

EXTRAORDINARY



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GOVERNMENT OF FIJI

AIRPORTS (DEVELOPMENT AND MODERNISATION) DECREE 2012 (DECREE NO. 31 OF 2012)

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

PART 1—PRELIMINARY

Short title and commencement

1. This Decree may be cited as the Airports (Development and Modernisation) Decree 2012 and shall come into force on the date of its publication in the *Gazette*.

Interpretation

2. In this Decree, unless the context otherwise requires—

- “airport” means the Nadi International Airport;
- “areas” means those areas under the redesign plans that are occupied by temporary licensees during the interim period and by licensees after the interim period;
- “Airports Fiji Limited” or “AFL” means the Fiji incorporated limited liability company having its registered office at CAAF compound, Namaka, Nadi;
- “Board” means the Board of Directors of Airports Fiji Limited;
- “existing licence” includes commercial tenancies and concession agreements which, at the date of the commencement of this Decree, are either current, purported, disputed or otherwise held, between Airports Fiji Limited and any person for the use of the airport premises;
- “existing licensee” includes a person who holds or purports to hold an existing licence prior to the commencement of this Decree;
- “interim period” means a maximum of 1 year from the date of the commencement of this Decree or such other period as approved by the Minister;
- “licence” means a licence, commercial tenancy or concession agreement issued under this Decree for the occupation of an area for the provision of goods and services at the airport;
- “licensee” means a person who has been issued with a licence under this Decree for the occupation of an area for the provision of goods and services at the airport;
- “Minister” means the Minister responsible for Public Enterprises;
- “modernise” means the acts of redesign of the airport premises for the maximisation of returns to the people of Fiji and the provision of a variety of goods and services to the airport users by efficiently utilising the airport premises;
- “person” means an individual, company or association or body of persons, corporate or unincorporate;
- “redesign plan” means a plan drawn up by Airports Fiji Limited for the modernisation of the airport;
- “rental fee” means the monthly fee paid by the temporary licensee or licensee to AFL for the occupation of an area;

“temporary licence” means a licence issued to a temporary licensee for the interim period; and

“temporary licensee” includes a person who has been issued with a temporary licence.

Objects

3.—(1) The objects of this Decree are to ensure the maximisation of returns to the people of Fiji and the modernisation of the airport.

(2) This Decree achieves these objects by —

- (a) cancelling the existing licences and converting them to temporary licences;
- (b) redesigning and renovating the airport;
- (c) offering a rate determined by AFL to the temporary licensees for such areas and for such use, as the Board determines in consultation with the Minister and in accordance with market surveys; and
- (d) allowing AFL to tender the areas to the public in the event that the temporary licensees fail or refuse to accept the offer made by AFL.

PART 2—LICENCES

Conversion of existing licences to temporary licences

4. — (1) All existing licences are, from the date of commencement of this Decree, converted to temporary licences.

(2) Unless determined otherwise by AFL and subject to such terms and conditions as determined by AFL, all temporary licensees shall continue to operate in the area they occupied or any other area that they are reallocated to by AFL, and shall continue to pay the rate or rental fee they paid under the existing licences during the interim period.

(3) The rental fee charged shall be subject to the provisions of section 5(3).

(4) No temporary licensee or any other person shall be entitled to any compensation or remedy for the conversion of existing licences into temporary licence under subsection (1), or for reallocation of any existing or temporary licensee or for any other action or decision made by AFL, in consultation with the Minister.

Redesign plans and renovations

5.—(1) AFL shall within 3 months from the commencement of this Decree or within such time as approved by the Minister, prepare a redesign plan and shall have the redesign plan approved by the Minister.

(2) Following approval of the redesign plans, AFL shall, within 9 months from the commencement of this Decree or within such time as approved by the Minister, carry out such renovations to the airport in accordance with the approved redesign plans, to modernise the airport premises.

(3) If any particular area which at the date of the commencement of this Decree is occupied by a temporary licensee and if any such area is not capable of occupation by that temporary licensee during renovations, the rental fee for such areas shall be determined by AFL and shall be reduced on a pro-rata basis in accordance with the rates payable under the existing licences.

Offer to temporary licensees

6.—(1) Prior to the expiry of the interim period, AFL shall, in consultation with the Minister, make offers to temporary licensees for the occupation of such areas under the redesign plans at the expiry of the interim period.

(2) Any offer made under subsection (1) by AFL to temporary licensees shall be based on independent surveys of regional and international airports in order to select those licensees who would maximise the most returns for the people of Fiji.

(3) If a temporary licensee —

- (a) refuses to accept an offer by AFL or fails to accept the offer within 3 months from date of offer; or
- (b) was not offered an area under the redesign plans by AFL,

AFL shall give the temporary licensee up to 3 months notice to vacate such areas that the temporary licensee occupied during the interim period.

(4) Any temporary licensee who is issued with a notice to vacate under subsection (3) shall vacate the area before the expiry of the period specified in the notice.

(5) If any temporary licensee who is given a notice under subsection (3) fails to vacate the area, AFL shall take such action as it may deem necessary to enforce the notice to vacate, and any costs to AFL arising out of any taken by AFL under this section shall be paid by the temporary licensee.

(6) AFL shall not be liable for any compensation to any person for any action taken by AFL under subsection (5).

Public tender

7.—(1) If a temporary licensee fails or refuses to accept an offer by AFL made under section 6, AFL shall advertise that area for public tender.

(2) Notwithstanding subsection (1), AFL shall advertise all other areas under the redesign plans for public tender.

(3) The call for public tender and the award of tender shall be finalised prior to the expiry of the interim period or within such period as approved by the Minister.

Award of licences

8.—(1) If a temporary licensee accepts an offer made by AFL under section 6, or where a person is selected to occupy any area of the airport after public tender under section 7, AFL shall enter into new licences, or any other agreements or tenancies with the temporary licensee or such other person.

(2) In awarding new licences, whether by way of an offer to temporary licensees or by way of a public tender in accordance with the provisions of this Decree, AFL shall, in consultation with the Minister, ensure that the award and its process is fair, non-discriminatory, promotes competition and maximises returns to the people of Fiji in a modernised airport.

Unpaid fee or rentals

9. Nothing in this Decree shall limit AFL from instituting legal proceedings against existing or temporary licensees in a Court, Tribunal or Commission or any adjudicating body to recover any unpaid concession fees and or rentals fees.

PART 3—MISCELLANEOUS

Certain decisions not to be challenged

10.—(1) No Court, Tribunal, Commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any challenges by any person or body, or to entertain or grant any remedy to any person or body, which seeks or purports to challenge or question—

- (a) the validity, legality or propriety of this Decree;
- (b) any decision of any Minister or any State official in relation to this Decree;
- (c) any decision, action or omission made under or arising out of the provisions of this Decree; or
- (d) any decision made by AFL pursuant to or under this Decree.

(2) Any proceeding, claim, challenge or dispute of any nature whatsoever in any Court, Tribunal, Commission or before any other person or body exercising a judicial function, in respect of any of the subject matters in subsection (1) that had been instituted before the commencement date of this Decree but had not been determined at that date, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall wholly terminate upon the commencement of this Decree, and a certificate to that effect shall be issued by the Chief Registrar, Tribunal, Commission or any other person or body exercising a judicial function.

(3) Any proceeding, claim, challenge or dispute of any nature whatsoever in any Court, Tribunal, Commission or before any other person or body exercising a judicial function, that had been instituted before the commencement date of this Decree but had not been determined at that date, in respect of any claim for any relief whatsoever against AFL with respect to any existing license, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall wholly terminate upon the commencement of this Decree, and a certificate to that effect shall be issued by the Chief Registrar, Tribunal, Commission or any other person or body exercising a judicial function.

(4) A certificate under subsections (2) or (3) is, for the purposes of any proceedings in a Court, Tribunal, Commission or any other person exercising a judicial function, conclusive of the matters stated in the certificate.

(5) A decision of the Chief Registrar, Tribunal, Commission or any other person exercising a judicial function to issue a certificate under subsections (2) or (3) is not subject to challenge in any Court, Tribunal, Commission or any other adjudicating body.

(6) For the avoidance of doubt, the Commerce Commission Decree (Decree No. 49 of 2010) shall not apply to any decision made pursuant to or under this Decree, including any decision made by AFL, the Minister or any other State official, and the Fiji Commerce Commission shall have no jurisdiction over AFL for any decision made with respect to any existing or temporary licence or licensee, or with respect to issuing new licences during the interim period.

Regulations

11. The Minister may make Regulations to effect to the provisions of this Decree.

GIVEN under my hand this 11th day of April 2012.

EPELI NAILATIKAU
President of the Republic of Fiji