

GOVERNMENT OF THE REPUBLIC OF FIJI DECREE NO. 7

MULTILATERAL INVESTMENT GUARANTEE AGENCY DECREE, 1989

A DECREE TO PROVIDE FOR FIJI'S MEMBERSHIP OF THE MULTILATERAL INVESTMENT GUARANTEE AGENCY AND MATTERS ANCILLARY THERETO

IN exercise of the powers vested in me as President and Commander-in-Chief of the Republic of Fiji, I, acting in accordance with the advice of the Prime Minister and the Cabinet, hereby make the following Decree—

Short title

1. This Decree may be cited as the Multilateral Guarantee Agency Decree, 1989.

Interpretation

2. In this Decree—

"Agency" means the Multilateral Investment Guarantee agency established under a Convention approved by the Board of Governors of the International Bank for Reconstruction and Development on the 11th day of October, 1985;

"Convention" means the Convention approved by the Board of Governors of the International Bank of Reconstruction and Development on the 11th day of October, 1985;

"Minister" means the Minister responsible for finance.

Authorisation for signing and acceptance of convention

3. The Minister is hereby authorised on behalf of the Government of Fiji to sign the Convention and to deposit with the International Bank for Reconstruction and Development an instrument of acceptance of the Convention, or by instrument under his hand to empower such person as may be named in such instrument to sign the said Convention and to deposit the said instrument of acceptance.

Financial provisions

4. There shall be debited to the Consolidated Fund on the warrant of the Minister all sums required for the purpose of making payments on behalf of Government under Article 6 of Chapter II of the Convention (which provides for the subscription of shares of stock of the Agency).

Certain provisions of Convention to have force of law

5. The provisions of the Convention set out in the Schedule shall have the force of law in Fiji:

Provided that nothing in Article 47 of Chapter VII of the Convention shall be construed as—

- (a) entitling the Agency to import into Fiji goods free of customs duty without any restriction on their subsequent sale therein; or
- (b) conferring upon the Agency any exemption from duties or taxes which form part of the price of goods sold or which are in fact no more than charges for services rendered.

Power of Minister to make orders

6. The Minister may by order make such provisions as are necessary for carrying into effect any of the provisions of the Convention and this Decree.

Made the 7th day of March 1989.

PENAIA K. GANILAU
President and Commander-in-Chief

SCHEDULE
(Section 5)

PROVISIONS OF THE CONVENTION ESTABLISHING THE MULTILATERAL
INVESTMENT GUARANTEE AGENCY WHICH HAVE THE FORCE OF LAW

CHAPTER I—ESTABLISHMENT, STATUS

PURPOSES AND DEFINITIONS

Article 1(b).—Status of the Agency

The Agency shall possess full juridical personality and, in particular, the capacity to—

- (i) contract;
- (ii) acquire and dispose of movable and immovable property, and
- (iii) institute legal proceedings.

CHAPTER VII—PRIVILEGES AND IMMUNITIES

Article 44.—Legal Process

Actions other than those within the scope of Article 57 (Disputes Between the Agency and Members) and Article 58 (Disputes Involving Holders of a Guarantee or Reinsurance) may be brought against the Agency only in a court of competent jurisdiction in the territories of a member in which the Agency has an office or has appointed an agent for the purpose of accepting service or notice or process. No such action against the Agency shall be brought (i) by members or persons acting for or deriving claims from members or (ii) in respect of personnel matters. The property and assets of the Agency shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of the final judgment or award against the Agency.

Article 45.—Assets

- (a) The property and assets of the Agency, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.
- (b) To the extent necessary to carry out its operations under this Convention, all property and assets of the Agency shall be free from restrictions, regulations, controls and moratoria of any nature; provided that property and assets acquired by the Agency as successor to or subrogee of a holder of a guarantee, a reinsured entity or an investor insured by a reinsured entity shall be free from applicable foreign exchange restrictions, regulations and controls in force in the territories of the member concerned to the extent that the holder, entity or investor to whom the Agency was subrogated was entitled to such treatment.
- (c) For purposes of this Chapter, the term "assets" shall include the assets of the Sponsorship Trust Fund referred to in Annex I to this Convention and other assets administered by the Agency in furtherance of its objective.

Article 46.—Archives and Communications

- (a) The archives of the Agency shall be inviolable, wherever they may be.
- (b) The official communications of the Agency shall be accorded by each member the same treatment that is accorded to the official communications of the Bank.

Article 47.—Taxes

- (a) The agency, its assets, property and income, and its operations and transactions authorised by this Convention, shall be immune from all taxes and customs duties. The agency shall also be immune from liability for the collection or payment of any tax or duty.
- (b) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Agency to Governors and their Alternates or on or in respect of salaries, expense allowances or other emoluments paid by the Agency to the Chairman of the Board, Directors, their Alternates, the President or staff of the Agency.

- (c) No taxation of any kind shall be levied on any investment guaranteed or reinsured by the Agency (including any earnings therefrom) or any insurance policies reinsured by the Agency (including any premiums and other revenues therefrom) by whomsoever held:
- (i) which discriminates against such investment or insurance policy **solely because it is** guaranteed or reinsured by the Agency; or
 - (ii) if the sole jurisdictional basis for such taxation is the location of any **office or place of** business maintained by the Agency.

Article 48.—Officials of the Agency

All Governors, Directors, Alternates, the President and staff of the Agency:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity;
- (ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange restrictions as are accorded by the members concerned to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by the members concerned to representatives, officials and employees of comparable rank of other members.

Article 50.—Waiver

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Agency and may be waived, to such extent and upon such conditions as the Agency may determine, in cases where such a waiver would not prejudice its interests. The Agency shall waive the immunity of any of its staff in cases where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency.