, transport, communications, data storage or financial infrastructure)
- Immigration requirements
 - 14 days visitor/business visa on arrival (21 days for Australia, New Zealand and USA nationals)
 - 2-3 months to process long term or short term permit



Common pitfalls – and how to avoid them [cont...]

- Limited capacity
 - High levels of migration – skilled and unskilled labour
 - Limited technical expertise
 - Important to invest in capacity-building initiatives
- Regulatory compliance
 - Environment management compliance
 - Government procurement procedures can be complex
 - Additional approvals for leasehold land
 - Stay one step ahead – written communications with regulatory bodies – engage local experts who already have the relationships to make things move



Design & Build contracts risks

- Opposed to Build only
- Fast track – speed v. control
- Contractor greater risk due to design responsibility
- Design and construct contracts often include a warranty that the project will be fit for purpose

Q & A

Note: The material set out in this presentation is of a general nature. It is not a substitute for specific legal advice in a given situation and should not be relied on as such. Munro Leys cannot accept responsibility for any such reliance.