



[166]

INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

COMMERCE (AMENDMENT) PROMULGATION 2009
(PROMULGATION NO. 4 OF 2009)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgement as President of the Republic of the Fiji Islands as to what is best and good for the people of Fiji, and by the executive authority of the State in accordance with section 85 of the Constitution and such other powers as may appertain, and with the advice of Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation

TO AMEND THE COMMERCE ACT

Short title and commencement

- 1.—(1) This Promulgation may be cited as the Commerce (Amendment) Promulgation 2009.
(2) This Promulgation comes into force on the day of its publication in the *gazette*.

Section 6 amended

2. The Commerce Act 1998 (“the Act”) is amended in section 6—

- (a) by repealing subsection (6) and substituting—

“(6) There is payable in respect of a member remuneration of an amount equivalent to—

- (a) that part of any amount of the fees charged by the Commission in relation to a particular matter that is attributable to the member’s participation in the matter; and
(b) a proportion of the amounts charged as contributions towards the fixed costs of the Commission that reflects the member’s participation in the affairs of the Commission that are represented by those fixed costs,

and such remuneration is payable to the member or the member’s firm.”;

- (b) by repealing subsection (7).

Section 16 amended

3. Section 16(1)(b) of the Act is amended by adding, “including fees charged by the Commission in connection with the performance of its functions” after “Commission” where it secondly appears.

New Part added

4. The Act is amended by adding the following immediately before Part 9—

“Part 8A—Power of Commission to Charge Fees

Commission to operate on self-funding basis

- 49A.—(1)** The Commission is to operate on the basis that, as far as is reasonably practicable, the operating costs of the Commission (including fixed costs, variable costs and overheads) are fully met by fees charged by the Commission in respect of the performance of its functions.

(2) In furtherance of that objective—

- (a) fees charged by the Commission in respect of the performance of a function may include amounts representing—
- (i) the time spent and expertise contributed by the Commission in performing the function;
 - (ii) the expenses incurred by the Commission in performing the function; and
 - (iii) a contribution towards the fixed costs, variable costs and overheads of the Commission; and
- (b) fees may be charged to—
- (i) any person or enterprise in respect of which the Commission has functions; or
 - (ii) any person or enterprise that is a participant in an industry in respect of which the Commission has functions.

Matters relating to amount of fees to be charged

49B.—(1) For the purposes of subparagraph (i) of section 49A(2)(a)—

- (a) the time spent by the Commission includes all time spent by any member or employee of the Commission;
- (b) the amount charged for time spent by a member may be determined by reference to the prevailing rate charged in the private sector by a person of the same qualifications, skills and experience as the member; and
- (c) the amount charged for time spent by an employee may be determined by reference to the salary level of the employee.

(2) For the purposes of subparagraph (ii) of section 49A(2)(a), expenses incurred by the Commission include the professional fees of legal and other experts.

(3) For the purposes of subparagraph (iii) of section 49A(2)(a), the Commission's fixed costs include all those costs incurred by the Commission in the performance of functions that do not directly relate to a particular person or enterprise or to an industry as a whole.

Matters relating to persons to be charged

49C. Without limiting the generality of paragraph (b) of section 49A(2), fees may be charged to any person or enterprise—

- (a) that is a recipient of services provided by the Commission;
- (b) that is carrying out an activity in respect of which the Commission has incurred costs or charges.

Apportionment of fees

49D.—(1) Where the performance of a function by the Commission relates, in the Commission's opinion, to a particular person or enterprise, the fee in respect of that function may be charged to that person or enterprise.

(2) Where the performance of a function by the Commission relates, in the Commission's opinion, to particular persons or enterprises, the fee in respect of that function may be charged to those persons or enterprises in such proportions as the Commission considers to be equitable.

(3) Where the performance of a function by the Commission relates, in the Commission's opinion, to an industry as a whole, the fee in respect of that function may be charged to such participants in the industry, and in such proportions, as the Commission considers to be equitable.

Fees become payable at commencement of matter

- 49E.**—(1) Fees are payable to the Commission on or before the commencement of the matter to which they relate.
- (2) If the exact amount of the fees payable in relation to a matter is not ascertainable at the time they become payable, the Commission may issue an estimate of those fees, and the amount specified in the estimate becomes immediately payable.
- (3) The issue by the Commission of such an estimate of fees payable, or the payment of the amount specified in an estimate, does not affect a person's liability for payment of the amount of fees as subsequently ascertained, and any difference between the amount estimated and the amount subsequently ascertained is payable by or refundable to the person.
- (4) A person's obligation for payment of fees under this Part in respect of a matter or part of a matter may be satisfied by the payment in advance, by agreement with the Commission, of an amount of fees that may differ from the amount that would otherwise be payable.

Miscellaneous

- 49F.**—(1) Fees charged by the Commission are a debt due and payable without any set off, retention or counterclaim and are recoverable by summary process.
- (2) Where a fee is charged to an enterprise that is not a legal person, the owners of the enterprise are jointly and severally liable for the payment of the fee."

Section 53(3) repealed

5. The Act is amended in section 53 by repealing subsection (3).

GIVEN UNDER MY HAND this 29th day of January 2009.

J. I. ULUIVUDA
President of the Republic of the Fiji Islands

COMMERCE (AMENDMENT) PROMULGATION 2009

EXPLANATORY NOTE

(This note is not part of the Promulgation and is intended only to indicate its general effect)

1. This Promulgation amends the Commerce Act 1998 ("the Act") to provide for the Commerce Commission established under the Act ("the Commission") to operate on a self-funding basis and for that purpose to charge fees in respect of the performance of its functions.
2. Section 2 amends section 6(6) of the Act to provide for the remuneration of members of the Commission to be equivalent to the amounts charged by the Commission as fees in respect of the individual member's participation in Commission matters and affairs.
3. Section 3 makes a consequential amendment to section 16(1)(b) of the Act.
4. Section 4 adds a new Part 8A to the Act, comprising new sections 49A to 49F, dealing with the power of the Commission to charge fees. These new sections provide as follows—
 - (a) New section 49A requires the Commission to operate on a self-funding basis and, in furtherance of that objective, provides for the Commission to charge fees in respect of the performance of its functions. The fees charged may represent the time spent and expertise contributed by the Commission in performing its functions, and are chargeable to any person or enterprise in respect of which the Commission has functions, or that is a participant in an industry in respect of which the Commission has functions.

- (b) New sections 49B and 49C provide further detail regarding the charging of fees as provided for under new section 49A.
 - (c) New section 49D provides for the Commission to apportion fees between the various parties who may be liable for the fees in such proportions as it considers equitable.
 - (d) New section 49E provides for fees to become payable at the commencement of the matter to which they relate, and authorises the Commission to agree in advance of a matter, and to accept payment of, an amount of fees in respect of the matter in lieu of the amount that would otherwise be payable once the matter commences.
 - (e) New section 49F provides for matters relating to recovery of fees payable.
5. Section 5 repeals section 53(3) of the Act consequent on the addition of new Part 8A.

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