

EXTRAORDINARY



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GOVERNMENT OF FIJI

FOREIGN INVESTMENT (AMENDMENT) DECREE 2013
(DECREE NO. 23 OF 2013)

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—

TO AMEND THE FOREIGN INVESTMENT ACT 1999

Short title and commencement

1.—(1) This Decree may be cited as the Foreign Investment (Amendment) Decree 2013 and shall come into force on the date of its publication in the *Gazette*.

(2) The Foreign Investment Act 1999 shall be referred to as the “Act”.

Section 13 amended

2. Section 13 of the Act is amended—

- (a) in subsection (1) (a) (ii) by deleting the words “or persistent”; and
- (b) by inserting the following new subsection after subsection (4)—

“(5) A subsequent breach of this Act shall result in the immediate cancellation of a Foreign Investment Registration Certificate.”

Insertion of new sections

3. The Act is amended by—

- (a) inserting the following new section after section 13—

“Forfeiture and restraining orders

13A.—(1) Upon cancellation of a Foreign Investment Registration Certificate, the Attorney-General shall apply to the court for an order forfeiting to the State all assets, interests, shares or property obtained by the foreign investor.

(2) Where there are reasonable grounds to suspect that any asset, interest, share or property in respect of which a forfeiture order may be granted pursuant to subsection (1), the Attorney-General may apply to the court for a restraining order against such things.

(3) An application for a restraining order may be made *ex parte* and shall be in writing, accompanied by an affidavit stating, in respect of the asset, interest, share or property of which the restraining order is sought, the—

- (a) description;
- (b) location; and
- (c) grounds for the belief that the asset, interest, share or property may be destroyed, removed, transferred or otherwise interfered with before the court may issue a forfeiture order”; and

(b) deleting section 17A and substituting with the following new sections—

“Monitoring officers

17A.—(1) The Chief Executive may appoint monitoring officers to inspect and monitor compliance of the foreign investor with terms and conditions of the Foreign Investment Registration Certificate and accompanying approval letter issued.

(2) In appointing an officer in subsection (1), the Chief Executive shall issue a warrant card which shall be *prima facie* evidence of the officer’s powers under this Act.

Powers of monitoring officers

17B.—(1) Pursuant to section 17A, a monitoring officer shall have the following powers—

- (a) require from any agent or person in charge of a foreign investment business or activity—
 - (i) any document relevant to an activity or matter inspected or investigated; and
 - (ii) assistance relevant to the investigation of a monitored or inspected activity;
- (b) enter at any time any land, building or facility to which—
 - (i) a Foreign Investment Registration Certificate applies; or
 - (ii) a monitoring officer reasonably suspects is the subject of a breach of this Act; and
- (c) conduct such investigations and inspections necessary for the purposes of this Act.

(2) Any person who—

- (a) hinders or obstructs;
- (b) refuses to assist; or
- (c) provides false or misleading information to

a monitoring officer in the performance of his or her functions or in the exercise of his or her powers under this Act, commits an offence and shall be liable upon conviction to fine not exceeding \$5,000.00.

(3) In this section, “warrant card” refers to an identification card stating the name and basis of authorisation given to a monitoring officer, to carry out duties and exercise powers under this Act.

Offences

17C.—(1) Any person who fails to comply with a provision of this Act to which a penalty is specified, commits an offence.

(2) Failure to comply with a provision of this Act to which a penalty is not provided for, shall render a person liable upon conviction to a fine not exceeding \$5,000.00.”

GIVEN under my hand this 5th day of August 2013.

EPELI NAILATIKAU
President of the Republic of Fiji