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GOVERNMENT OF FIJI

MICROFINANCE INSTITUTIONS (EXAMINATION AND ASSESSMENT) DECREE 2010
 (DECREE NO. 53 OF 2010)

IN exercise of the powers vested in me as 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—

Short title and commencement

1.— (1) This Decree may be cited as the Microfinance Institutions (Examination and Assessment) Decree 2010.

(2) This Decree comes into force on the date appointed by the Minister by notice in the *Gazette*.

Interpretation

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

“Chief Registrar” means the Chief Registrar of the High Court;

“Director” in relation to a microfinance institution, includes any person occupying the position of director by whatever name called;

“Governor” means the Governor of the Reserve Bank appointed under Section 11 of the Reserve Bank of Fiji Act (Cap.210);

“Manager” includes a director, chief executive officer or trustee of any microfinance institution;

“microfinance institution” means any institution operating as a microfinance institution or providing microfinance or engaging in business of providing microfinance and includes such institutions as the Minister may by notice in writing in the *Gazette* define as microfinance institutions;

“Minister” means the Minister responsible for Finance;

“Reserve Bank” means the Reserve Bank of Fiji established under the Reserve Bank of Fiji Act (Cap. 210)

Powers of Reserve Bank

3.—(1) Notwithstanding the powers contained in the Reserve Bank of Fiji Act (Cap. 210) and the Banking Act 1995, the Reserve Bank may conduct examinations, onsite or otherwise, of any microfinance institution.

(2) In carrying out the examination in subsection (1) the Reserve Bank must assess—

- (a) the governance structure;
- (b) credit policy and accounting process;
- (c) loan portfolio management;
- (d) total deposits received by the microfinance institutions;
- (e) amount which would have been utilised by Management for operational expenses;
- (f) loan files;
- (g) client files; and
- (h) such other matters as may be deemed necessary by the Reserve Bank.

Reserve Bank to report to Cabinet

4. Upon completion of the examinations in section 3, the Reserve Bank must present a report of its findings to Cabinet.

Information to be supplied to the Reserve Bank

5. Upon written notice by the Governor, microfinance institutions must submit to the Reserve Bank in respect of the business and operations of that microfinance institution, in a form as may be prescribed and within such time as maybe required—

- (a) a statement showing the assets and liabilities of the microfinance institution;
- (b) a balance sheet;
- (c) a statement of profit and loss;
- (d) a statement of income and expenditure; and
- (e) any other such returns, data, or information as may be required by the Reserve Bank.

Failure to supply information

6. Where any microfinance institution or its manager fails to comply with any notice issued under section 5, that microfinance institution or manager shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding 500 penalty units or to imprisonment of a term not exceeding 3 years, or both.

Reserve Bank may require production of documents, etc.

7. The Governor may require by notice in writing to any microfinance institution, the production by the managers of that microfinance institution, at a time specified in that notice, of books, papers, files, securities, other documents or any other record of any type whatsoever (including electronic, digital, or audio-visual materials), or copies thereof which are in custody, possession or control of the microfinance institution and which may be relevant to the examination under section 3.

Failure to Produce Documents

8. Where any microfinance institution or its manager fails to comply with any notice issued under section 7, that microfinance institution or director or manager shall be guilty of an offence and shall be liable upon conviction of a fine not exceeding 500 points system or to imprisonment of a term not exceeding 3 years, or both.

Power to issue search warrants

9.—(1) The Governor or anyone authorised under Section 10, acting in accordance with the provisions of section 3, may apply to the Magistrates Court for a warrant, and the Court may issue a warrant if it is satisfied that there are reasonable grounds for suspecting that information required under the Decree is in a place sought to be searched by the Governor or any such authorised persons.

(2) A search warrant under this section shall authorise the Governor or any authorised persons to enter such premises specified in the warrant, using such force as is reasonably necessary to obtain such information as is necessary for examination by the Reserve Bank.

(3) If during the authorised search—

- (a) anything searched for is found; or
- (b) any other thing reasonably suspected as having relevance to the information sought is found;

the Governor or other person authorised by the search warrant may seize it and take it to the Reserve Bank were it may be detained until the conclusion of the examination, and reasonable care shall be taken for its preservation.

Power to Delegate

10. The Reserve Bank may authorise any person or organisation to assist it in the exercise of its functions under this Decree, either generally or in any particular case and may otherwise delegate its functions under this Decree.

General Penalty

11. Where any manager or director of any microfinance institution fails to comply with the provisions of this Decree, that manager shall be liable on conviction to a fine not exceeding 500 penalty points for every day which the default continues or to imprisonment of a term not exceeding 3 years, or both.

Power to make regulations

12. The Minister may make regulations prescribing matters that are required or permitted by this Decree or are necessary or expedient to be prescribed for carrying out or giving effect to this Decree.

Decisions not to be challenged

13.—(1) No court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body which seeks or purports to challenge or question—

- (a) the validity, legality or propriety of this Decree;
- (b) any decision of the Minister or the Reserve Bank, made under this Decree.

(2) Where any proceeding, claim challenge, application or dispute of any form whatsoever, is brought before any court, tribunal, commission or any other adjudicating body, in respect of any subject matter in subsection (1), then the presiding judicial officer, without hearing or in any way determining the proceeding or application, must immediately transfer the proceeding or the application to the Chief Registrar for termination of the proceeding or the application and the issuance of a Certificate to that effect.

(3) A certificate under subsection (2) is, for the purposes of any proceedings in a court, tribunal, commission or any other person or body exercising a judicial function, conclusive of the matters stated in the Certificate.

(4) A decision of the Chief Registrar to issue a certificate under subsection (2) is not subject to challenge in any court, tribunal, commission or any other adjudicating body.

Given under my hand this 5th day of October 2010.

EPELI NAILATIKAU
President of the Republic of Fiji