

[553]

INTERIM GOVERNMENT OF THE REPUBLIC OF FIJI ISLANDS

PREVENTION OF BRIBERY
(PROMULGATION NO. 12 OF 2007)

ARRANGEMENT OF SECTIONS

SECTION

1. Short Title

PART I—PRELIMINARY

2. Interpretation

2A. Power of Commission to prosecute in its own name

PART II—OFFENCES

3. Soliciting or accepting an advantage

4. Bribery

5. Bribery for giving assistance, etc. in regard to contracts

6. Bribery for procuring withdrawal of tenders

7. Bribery in relation to auctions

8. Bribery of public servants by persons having dealings with public bodies

9. Corrupt transactions with agents

10. Possession of unexplained property

11. Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

12. Penalty for offences

12AA. Confiscation of assets

12AB. Appeal against confiscation order

12AC. Costs in proceedings on confiscation order

12A. Conspiracy

PART III—POWERS OF INVESTIGATION

13. Special powers of investigation

13A. Order to make material available and to render assistance

13B. Disclosure of information obtained under section 13A

13C. Restriction on publication of information disclosed under section 13B

14. Power to obtain information

14A. [Not promulgated]

14B. [Not promulgated]

14C. Restraining orders

14D. Variation and revocation of restraining orders

14E. Application for directions

15. Legal advisers and privileged information

16. Power to obtain assistance

17. Further powers of search

17A. Surrender of travel document

17B. Return of travel documents

17BA. Permission to leave Fiji

17C. Further provisions relating to security, appearance, etc.

18. [Not promulgated]

19. Custom not to be a defence

PART IV—EVIDENCE

20. Admissibility of accused's declarations and statements

21. Evidence of pecuniary resources or property

21A. Certificate as to official emoluments, etc.

- 22. Person giving or receiving bribe not to be regarded as an accomplice
- 23. Power to secure evidence of parties to offences
- 24. Burden of proof
- 25. [Not promulgated]
- 26. [Not promulgated]

PART V—MISCELLANEOUS

- 27. Frivolous, false or groundless complaints to be reported to the Commissioner
- 28. Costs on acquittal
- 29. Offence of making a false report of the commission of offence, etc.
- 30. Offence to disclose identity, etc. of persons being investigated
- 30A. Protection of informers
- 31. Consent of Commissioner or Director of Public Prosecutions required for prosecution of offences under Part II
- 31A. Time limit for prosecution of offences
- 32. Alternative convictions, and amending particulars
- 33. Effect of conviction of an offence under this Promulgation
- 33A. Power of court to prohibit employment of convicted person
- 34. [Not promulgated]
- 35. Amendment of Schedule

Schedule. Public Bodies

In exercise of the powers conferred upon the Interim Government and upon the exercise of my own deliberate judgment as President of the Republic of the Fiji Islands as to what is in the best interest and good for the beloved peoples of the Fiji Islands, and by the executive authority of the State in accordance with Section 85 of the Constitution and all such other powers as may appertain, and with the approval of Cabinet, I, Josefa Iloilovatu Uluivuda, President of the Republic of the Fiji Islands, hereby make this Promulgation—

TO MAKE FURTHER AND BETTER PROVISION FOR THE PREVENTION OF BRIBERY, CORRUPTION, ELECTORAL FRAUD AND MISCONDUCT IN PUBLIC OFFICE AND FOR PURPOSES NECESSARY THERETO OR CONNECTED THEREWITH

Short title

1. This Promulgation may be cited as the Prevention of Bribery Promulgation.

PART I—PRELIMINARY

Interpretation

- 2.—(1) In this Promulgation, unless the context otherwise requires—

“advantage” means—

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; and

(f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

but does not include an election donation within the meaning of the Electoral Act, particulars of which are included in an election return in accordance with that Act;

“agent” includes a public servant and any person employed by or acting for another;

“banker's books” means-

- (a) any ledger, ledger card, statement of account, day book, cash book, account book or other book or document whatsoever;
- (b) any cheque, voucher, record card, report, letter or other document whatsoever; and
- (c) any copy of anything referred to in paragraph (a) or (b), used in the ordinary business of a bank;

“child” includes a child who is illegitimate or adopted, a foster child and a step-child;

“Commissioner” means the Commissioner of the Fiji Independent Commission Against Corruption appointed by the President and includes the Deputy Commissioner appointed under section 6 of the Fiji Independent Commission Against Corruption Promulgation and the person appointed to act as the Commissioner of the Fiji Independent Commission Against Corruption under section 7(2) of that Promulgation;

“company books” means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book, report, letter or other book or document used in the ordinary business of a company;

“court” includes a magistrate hearing proceedings with a view to committal for trial before the High Court;

“document” includes any register, book, record, tape-recording, any form of computer input or output, and any other material whether produced mechanically, electrically, or manually or by any other means whatsoever;

“entertainment” means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions;

“investigating officer” means any person authorized by the Commissioner to exercise the powers of an investigating officer under this Promulgation;

“parents” includes parents-in-law and step-parents;

“prescribed officer” means—

- (a) any person holding an office of emolument, whether permanent or temporary, under the Government; and
- (b) the following persons (to the extent that they are not persons included in paragraph (a))—
 - (1) any official of the Government appointed by the President or who has sworn an oath of office before the President;
 - (2) Chairman of the Public Service Commission;
 - (3) any member of the staff of the Fiji Independent Commission Against Corruption;
 - (4) any judicial officer holding a judicial office and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary.

“principal” includes—

- (a) an employer;
- (b) a beneficiary under a trust;
- (c) a trust estate as though it were a person;
- (d) any person beneficially interested in the estate of a deceased person;
- (e) the estate of a deceased person as though it were a person; and
- (f) in the case of an employee of a public body, the public body;

"public body" means—

- (a) the Government;
- (b) the Cabinet;
- (c) the Parliament;
- (d) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the President or the Cabinet; and
- (e) any board, commission, committee or other body specified in Schedule 1;

"public servant" means any prescribed officer and also any employee of a public body.

(2) For the purposes of this Promulgation—

- (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;
- (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
- (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

(3) The President may by notice in the *Gazette*—

- (a) exclude, for the purposes of the definition of "public servant" in subsection (1), any council, board, committee or other body of any educational institution specified in the notice;
- (b) exclude from the definition of "public servant" any member of any council, board, committee or other body of any educational institution, who would otherwise by virtue of his membership thereof fall within that definition.

Power of Commission to prosecute in its own name

2A. — (1) For the avoidance of doubt, and notwithstanding the right of the Director of Public Prosecutions to prosecute any offence or to terminate any criminal proceeding at any court of trial, the Commission may prosecute in its own name before any court any offence contrary to this Promulgation or the Fiji Independent Commission Against Corruption Promulgation or any statutory offence of corruption or illegal conduct in relation to any election.

(2) For the purpose of subsection (1) and for the purpose of advising the Commission generally in relation to its powers and duties in any case or matter, the Commission may instruct and retain counsel and solicitors.

PART II—OFFENCES

Soliciting or accepting an advantage

3. Any prescribed officer who, without the general or special permission of the President, solicits or accepts any advantage shall be guilty of an offence.

Bribery

4. — (1) Any person who, whether in Fiji or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's—

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2) Any public servant who, whether in Fiji or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(3) If a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section.

(4) For the purposes of subsection (3) permission shall be in writing and—

- (a) be given before the advantage is offered, solicited or accepted; or
- (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought.

Bribery for giving assistance, etc. in regard to contracts

5.—(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in—

- (a) the promotion, execution, or procuring of—
 - (i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or
 - (ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

- (a) the promotion, execution or procuring of, or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.

Bribery for procuring withdrawal of tenders

6.—(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

Bribery in relation to auctions

7.—(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

Bribery of public servants by persons having dealings with public bodies

8.—(1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

Corrupt transactions with agents

9.—(1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's—

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document—

- (a) in respect of which the principal is interested; and
- (b) which contains any statement which is false or erroneous or defective in any material particular; and
- (c) which to his knowledge is intended to mislead the principal,

shall be guilty of an offence.

(4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).

(5) For the purposes of subsection (4) permission shall—

- (a) be given before the advantage is offered, solicited or accepted; or
- (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

Possession of unexplained property

10.—(1) Any person who, being or having been a prescribed officer—

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.

(2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused.

(3) In this section, “official emoluments” includes any pension or gratuity payable under any statutory law.

Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

11.—(1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that—

- (a) he did not actually have the power, right or opportunity so to do or forbear;
- (b) he accepted the advantage without intending so to do or forbear; or
- (c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Penalty for offences

12.—(1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable—

- (a) on conviction on indictment—
 - (i) for an offence under section 10, to a fine of \$1000000 and to imprisonment for 10 years;
 - (ii) for an offence under section 5 or 6, to a fine of \$500000 and to imprisonment for 10 years; and
 - (iii) for any other offence under this Part, to a fine of \$500000 and to imprisonment for 7 years; and
- (b) on summary conviction—
 - (i) for an offence under section 10, to a fine of \$500000 and to imprisonment for 3 years; and
 - (ii) for any other offence under this Part, to a fine of \$100000 and to imprisonment for 3 years.

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify.

(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of \$100000 and to imprisonment for 1 year, and shall be ordered to pay to the Government in such manner as the court directs the amount or value of the advantage received by him or such part thereof as the court may specify.

(3) In addition to any penalty imposed under subsection (1), the court may order a person convicted of an offence under section 10(1)(b) to pay to the Government—

- (a) a sum not exceeding the amount of the pecuniary resources; or
- (b) a sum not exceeding the value of the property,

the acquisition of which by him was not explained to the satisfaction of the court.

(4) An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction.

Confiscation of assets

12AA.—(1) Subject to this section, where a person is convicted on indictment of an offence under section 10(1)(b) the court may, in addition to any penalty imposed under section 12(1), order the confiscation of any pecuniary resources or property—

- (a) found at the trial to be in his control as provided in section 10; and
- (b) of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which by him was not explained to the satisfaction of the court.

(2) Any application for an order under subsection (1) shall be made by the Attorney-General within 28 days after the date of the conviction.

(3) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted unless that other person has been given reasonable notice that such an order may be made and has had an opportunity to show cause why it should not be made.

(4) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted if that other person satisfies the court in any proceedings to show cause under subsection (3) that he had—

- (a) acted in good faith as regards the circumstances in which the pecuniary resources or property came to be held by him; and
- (b) so acted in relation to the pecuniary resources or property that an order in the circumstances would be unjust.

(5) Nothing in subsection (4) shall be construed as limiting the court's discretion to decline to make an order under subsection (1) on grounds other than those specified in subsection (4).

(6) An order under subsection (1) may be made subject to such conditions as the court thinks fit in all the circumstances of the case.

(7) A court may make orders under both subsection (1) and section 12(3) in respect of the same offence but shall not make orders under both provisions in respect of the same pecuniary resources or property.

(8) An order under subsection (1) may make provision for taking possession of pecuniary resources or property to which the order applies and for the disposal of such resources or property by or on behalf of the Government.

Appeal against confiscation order

12AB.—(1) Subject to this section, where an order is made under section 12AA in respect of pecuniary resources or property held by a person other than the person convicted, that other person may, within 28 days after the date of making the order, appeal against the order to the Court of Appeal.

(2) On an appeal under this section the Court of Appeal may—

- (a) confirm the order, with or without modification; or
- (b) quash the order and make such other order (if any) under section 12AA as it thinks appropriate.

(3) Proceedings under this section shall not operate as a stay of execution of an order unless the court which makes the order or the Court of Appeal otherwise orders and any stay of execution may be subject to such conditions as to costs, the giving of security or otherwise as the court or the Court of Appeal thinks fit.

(4) Subject to this section, an appeal shall be brought in such manner and shall be subject to such conditions as is directed by a single Judge of the Court of Appeal.

(5) Nothing in this section shall prejudice or affect the right of a convicted person to appeal against his sentence under any statutory law.

Costs in proceedings on confiscation order

12AC.—(1) The court or the Court of Appeal, as the case may be, may, if it thinks fit, award to any person his reasonable costs in respect of any proceedings before it in relation to—

- (a) the making of an order under section 12AA; or
- (b) an appeal under section 12AB,

where such an order is not made or is quashed.

(2) Any costs awarded under subsection (1)—

- (a) shall, except where the amount is fixed by the court or the Court of Appeal, be ascertained by the Registrar of the High Court;
- (b) shall be paid from general revenue.

Conspiracy

12A.—(1) Any person convicted of conspiracy to commit an offence under this Part shall be dealt with and punished in like manner as if convicted of such offence and any rules of evidence which apply with respect to the proof of any such offence shall apply in like manner to the proof of conspiracy to commit such offence.

(2) The powers of investigation conferred by Part III of this Promulgation shall apply with respect to a conspiracy to commit an offence under this Promulgation in like manner as they apply to the investigation of any such offence.

PART III—POWERS OF INVESTIGATION

Special powers of investigation

13.—(1) Where the Commissioner is satisfied that there is reasonable cause to believe—

- (a) that an offence under this Promulgation may have been committed by any person; and
- (b) that any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatsoever kind or description, and any banker's books, company books, documents or other article of or relating to any person named or otherwise identified in writing by the Commissioner are likely to be relevant for the purposes of an investigation of such offence,

he may for those purposes authorize in writing any investigating officer on production by him of the authorization if so required—

- (i) to investigate and inspect such accounts, books or documents or other article of or relating to the person named or otherwise identified by the Commissioner;
- (ii) to require from any person the production of such accounts, books, documents, or other article of or relating to the person named or otherwise identified by the Commissioner which may be required for the purposes of such investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts, books or documents or of any relevant entry therein and photographs of any other article.

(1A) The Commissioner shall not, without the leave of the High Court obtained on ex parte application in chambers, issue an authorization under or by virtue of which any particular person who is alleged or suspected to have committed an offence under this Promulgation can be required to comply with any requirement of the description mentioned in subsection (1)(i) and (ii).

(1B) The High Court shall not grant leave for the issue of an authorization under subsection (1)(i) and (ii) unless, on consideration of an application under subsection (1A), it is satisfied as to the matters that the Commissioner is required to be satisfied under subsection (1).

(2) (a) Every authorization given under subsection (1) shall be deemed also to authorize the investigating officer to require from any person information as to whether or not at any bank, company or other place there is any account, book, document or other article liable to investigation, inspection or production under such authorization.

(b) A requirement under paragraph (a) shall be made in writing and any statement therein as to the existence of the appropriate authorization under subsection (1) shall be accepted as true without further proof of the fact.

(3) Any person who, having been lawfully required under this section to disclose any information or to produce any accounts, books, documents or other article to an investigating officer authorized under subsection (1), shall, notwithstanding the provisions of any other Act or rule of law to the contrary save only the secrecy provisions imposed by section 4 of the Income Tax Act, comply with such requirement, and any such person who fails or neglects, without reasonable excuse, so to do, and any person who obstructs any such investigating officer in the execution of the authorization given under subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year.

(4) Any person who falsely represents that an appropriate authorization has been given under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year.

Order to make material available and to render assistance

13A. — (1) The Commissioner or an investigating officer with the approval of the Commissioner or the Deputy Commissioner may, for the purpose of an investigation into, or proceedings relating to, an offence suspected to have been committed under this Promulgation, make an ex parte application to the High Court in chambers for an order under subsection (2) in relation to particular material or material of a particular description held by the Commissioner of Inland Revenue or by any officer of the Inland Revenue Department.

(2) Subject to subsection (6), the High Court may, if on such an application it is satisfied that—

(a) there are reasonable grounds for suspecting that an offence under this Promulgation has been committed;

(b) there are reasonable grounds for believing that the material to which the application relates is likely to be relevant to the investigation or proceedings for the purpose of which the application is made; and

(c) there are reasonable grounds for believing that it is in the public interest, having regard to—

(i) the seriousness of the offence suspected to have been committed;

(ii) whether or not the suspected offence could be effectively investigated if an order under this subsection is not made;

(iii) the benefit likely to accrue to the investigation or proceedings if the material is so produced or if access to it is given; and

(iv) the public interest in preserving secrecy with regard to matters relating to the affairs of persons that may come to the knowledge of the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in the performance of their duties under the Income Tax Act

make an order that the Commissioner of Inland Revenue or any officer of the Inland Revenue Department—

(i) shall—

(A) produce the material for the Commissioner or an investigating officer to take away; or

(B) give them access to it,

within such period as the order may specify;

- (ii) shall, in relation to that material, render to the Commissioner or an investigating officer in the exercise of the powers of the Commissioner or an investigating officer or the discharge of the duties of the Commissioner or an investigating officer under this Promulgation such assistance as the Commissioner or an investigating officer, as the case may be, may reasonably require.

(3) The period to be specified in an order under subsection (2) shall be 7 days unless it appears to the High Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) Where an order is made under subsection (2) the Commissioner of Inland Revenue or any officer of the Inland Revenue Department shall, notwithstanding the provisions of any other law to the contrary including the provisions of section 4 of the Income Tax Act and sections 13 and 14 of this Promulgation, comply with the terms of that order within such period as the order may specify.

(5) For the purposes of the prosecution of an offence under this Promulgation where an order is made under subsection (2), the giving of evidence by the Commissioner of Inland Revenue or any officer of the Inland Revenue Department in relation to particular material or material of a particular description with respect to which the order is made shall not be subject to any obligation as to secrecy or other restriction as to disclosure imposed by section 4 of the Income Tax Act or otherwise.

(6) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) shall only be made where an application in relation to particular material is not reasonably practicable.

(7) Where material to which an application under this section relates consists of information recorded otherwise than in legible form—

- (a) an order under subsection (2)(i)(A) shall have effect as an order to produce the material in a form in which it can be taken away; and
- (b) an order under subsection (2)(i)(B) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) Where an order made under subsection (2)(i) relates to information recorded otherwise than in legible form, the Commissioner or an investigating officer may by notice in writing require the Commissioner of Inland Revenue or an officer of the Inland Revenue Department to produce the material in a form in which it is visible and legible and can be taken away.

(9) The Commissioner or an investigating officer may by notice in writing—

- (a) extend the period specified in an order under subsection (2) (and any such extension shall be deemed to be an order made by the High Court under that subsection);
- (b) release the Commissioner of Inland Revenue or an officer of the Inland Revenue Department from any obligation under an order of the description mentioned in subsection (8) to produce material in the form in which it was recorded.

(10) The Commissioner or an investigating officer may photograph or make copies of any material produced under this section.

Disclosure of information obtained under section 13A

13B. Where any information subject to an obligation of secrecy under the Income Tax Act has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 13A, that information may be disclosed by the Commissioner or an investigating officer to the Director of Public Prosecutions for the purposes of any proceedings relating to or any prosecution of an offence under this Promulgation but may not otherwise be disclosed.

Restriction on publication of information disclosed under section 13B

13C.—(1) This section applies—

- (a) to information of the description mentioned in section 13B which has been furnished to the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in respect of the liability, responsibility or obligation of any person (“the person named”) under the Income Tax Act;

- (b) where that information is disclosed to the Commissioner or Director of Public Prosecutions under section 13B;
- (c) where the Commissioner or Director of Public Prosecutions decides that any of the information so disclosed is to be adduced in evidence by the prosecution for the purpose of any prosecution of an offence under this Promulgation, not being an offence alleged to have been committed by the person named;
- (d) where a venue for and a date and time of hearing of those proceedings has been fixed; and
- (e) where those proceedings may result in the information being publicly revealed.

(2) As soon as practicable after having made a decision of the description mentioned in subsection (1)(c), and in any case not less than 14 days before the date referred to in subsection (1)(d), the Commissioner or Director of Public Prosecutions shall serve notice in writing of that fact on the person who furnished the information as mentioned in subsection (1)(a) and on the person named.

(3) A notice under subsection (2) shall be accompanied by a statement in writing so as to adequately inform the person on whom it is served of—

- (a) the details of such information disclosed to the Commissioner or Director of Public Prosecutions that is to be so adduced;
- (b) the venue for, date and time of the hearing of those proceedings; and
- (c) the substance of this section.

(4) Within 14 days after the service on him of a notice under subsection (2), the person on whom it is served may on notice in writing to the Commissioner or Director of Public Prosecutions make an application in chambers to the court before whom the proceedings are to be heard for an order under subsection (5) and the Commissioner or Director of Public Prosecutions shall be given an opportunity to be heard on that application.

(5) On application made to it under subsection (4), the court may by order give directions prohibiting or restricting the publication of any information so disclosed to the Commissioner or Director of Public Prosecutions which may lead to the identity of the person named being publicly revealed.

(6) In the making of an order under subsection (5), the court shall in considering whether or not to make an order, have regard to the views of the Commissioner or Director of Public Prosecutions on the application, if any, and those of the applicant and shall consider whether the public interest in the publication of any information being the subject of the application, without prohibition or restriction, outweighs—

- (a) the privacy and confidentiality of that information;
- (b) any prejudice to the person named which might result from the publication of that information without prohibition or restriction; and
- (c) the public interest in preserving secrecy with regard to matters relating to the affairs of persons that may come to the knowledge of the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in the performance of their duties under the Income Tax Act.

(7) If in the course of any prosecution of an offence under this Promulgation after the making of an order under subsection (5) the court by whom the order was made is satisfied, after giving the person in favour of whom the order was made an opportunity to be heard, that the effect of that order is to impose a substantial and unreasonable prohibition or restriction upon the reporting of those proceedings or the reporting of that prosecution and that, notwithstanding the matters referred to in subsection (6)(a), (b) and (c) and the views of the person in favour of whom the order was made, if any, it is in the public interest to remove the prohibition or to relax the restriction, the court or the judge shall direct that the order shall not apply to such information in respect of which that order was made as is specified in the direction.

(8) Any person who publishes or broadcasts information being the subject of an order under subsection (5), including an order in respect of which a direction is made under subsection (7), in contravention of that order commits an offence and is liable on conviction to a fine of \$10000 and to imprisonment for 6 months.

Power to obtain information

14.—(1A) The Commissioner or an investigating officer may, for the purpose of an investigation into, or proceedings relating to, an offence suspected to have been committed by any person under this Promulgation, make an *ex parte* application to the High Court in chambers for an order under subsection (1).

(1B) The High Court shall not make an order under subsection (1) unless on an *ex parte* application made to it under subsection (1A) it is satisfied that there are reasonable grounds for suspecting that—

- (a) in the case of an application relating to subsection (1)(c), that the information to be required from the person being the subject of the application is likely to be relevant to the investigation or the proceedings;
- (b) in the case of an application relating to subsection (1)(d) or (e), that the person being the subject of the application has or may reasonably have access to information likely to be relevant to the investigation or the proceedings.

(1) Where on an application under subsection (1A) the High Court is satisfied that there are reasonable grounds for suspecting that an offence under this Promulgation has been committed it may make an order authorizing the Commissioner by a notice in writing to require—

- (a) such person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commissioner sees fit, a statement in writing, enumerating—
 - (i) the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by, or which at any time during the 3 years immediately preceding the date of such notice or during such shorter period as may be specified in such notice belonged to or was possessed by, such person, his agents or trustees, specifying in respect of each property enumerated whether it is or was possessed jointly (and, if so, with whom) or severally; and specifying the date upon which, and the person from whom, each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and, where it was acquired by purchase, specifying the consideration paid therefore; and in respect of any property enumerated which has been disposed of, whether by sale, gift or otherwise, at any time during the 3 years immediately preceding the date of the notice or such shorter period as aforesaid, specifying how and to whom the same was disposed of and, where it was disposed of by sale, specifying the consideration given therefore;
 - (ii) all expenditure incurred by such person in respect of himself, his spouse, parents or children with regard to living expenses and other private expenditure during any period specified in such notice (not, however, being a period commencing earlier than 3 years from the date of the notice);
 - (iii) all liabilities incurred by such person, his agents or trustees, at such time or during such period as may be specified in such notice (not, however, being a time or a period commencing earlier than 3 years from the date of the notice), and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;
- (b) such person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commissioner sees fit, a statement in writing of any money or other property sent out of Fiji by him or on his behalf during such period as may be specified in the notice;
- (c) any other person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commissioner sees fit, a statement in writing enumerating the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by him and further stating, in respect of each such property, the date upon which and the person from whom it was acquired, if the Commissioner believes that such information may assist the investigation or proceedings;
- (d) any other person whom the Commissioner believes to be acquainted with any facts relevant to such investigation or proceedings to furnish to the investigating officer specified in such notice all

information in his possession or to which he may reasonably have access (not being information readily available to the public) respecting such matters as are specified in the notice or, as the Commissioner sees fit, to appear before the investigating officer specified in such notice or such other person specified in the notice and to answer orally on oath or affirmation any questions relevant thereto; and, on demand by the investigating officer specified in such notice or such other person, to produce or deliver or otherwise furnish to him the original or a copy of any document in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public) which, in the opinion of the investigating officer specified in such notice or such other person, may be relevant to such investigation or proceedings; for the purposes of this paragraph the investigating officer specified in such notice or such other person shall have authority to administer any oath or take any affirmation;

- (e) the person in charge of any public body or any department, office or establishment of any public body to produce or furnish to the investigating officer specified in such notice any document or a copy, certified by the person in charge, of any document which is in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public);
- (f) the manager of any bank to give to the investigating officer specified in such notice copies of the accounts of such person or of his spouse, parents or children at the bank as shall be named in the notice.

(2) Without prejudice to the generality thereof, the powers conferred by subsection (1)(d) include the power to require information from, and to require the attendance for the purpose of answering questions of—

- (a) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction; and
- (b) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction,

as to any of the following matters, that is to say—

- (i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) and (b) and any other information in his possession which may be helpful in identifying or locating any such person;
- (ii) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction; and
- (iii) the terms and conditions of any such land or property transaction.

(3) A notice under subsection (1) shall be served on the person to whom it is addressed either personally or by registered post addressed to his last known place of business or residence.

(4) Every person on whom a notice under subsection (1) is served shall, notwithstanding the provisions of any other Promulgation, Act or rule of law to the contrary save only the provisions of section 4 of the Income Tax Act, comply with the terms of that notice within such time as may be specified therein or within such further time as the Commissioner may, in his discretion, authorize, and any person on whom such a notice has been served, who, without reasonable excuse, neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year.

(5) A person who wilfully makes any false statement in answer to a notice under subsection (1) shall be guilty of an offence and shall be liable to a fine of \$20000 and to imprisonment for 1 year.

Restraining orders

14C.—(1) If, on application ex parte by or on behalf of the Commissioner, the court is satisfied that—

- (a) any property is in the possession of or under the control of or is due to a person (hereinafter in this section and in sections 14D and 14E referred to as the “suspected person”), who is the subject

of an investigation in respect of an offence alleged or suspected to have been committed by him under this Promulgation or against whom a prosecution for such an offence has been instituted, from another person (hereinafter so referred to as the "third party"); or

(b) a third party is holding any property for or on behalf of or to the order of a suspected person, the court may make an order under this subsection (hereinafter so referred to as a "restraining order").

(2) In making a restraining order the court may—

(a) impose such conditions; or

(b) exempt such property from the operation thereof (including periodic payments of money),

as it thinks fit, but subject as aforesaid, the suspected person and any third party on whom a restraining order is served in accordance with subsection (3) shall not dispose of or otherwise deal with any property specified in the restraining order save in accordance with directions of the court.

(2A) A restraining order shall, if so provided in the order, apply to the income from any property specified therein as it applies to the property itself.

(3) A restraining order shall be served on the suspected person and any third party to whom it is directed and may be served by delivering it to him or them personally or may, where the court is satisfied that such person cannot be found or is not in Fiji, be served in such other manner as the court may direct on application *ex parte* by or on behalf of the Commissioner.

(3A) Where any property specified in a restraining order is immovable property, such order shall be deemed to be an instrument affecting land and shall be registrable as such at the Office of the Registrar of Titles under the Land Transfer Act in such manner as the Registrar of Titles thinks fit.

(3B) Where any property specified in a restraining order includes any debt or obligation due by a bank or deposit-taking company to the person to whom the notice is given the Commissioner may serve on such bank or deposit-taking company a copy of that restraining order which copy restraining order shall have the effect of directing the bank or deposit-taking company with respect to the person specified in the copy restraining order not to pay, liquidate, satisfy, settle or discharge that debt or obligation either in whole or in part without the consent of the court.

(4) Subject to subsection (5), a restraining order with respect to property—

(a) of the description mentioned in subsection (1)(a) shall continue in force for a period of 12 months from the making thereof, but on application by or on behalf of the Commissioner the court may extend its operation for periods of 12 months at a time;

(b) of the description mentioned in subsection (1)(b) shall continue in force for a period of 6 months from the making thereof, but on application by or on behalf of the Commissioner the court may extend its operation for periods of 3 months at a time.

(5) Where—

(a) a restraining order is made with respect to a third party or a suspected person against whom a prosecution for an offence under this Promulgation has been instituted; or

(b) a restraining order is in force with respect to a third party or a suspected person against whom a prosecution for such an offence is instituted,

the restraining order shall, except in the case of a prosecution against a third party, continue in force until the proceedings on such prosecution have been finally determined and, if an order is made against that person under section 12(3) or 12AA, until that order has been set aside, complied with or enforced, as the case may be.

(5A) Nothing in subsection (4) or (5) shall prevent the court from making a further restraining order in respect of the same property on application *ex parte* by or on behalf of the Commissioner.

(6) A suspected person or third party on whom a copy of a restraining order has been served in accordance with subsection (3) or (3B) of this section or section 14D(5) shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 or to the value of the property disposed of or otherwise dealt with, whichever is greater, and to imprisonment for 1 year if, during the continuance in force of the order, he knowingly disposes of or otherwise deals with any property specified in the restraining order otherwise than in accordance with directions of the court.

(7) In this section and in sections 14D and 14E, "court" means the High Court.

Variation and revocation of restraining orders

14D.—(1) The Commissioner may at any time apply *ex parte* to the court for the variation or revocation of a restraining order.

(2) A person on whom a restraining order has been served in accordance with section 14C(3) or subsection (5) of this section may at any time apply to the court for an order revoking or varying the order.

(3) The applicant under subsection (2) shall give to the Commissioner such notice of the day fixed for the hearing of the application as a judge of the court may order.

(4) On the hearing of an application under subsection (2), the court may—

- (a) revoke the order if it is satisfied that undue hardship will be caused by its continuance in operation;
- (b) vary the order in such manner as it thinks fit.

(5) Where a restraining order has been revoked or varied under this section, notice of such revocation or the order as so varied, as the case may be, shall be served on the third party to whom it is directed and on the suspected person.

Application for directions

14E.—(1) The suspected person or a third party on whom a restraining order has been served in accordance with section 14C(3) or 14D(5) may at any time apply to the court for directions.

(2) The parties to any such application shall be—

- (a) the suspected person and the third party; and
- (b) the Commissioner.

(3) A person applying for directions under subsection (1) shall give to each other party to the application such notice of the day fixed for the hearing of the application as a judge of the court may order.

(4) On the hearing of an application under subsection (1), the court may give such directions as it thinks fit.

Legal advisers and privileged information

15.—(1) Save as is provided in this section, nothing in this Promulgation shall require the disclosure by a legal adviser of any privileged information, communication, book, document or other article.

(2) Subject to subsection (4), the information referred to in section 13(2) and in section 14(2) may be required from a legal adviser as from any other person, notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(3) Subject to subsection (4), a legal adviser may be required by notice under section 14(1)(d)—

- (a) to state whether, at any time during such period as is specified in the notice, he has acted on behalf of any person named or otherwise identified in the notice in connection with—
 - (i) the transfer by such person of any moneys out of Fiji; or

- (ii) the investment by such a person within or outside Fiji of any moneys; and
- (b) if so, to furnish information in his possession with respect thereto, being information as to—
 - (i) the date of the transfer or investment;
 - (ii) the amount of the transfer or investment;
 - (iii) in the case of a transfer, the name and address of the bank and the name and number (if any) of the account to which the money was transferred;
 - (iv) in the case of an investment, the nature of the investment,

notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(4) Nothing in subsection (2) or (3) shall require a legal adviser to comply with any such requirement as is specified therein to the extent to which such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any proceedings, begun or in contemplation, before a court or to enable him to give legal advice to his client.

(5) In this section "legal adviser" means counsel or a solicitor.

(6) The protection conferred by this section on a legal adviser shall extend to a clerk or servant of or employed by a legal adviser.

Power to obtain assistance

16.—(1) Any investigating officer conducting an investigation into an offence alleged or suspected to have been committed under this Promulgation may apply to any public servant for assistance in the exercise of his powers or the discharge of his duties under this Promulgation.

(2) Any public servant who when requested under subsection (1) to render assistance, without reasonable excuse neglects or fails to render such assistance shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year.

Further powers of search

17.—(1) Any investigating officer may, for the purposes of an investigation into, or proceedings relating to, an offence suspected to have been committed under this Promulgation, make an ex parte application to a court for the issue of a warrant under subsection (1A).

(1A) Where on an application under subsection (1) the court is satisfied that there is reasonable cause to believe that in any premises or place there is anything which is or contains evidence of an offence under this Promulgation, the court may by warrant directed to an investigating officer named in the warrant, empower such officer and any other investigating officer, to enter such premises or place, by force if necessary, and search the same.

(1B) Notwithstanding subsections (1) and (1A), where the Commissioner is satisfied that there is reasonable cause to believe—

- (a) that in any premises or place there may be anything which is or contains evidence of an offence under this Promulgation; and
- (b) that the making of an ex parte application under subsection (1) would seriously impede an investigation into, or proceedings relating to, an offence suspected to have been committed under this Promulgation,

the Commissioner may by warrant directed to an investigating officer named in the warrant, empower such officer and any other investigating officer to enter such premises or place, by force if necessary, and search the same.

(2) Without prejudice to any other law relating to entry and search, the chambers of counsel or the office of a solicitor are not subject to entry and search under this section or any warrant issued under this section except in the course of investigating an offence under this Promulgation alleged or suspected to have been committed by that counsel or that solicitor, as the case may be, or by his clerk or any servant employed by him in such chambers or office.

(3) Any person who obstructs or resists the Commissioner or any investigating officer in the exercise of the powers of entry and search under this section shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year.

(4) In this section "court" means a magistrate and the High Court.

Surrender of travel document

17A.—(1) A magistrate may, on the application *ex parte* of the Commissioner, by written notice require a person who is the subject of an investigation in respect of an offence reasonably suspected to have been committed by him under this Promulgation to surrender to the Commissioner any travel document in his possession.

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith.

(3A) Subject to subsection (6), a person to whom a notice under subsection (1) is addressed shall not leave Fiji, whether or not the notice has been served on him under subsection (2), before the expiry of a period of 6 months from the date of the notice unless—

(a) an application made under section 17B(1) for the return of a travel document is granted; or

(b) an application made under section 17BA(1) for permission to leave Fiji is granted.

(4) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may be arrested and taken before a magistrate by a police officer or by a person appointed in that behalf by the Commissioner.

(5) Where a person is taken before a magistrate under subsection (4), the magistrate shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the magistrate that he does not possess a travel document, by warrant commit him to prison there to be safely kept—

(a) until the expiry of the period of 28 days from the date of his committal to prison as aforesaid; or

(b) until such person complies with the notice under subsection (1) and a magistrate, by order in that behalf, orders and directs the Commissioner of Prisons to discharge such person from prison (which order shall be sufficient warrant for the Commissioner of Prisons so to do),

whichever occurs first.

(5A) Subject to subsection (6), a travel document surrendered to the Commissioner in compliance with a notice under subsection (1) may be detained for a period of 6 months from the date of the notice unless an application made under section 17B(1) for the return of the travel document is granted.

(6) The period of 6 months referred to in subsections (3A) and (5A) may be extended for a further period of 3 months if a magistrate, on application by the Commissioner, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorizes such extension:

Provided that a magistrate shall not hear an application under this subsection unless reasonable notice of the application has been given by the Commissioner to the person to whom the relevant notice is addressed.

(6A) All proceedings before a magistrate under this section shall be conducted in chambers.

(6B) A notice under subsection (1) which has been served in accordance with subsection (2) and complied with shall not thereafter be revoked or withdrawn.

(7) In this section and in section 17B, "travel document" means a passport or other document establishing the identity or nationality of a holder.

Return of travel documents

17B.—(1) A person who has surrendered a travel document under section 17A may at any time make application in writing, either to the Commissioner or to a magistrate or both for its return, and every such application shall contain a statement of the grounds on which it is made.

(2) A magistrate shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Commissioner.

(3) The Commissioner or a magistrate shall only grant an application made under subsection (1) where the Commissioner or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in section 17A(1), a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section—

(a) the applicant may be required to—

(i) deposit such reasonable sum of money with such person as may be specified;

(ii) enter into such recognizance with such sureties, if any, as may be specified; or

(iii) deposit such a sum of money and enter into such a recognizance as may be specified;

(b) any such applicant or surety may be required to deposit such property or document of title thereto with such person as may be specified for retention by that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) shall be subject to the conditions that—

(a) the applicant shall further surrender his travel document to the Commissioner at such time as may be specified; and

(b) the applicant shall appear at such time and place in Fiji as may be specified and at such other time and place in Fiji thereafter as may be further specified.

(6) An application under this section may be granted either without conditions or subject to the conditions that—

(a) the applicant shall further surrender his travel document to the Commissioner at such time as may be specified; and

(b) the applicant shall appear at such time and place in Fiji as may be specified and at such other time and place in Fiji thereafter as may be further specified.

(7) Where a travel document is returned to the applicant under this section subject to a condition imposed under subsection (5)(a) or (6)(a), then after the time specified under that subsection, the provisions of section 17A(3A) shall continue to apply in respect of the applicant and the provisions of section 17A(5A) shall continue to apply in respect of the travel document surrendered by the applicant pursuant to the condition as if no return had been made to the applicant under this section.

(8) Proceedings before a magistrate under this section—

(a) shall be conducted in chambers; and

(b) shall be deemed to be proceedings which a magistrate has power to determine in a summary way and, accordingly relevant enabling statutory law shall apply, with any necessary modifications, to appeals against an order of a magistrate under this section.

(9) Anything to be specified in respect of an applicant under this section shall be specified by notice in writing served personally on the applicant.

Permission to leave Fiji

17BA.—(1) Without prejudice to section 17B, a person on whom a notice under section 17A(1) is served may at any time make application in writing to the Commissioner or to a magistrate or both for permission to leave Fiji, and every such application shall contain a statement of the grounds on which it is made.

(2) A magistrate shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Commissioner.

(3) The Commissioner or a magistrate shall only grant an application made under subsection (1) where the Commissioner or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in section 17A(1), a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section—

(a) the applicant may be required to—

(i) deposit such reasonable sum of money with such person as may be specified;

(ii) enter into such recognizance with such sureties, if any, as may be specified; or

(iii) deposit such a sum of money and enter into such a recognizance as may be specified;

(b) any such applicant or surety may be required to deposit such property or document of title thereto with such person as may be specified for retention by that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) shall be subject to a condition that the applicant shall appear at such time and place in Fiji as may be specified and at such other time and place in Fiji thereafter as may be further specified.

(6) An application under this section may be granted either without condition or subject to a condition that the applicant shall appear at such time and place in Fiji as may be specified and at such other time and place in Fiji thereafter as may be further specified.

(7) Where a person is permitted to leave Fiji under this section subject to a condition imposed under subsection (5) or (6), then after the time specified under that subsection or (if applicable) after the last of such times, the provisions of section 17A(3A) shall continue to apply in respect of the person as if the person had not been permitted to leave Fiji under this section.

(8) Proceedings before a magistrate under this section—

(a) shall be conducted in chambers; and

(b) shall be deemed to be proceedings which a magistrate has power to determine in a summary way and, accordingly, any enabling statutory law (which relates to appeals) shall apply, with any necessary modifications, to appeals against an order of a magistrate under this section.

(9) Anything to be specified in respect of an applicant under this section shall be specified by notice in writing served personally on the applicant.

Further provisions relating to security, appearance, etc.

17C.—(1) Where a person granted an application under section 17B fails to comply with the requirement of any condition imposed under that section—

(a) he may be arrested and dealt with in the same manner that a person who fails to comply with a notice under section 17A(1) may be arrested and dealt with under section 17A(4) and (5); and

(b) any deposit made or recognizance entered into under section 17B may be forfeited by a magistrate on application by the Commissioner.

(1A) Where a person granted an application under section 17BA fails to comply with the requirement of any condition imposed under that section, any deposit made or recognizance entered into under that section may be forfeited by a magistrate on application by the Commissioner.

(2) Where a magistrate declares or orders the forfeiture of a recognizance under this section, such declaration or order may, on the application of the Commissioner, be registered in the High Court, and thereupon the

High Court may make any order as it sees fit in the interests of justice to deal with or to assist in the actual recovery of the forfeited recognizance.

Custom not to be a defence

19. In any proceedings for an offence under this Promulgation, it shall not be a defence to show that any such advantage as is mentioned in this Promulgation is customary in any profession, trade, vocation, calling or tradition.

PART IV—EVIDENCE

Admissibility of accused's declarations and statements

20. In any proceedings against a person for an offence under this Promulgation—

- (a) if such person tenders himself as a witness then any statutory declaration or statement in writing furnished by him in compliance or purported compliance with the terms of a notice served on him under section 14 shall be regarded as a former statement made by him relative to the subject-matter of the proceedings and the rules of evidence as to proof of a contradictory statement of an adverse witness and as to cross-examination as to a previous statement in writing shall apply with respect to that witness;
- (b) the fact of the person's failure in any respect to comply with the terms of a notice served on him under section 14 may be adduced in evidence and made the subject of comment by the court and the prosecution.

Evidence of pecuniary resources or property

21.—(1) In any proceedings against a person for an offence under Part II (other than section 10), the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, or is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court—

- (a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage; and
- (b) as showing that such advantage was accepted or solicited as an inducement or reward.

(2) For the purposes of subsection (1) a person accused of an offence under Part II (other than section 10) shall be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

Certificate as to official emoluments, etc.

21A.—(1) In any proceedings against a person for an offence under this Promulgation, a certificate purporting—

- (a) to certify—
 - (i) the rate of, and the total amount of, official emoluments and the allowances, other than such emoluments, paid to any prescribed officer in relation to the discharge by him of his duties as a prescribed officer;
 - (ii) that any person was or was not serving at any specified time or during any specified period as a prescribed officer or ceased to be a prescribed officer at or before any specified time; or
 - (iii) that a prescribed officer held or did not hold at any specified time any specified office; and

(b) to be signed by the Chairman of the Public Service Commission, shall be admitted in such proceedings by any court on its production without further proof.

(2) On the production of a certificate under subsection (1) the court before which it is produced shall, until the contrary is proved, presume—

(a) that the facts stated therein are true; and

(b) that the certificate was signed by the Chairman of the Public Service Commission.

(3) In this section, “official emoluments” includes a pension or gratuity payable under any statutory law.

Person giving or receiving bribe not to be regarded as an accomplice

22. Notwithstanding any Act, Promulgation, rule of law or practice to the contrary, no witness shall, in any proceedings for an offence under Part II, be regarded as an accomplice by reason only of any payment or delivery by him or on his behalf of any advantage to the person accused or, as the case may be, by reason only of any payment or delivery of any advantage by or on behalf of the person accused to him.

Power to secure evidence of parties to offences

23. In or for the purpose of any proceedings for an offence under Part II, the court may, at the request in writing of the Commissioner or the Director of Public Prosecutions, inform any person accused or suspected of such offence or of any other offence under Part II that, if he gives full and true evidence in such proceedings and, where such proceedings are proceedings held with a view to committal for trial in the High Court, in the trial before the High Court of all things as to which he is lawfully examined, he will not be prosecuted for any offence disclosed by his evidence; and upon such person giving evidence in any such proceedings no prosecution against him for any offence disclosed by his evidence therein shall be instituted or carried on unless the court before which he gives evidence considers that he has wilfully withheld evidence or given false testimony and so certifies to the Commissioner or the Director of Public Prosecutions in writing.

Burden of proof

24. In any proceedings against a person for an offence under this Promulgation, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused.

PART V—MISCELLANEOUS

Frivolous, false or groundless complaints to be reported to the Commission

27. At the conclusion of proceedings for an offence under this Promulgation, the court may, if of the opinion that the complainant or any other person has knowingly, and with intent to harm the accused, made a false, frivolous or groundless allegation against him, so certify in writing and transmit the certificate and the record of the proceedings to the Commissioner or the Director of Public Prosecutions.

Costs on acquittal

28. Where a person is acquitted after trial before the High Court or before a Magistrate for an offence under Part II, the court may award costs to that person, such costs to be taxed unless agreed, and paid out of the general revenue.

Offence of making a false report of the commission of offence, etc.

29. Any person who, during the course of an investigation into, or in any proceedings relating to, an offence alleged or suspected to have been committed under this Promulgation, knowingly—

(a) makes or causes to be made a false report of the commission of an offence under this Promulgation to any investigating officer specified in an authorization given under section 13; or

(b) misleads any investigating officer specified in an authorization given under section 13,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$20000 and to imprisonment for 1 year.

Offence to disclose identity, etc. of persons being investigated

30.—(1) Any person who knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under Part II is taking place, without lawful authority or reasonable excuse, discloses to—

- (a) the person who is the subject of the investigation (the "subject person") the fact that he is so subject or any details of such investigation; or
- (b) the public, a section of the public or any particular person the identity of the subject person or the fact that the subject person is so subject or any details of such investigation,

shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year.

(2) Subsection (1) shall not apply as regards disclosure of any of the descriptions mentioned in that subsection where, in connection with such investigation—

- (a) a warrant has been issued for the arrest of the subject person;
- (b) the subject person has been arrested whether with or without warrant;
- (c) the subject person has been required to furnish a statutory declaration or a statement in writing by a notice served on him under section 14(1)(a) or (b);
- (d) a restraining order has been served on any person under section 14C(3);
- (e) the residence of the subject person has been searched under a warrant issued under section 17; or
- (f) the subject person has been required to surrender to the Commissioner any travel document in his possession by a notice served on him under section 17A.

(3) Without affecting the generality of the expression "reasonable excuse" in subsection (1) a person has a reasonable excuse as regards disclosure of any of the descriptions mentioned in that subsection if, but only to the extent that, the disclosure reveals—

- (a) any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the Commissioner, the Deputy Commissioner or any officer of the Commission; or
- (b) a serious threat to public order or to the security of Fiji or to the health or safety of the public.

Protection of informers

30A.—(1) Save as provided in subsection (2)—

- (a) no information for an offence under this Promulgation shall be admitted in evidence in any civil or criminal proceeding; and
- (b) no witness in any civil or criminal proceeding shall be obliged—
 - (i) to disclose the name or address of any informer who has given information to the Commissioner with respect to an offence under this Promulgation or of any person who has assisted the Commissioner in any way with respect to such an offence; or
 - (ii) to answer any question if the answer thereto would lead, or would tend to lead, to discovery of the name or address of such informer or person,

if, in either case, such informer or person is not himself a witness in such proceeding,

and, if any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(2) If in any proceeding before a court for an offence under this Promulgation the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding a court is of opinion that justice cannot be fully done between the parties thereto without disclosure of the name of an informer or a person who has assisted the Commissioner, the court may permit inquiry and require full disclosure concerning the informer or such person.

Consent of Commissioner or of Director of Public Prosecutions required for prosecution of offences under Part II

31.—(1) No prosecution for an offence under Part II shall be instituted unless brought by the Commissioner or by the Director of Public Prosecutions.

(2) Notwithstanding subsection (1) of this section a person may be charged with an offence under Part II and may be arrested therefor, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail notwithstanding that the consent of the Commissioner or of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no such person shall be remanded in custody or on bail for longer than 3 days on such charge unless in the meantime the consent of the Commissioner or of the Director of Public Prosecutions aforesaid has been obtained.

(3) When a person is brought before a magistrate before the Commissioner or of the Director of Public Prosecutions has consented to the prosecution, the charge shall be explained to the person accused but he shall not be called upon to plead and the provision of the law for the time being in force relating to criminal procedure shall be modified accordingly.

Time limit for prosecution of offences

31A.—(1) Notwithstanding any time limit for the prosecution of offences provided by any law, a complaint may be made or an information laid in respect of an offence under section 3, 14(5), 14A(5), 14C(6) or 33A within 2 years from the time when the matter of such complaint or information respectively arose.

(2) Notwithstanding any time limit for the prosecution of offences provided by any law, a complaint may be made or an information laid in respect of an offence under section 13(3), 13(4), 29 or 30(1) within 1 year from the time when the matter of such complaint or information respectively arose.

Alternative convictions, and amending particulars

32.—(1) If, on the trial of any person for any offence under Part II, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part II, the accused may, notwithstanding the absence of consent under section 31 in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

(2) If on the trial of any person for any offence under Part II there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is prima facie evidence of the commission of that offence, and in such a case the court may, notwithstanding the absence of consent under section 31 in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness.

(3) If an amendment is made under subsection (2) after the case for the prosecution is closed no further witness may be called by the prosecution other than such and on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

(4) Nothing in this section shall exclude the application of any other law whereby a person may be found guilty of an offence other than that with which he is charged.

Effect of conviction of an offence under this Promulgation

33. Any person convicted of an offence under Part II of this Promulgation shall, by reason of such conviction, be disqualified for a period of 10 years from the date of such conviction from—

- (a) being elected as a Member of the Parliament; or
- (b) being or being elected or appointed as a member of the Cabinet and any other public body, other than a public body specified in Schedule 1.

Power of court to prohibit employment of convicted person

33A.—(1) Where a person has been convicted of an offence under Part II, a court may, on the application of the prosecution or on its own motion, where it considers it to be in the public interest so to do, order that the convicted person be prohibited from taking or continuing employment, whether temporary or permanent and whether paid or unpaid—

- (a) in the case where the convicted person was employed by a corporation or a public body at the time of or prior to his conviction, as a director or manager or in such other capacity concerned with, whether directly or indirectly, the management of that corporation or any public body or any corporation that is a subsidiary of that corporation or any public body; or
- (b) in the case where the convicted person was practising any profession or was otherwise self-employed at the time of or prior to his conviction, in the practice of his profession or in the business, or class of business, in which he was so employed, as the case may be;
- (c) in other cases, as a partner or as a manager of or in such other capacity concerned with, whether directly or indirectly, the management of such partnership, firm or person or such class of partnership, firm or person; and
- (d) for such period not exceeding 7 years,

as the court may determine.

(2) A person in respect of whom an order under subsection (1) has been made may at any time during the continuance in force of the order apply to the court for the order to be varied or cancelled.

(3) On an application under subsection (2) the court shall consider all the circumstances including any changes in the applicant's circumstances since the making of the order and whether it would be in the public interest for the order to be varied or cancelled.

(4) Not less than 7 days before the hearing of an application under subsection (2) the person applying shall give written notice to the Director of Public Prosecutions and to the Commissioner of his intentions and on any hearing of an application the Director of Public Prosecutions and the Commissioner shall have the right to appear and be heard.

(5) Any person in respect of whom an order under subsection (1) has been made who contravenes the order commits an offence and is liable to a fine of \$50000 and to imprisonment for 12 months.

Amendment of Schedule

35. The Cabinet may by order published in the *Gazette* amend the Schedule.

PUBLIC BODIES

1. The University of the South Pacific
2. The Fiji Human Rights Commission
3. The Ombudsman's Office
4. Native Lands Trust Board
5. Fijian Holdings Limited
6. Fiji National Provident Fund
7. Auditor General's Office
8. Director of Public Prosecutions Office
9. Commerce Commission
10. Fiji Islands Revenue and Customs Authority
11. Fiji Development Bank
12. Yasana Holdings Limited
13. Post Fiji Limited
14. Telecom Fiji Limited
15. Vodafone
16. Amalgamated Telecom Holding Limited

17. Air Terminal Services Limited
18. Air Fiji Limited
19. Air Pacific Limited
20. Airports Fiji Limited
21. Capital Markets Development Authority
22. Civil Aviation Authority of the Fiji Islands
23. Fiji Broadcasting Corporation Limited
24. Fiji Electricity Authority
25. Fiji Hardwood Corporation Limited
26. Fiji International Telecommunications Limited
27. Fiji Islands Visitors Bureau
28. Fiji Investment Corporation Limited
29. Fiji Islands Trade and Investment Board
30. Fiji Pine Limited
31. Fiji Ports Corporation Limited
32. Fiji Ships and Heavy Industries Limited
33. Fiji Sports Council
34. Housing Authority
35. Fiji Shipping Corporation Limited
36. National Fire Authority
37. Land Transport Authority
38. Ports Terminal Limited
39. Reserve Bank of Fiji
40. Public Rental Board
41. Rewa Dairy Company Limited
42. Rewa Rice Limited
43. Viti Corporation Limited
44. Sugar Cane Growers Council
45. Sugar Cane Growers Fund Authority

Given under my hand this 4th day of April 2007.

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