

[NO. XX]

GOVERNMENT OF FIJI

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FIJI NATIONAL PROVIDENT FUND DECREE 2011

(DECREE No. XX)

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## GOVERNMENT OF FIJI

## FIJI NATIONAL PROVIDENT FUND DECREE 2011

(DECREE NO. XX OF 2011)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Board of Fiji Decree 2009, I hereby make the following Decree—

A DECREE TO REFORM THE FIJI NATIONAL PROVIDENT FUND, TO MAKE PROVISION TO SECURE RETIREMENT SAVINGS AND RETIREMENT INCOMES, AND FOR RELATED PURPOSES

## PART 1—PRELIMINARY

*Short title*

1. This is the Fiji National Provident Fund Decree 2011.

*Objects of this law*

2. The principal objects of this law are—
  - (a) to ensure that workers will accumulate savings throughout their working lives to help provide income after they cease working; and
  - (c) to improve the operation and governance of the Fiji National Provident Fund.

*Commencement**To be reviewed*

3. This law comes into operation as follows—
  - (a) Parts 1, 2, 8, 9 and 11 come into operation on the date on which this law is Gazetted;
  - (b) Parts 3, 4, 5, 6 and 7 come into operation on the date appointed by the Minister by notice in the Gazette, but the Minister is not to appoint a date for this purpose unless satisfied that the Board has complied with Part 2 of the transition law;
  - (c) Part 10 comes into operation on the date appointed by the Minister by notice in the Gazette.

*Interpretation*

- 4.-(1) In this law, unless the context otherwise requires—

“account based pension” means a pension of the kind described in the regulations as an account based pension;

“actuary” means a person who—

- (a) is qualified to be appointed to be an actuary under the Insurance Act 1998; and
- (b) is appointed under subsection 122(1);

“additional contribution” means an amount paid to, and accepted by, the Board as an additional contribution in respect of an FNPF member;

“annuitant” means—

- (a) in relation to an annuity—the annuitant as defined in the definition of “annuity” in this subsection; or
- (b) in relation to an account based pension—the pensioner;

“annuity” means a contract under which a person (the “annuity provider”) undertakes, for valuable consideration, to provide a series of payments by way of annuity (“annuity payments”) to another person (the “annuitant”);

“approved retirement income product” means—

- (a) a basic annuity; or
- (b) a retirement income product approved under section 68;

“auditor” means a person who—

- (a) is a member of an international firm of chartered accountants represented in Fiji by a public practising member of the Fiji Institute of Accountants; and
- (b) is appointed under section 122(2);

“balance”, in relation to a fund, an FNPF member’s FNPF account or an FNPF member’s preserved or general entitlement at a particular time, means the amount standing to the credit of the fund or account, or the amount of the entitlement, at that time;

“basic annuity” means an annuity provided by the Board under section 63;

“Board” means the Board continued in existence by section 5;

“Board member” means a person holding office as a Board member under section 7;

“Chairman” means the Board member holding office as Chairman under section 8;

“Chief Executive Officer” means the person for the time being holding office or acting as Chief Executive Officer under subsection 20(2);

“child”, of a person, includes an ex-nuptial child of the person;

“Code of Conduct” means a code formulated under section 17;

“Code of Fair Practice” means a code formulated under section 76;

“commencement day” means the day appointed for subsection 3(2);

“conversion factor” means a percentage specified in the table to clause 4 of Schedule 4 or in the table to clause 10 of that Schedule;

“conversion threshold” means the amount prescribed for the purposes of this definition;

“crediting rate” means a rate determined under paragraph 48(1)(c);

“Deputy Chairman” means the Board member holding office as Deputy Chairman under section 8;

“disqualified person” means a person—

- (a) who has been convicted or found guilty of an offence punishable by 12 months or more imprisonment;
- (b) who has been convicted or found guilty of an offence involving dishonesty;
- (c) in respect of whom a receiving order under the Bankruptcy Act (Cap. 48) has been made;
- (d) who is a voluntary or involuntary patient in a mental hospital or facility under the Mental Health Decree 2011;
- (e) who has become incapable of being appointed as, or is prohibited from acting as, a director of a company because of section 187 or 190 of the Companies Act (Cap. 247) or another written law;
- (f) who has been, either in Fiji or overseas, disqualified from acting as a director or executive officer of a body corporate under a law relating to companies or to the provision of financial services.

“document” includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

and includes a document created or stored electronically;

“employee” has a meaning affected by subsections (2), (3) and (4);

“employer” has a meaning affected by subsections (2), (3) and (4);

“entitlement event”, for an FNPF member, means any of the following—

- (a) the member reaches the age prescribed for this paragraph;
- (b) the member becomes physically or mentally incapacitated from ever engaging in any further employment;
- (c) the member has left, or is about to leave, Fiji permanently to reside in another country;
- (d) the death of the member;



“executive officer”, for a body corporate, means a person who takes part in the management of the body corporate;

“exempt employee”, for an employer for a month, means any of the following—

- (a) an employee of the employer who, at any time during the month—
  - (i) is less than 15 years old; or
  - (ii) is an outworker as defined in the Workmen’s Compensation Act (Cap. 94); or
  - (iii) is detained in a prison, approved school under the Juveniles Act (Cap. 56) or is a voluntary or involuntary patient in a mental health hospital or facility under the Mental Health Decree 2011;
- (b) an employee of the employer whose total wages payable by the employer for the month are less than the prescribed amount;
- (c) an employee of the employer, not being a resident of Fiji, upon whom have been conferred, who has been accorded or who is entitled to, immunities and privileges under the Diplomatic Privileges and Immunities Act (Cap. 8);
- (d) a person who is employed in Fiji but is not a citizen of Fiji, unless the person has applied to become a member and his or her employer has agreed under subsection 36(2);
- (e) a person declared by the Board under subsection (5) to be an exempt employee of the employer;

“financial condition report” means a report required by section 124;

“financial crime” means any of the following—

- (a) an offence that involves fraud or dishonesty relating to the assets or money of the Board or a fund;
- (b) financing or facilitating, or being involved in financing or facilitating, an offence relating to the assets or money of the Board or a fund;
- (c) dealing with the proceeds of crime as defined in the Proceeds of Crime Act, 1997 (otherwise than in accordance with that Act), whether or not related to the Board or a fund;
- (d) an offence under the Financial Transactions Reporting Act 2004, whether or not related to the Board or a fund;

“financial year” means the period from 1 July in a year to 30 June in the next year;

“FNPF” means the Fiji National Provident Fund continued in existence by section 29;

“FNPF account”, for an FNPF member, means the account required in respect of the member by subsection 45(1);

“FNPF member” means a person —

(a) who was, immediately before Part 3 commenced, a member of the FNPF in respect of whom contributions were or were required to be made under the former law; or

(b) admitted as an FNPF member under this law;

until the person ceases to be an FNPF member under this law;

“former law” means the Fiji National Provident Fund Act (Cap. 129);

“fund”, in relation to the Board, means each of the following—

(a) the FNPF;

(b) the Retirement Income Fund;

(c) the Special Death Benefits Fund;

(d) any other fund established by the Board;

and, in relation to another retirement income product provider, means a fund that a condition of the approval under this law of a retirement income product provided by the provider, or a prudential standard, requires the provider to establish and maintain;

“funding and solvency certificate”, for a fund, means a certificate referred to in section 90 in respect of the fund;

“general account”, for an FNPF member, means the account for the member provided for in paragraph 45(2)(b);

“general entitlement”, for an FNPF member at a particular time, means the balance of the member’s FNPF account at that time less the amount of the member’s preserved entitlement at that time;

“holding company” of a company has the same meaning as in section 156 of the Companies Act (Cap. 247);

“inadmissible asset”, in respect of a fund, means any of the following—

(a) goodwill;

(b) a deferred taxation credit;

(c) deferred acquisition costs;

(d) management rights;

(e) computer software;

(f) any other intangible asset;

(g) any surplus in another fund that may be transferred to the fund under this law;

(h) if the value of an asset of the Board used in the conduct of business of the fund, as recorded in the Board’s accounts, is more than the amount that the asset would reasonably be expected to be sold for—the asset, to the extent of the difference between the 2 amounts;

(i) any prescribed asset;

“inspector” means a person appointed by the Board under subsection 99(1);

- “investment guidelines”, for a fund, means an investment guideline in force under section 93;
- “key features statement”, for a retirement income product, means a statement for the product required by section 73;
- “mandated contribution” means an amount required by section 37 to be paid as a contribution;
- “minimum sum” means the amount prescribed for the purposes of this definition;
- “nomination” means a nomination under subsection 58(1);
- “penalty amount” means an amount required by subsection 40(1) to be paid as a penalty amount;
- “personal representative”, of a person who has died, has the same meaning as in the Succession, Probate and Administration Act (Cap. 60);
- “prescribed” means prescribed by the regulations;
- “preserved account”, for an FNPF member, means the account for the member provided for in paragraph 45(2)(a);
- “preserved entitlement”, for an FNPF member, means the amount calculated under subsections (7) and (8) in respect of the member;
- “pro-rata crediting rate” means a rate determined under paragraph 48(1)(d) or subsection 48(3);
- “prudential standard” means a standard made under section 121;
- “public official” means a person who—
- (a) is an employee in the public service (within the meaning of the Public Service Act 1999); or
  - (b) holds an office in the Republic of Fiji Military Forces or the Fiji Police Force; or
  - (c) holds a full-time office in, or is a full-time employee of, a commercial statutory authority or a government company (both as defined in the Financial Management Act 2004) (except the Board);
- but a person is not a public official merely because he or she is a Board member or the Chairman of the Board;
- “RBF inspector” means a person appointed by the Reserve Bank under section 131;
- “related company”, for a company (the “first company”), means a company that is—
- (a) a subsidiary or a holding company of the first company; or
  - (b) a subsidiary of a holding company of the first company; or
  - (c) a holding company of a subsidiary of the first company;
- “relevant document or thing” means a document or thing that—

- (a) an employer is required to keep under this law or the Employment Act (Cap. 92); or
- (b) an inspector reasonably considers may be relevant for a purpose mentioned in subsection 101(1) or 102(1);

“relevant person” means each of the following—

- (a) an employer;
- (b) a person who an inspector has grounds to suspect may be an employer;
- (c) when the employer or suspected employer is a body corporate—  
an executive officer of the body corporate;
- (d) an employee;
- (e) a person who an inspector has grounds to suspect may be an employee.

“Reserve Bank” means the Reserve Bank of Fiji;

“Retirement Income Fund” means the fund required by section 65 to be established by the Board;

“retirement income product” means—

- (a) an annuity; or
- (b) an account based pension;

“retirement income product provider” means an annuity provider (as defined in the definition of “annuity” in this subsection) or the provider of an account based pension;

“solvency requirement”, for the FNPF, means the solvency requirement set to in section 32;

“Special Death Benefit Fund” means the fund required by section 81 to be established by the Board;

“staff member” means a member of the Board’s staff;

“statutory manager” means a person appointed under section 133 as a statutory manager;

“subsidiary” of a company has the same meaning as in section 156 of the Companies Act (Cap. 247);

“this law” includes the Regulations;

“transition law” means the Fiji National Provident Fund Transition Decree 2011;

“wages”, for an employee for a period—

- (a) includes all amounts payable in money to the employee by his or her employer in respect of the period under the relevant contract of employment, ignoring deductions and withholdings (whether or not required by law); and