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GOVERNMENT OF FIJI  
 (DECREE NO. 48 OF 2010)

CONSUMER CREDIT (AMENDMENT) DECREE 2010

ARRANGEMENT OF SECTIONS

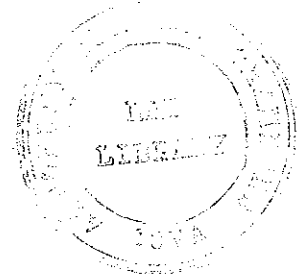
SECTION

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CONSUMER CREDIT (AMENDMENT) DECREE 2010  
 (DECREE NO. 48 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 Decree 2009, I hereby make the following Decree—

A DECREE TO AMEND THE CONSUMER CREDIT ACT

PART 1 — PRELIMINARY

*Short title and Commencement*

1. This Decree is referred to as the Consumer Credit (Amendment) Decree 2010 and shall come into force on the same day as the Commerce Commission Decree 2010 comes into force.

*Interpretation*

2. In this Decree, the Consumer Credit Act is referred to as “the Act”.

PART 2 — AMENDMENTS TO THE ACT

*Section 3 Amended*

3. Section 3 of the Act is amended by—
  - (a) deleting “Assistant Director”;
  - (b) deleting the definition of “Director” and substituting with—

“Director” refers to the Director of Trade Measurement and Standards appointed under the National and Trade Measurement Decree 1989 and includes any other person who for the time being occupies the office or performs the duties of the Director”.

*Section 5 Amended*

4. Section 5 of the Act is amended by—
- (a) deleting in subsection (4) “Chief Inspector” and substituting with “Director”;
  - (b) deleting in subsection (4) “Assistant Director” and substituting with “any other inspectors or officers appointed under the Trade Standards and Quality Control Decree”; and
  - (c) deleting in subsection (5) “Assistant Director”.

*Section 101 Amended*

5. Section 101 of the Act is amended by deleting “of Fair Trading and Consumer Affairs”.

*Section 106 Amended*

6. Section 106 is amended by deleting “of Fair Trading and Consumer Affairs” and substituting with “National and Trade Measurement Office”.

*Section 108 Amended*

7. Section 108 subsection (1) of the Act is amended by deleting “of Fair Trading and Consumer Affairs”.

*Section 109 Amended*

8. Section 109 subsections (1) and (3) of the Act is amended by deleting “of Fair Trading and Consumer Affairs”.

*Section 110 Amended*

9. Section 110 of the Act is amended by deleting “of Fair Trading and Consumer Affairs”.

*Section 184 Amended*

10. Section 184 of the Act is amended by inserting new subsections 7A and 7B after subsection (7)—

“(7A) The amount ordered to be paid may be recovered in a court of competent jurisdiction as a debt due by the convicted person to the other person.

(7B) Unless otherwise expressly provided, any goods or articles in connection with which any offence against this Act is committed may, on conviction of any person guilty of the offence, be forfeited to the State by order of the court, and such forfeiture may, in the case of articles, extend to the whole of any similar articles found on the defendant’s premises or in his possession at the time the offence was committed”.

*Section 186 Amended*

- 11.—(1) Section 186 of the Act is amended by—

- (a) deleting the whole provision and substituting with—

*“Powers of Inspectors*

186.—(1) For the purpose of the discharge by the Office of any of its functions under this Act, or for any other purposes of this Act, an Inspector may at all reasonable times—

- (a) enter any premises he knows or reasonably suspects have been or are being or are likely to be used by any person in connection with a contravention of this Act;
- (b) enter any premises where he knows or reasonably suspects that records are kept relating to supply of goods or services or relating to a contravention of this Act;

(c) in any premises entered by him—

- (i) search for, examine, take possession of or make copies of or extracts from records relating to goods or services supplied or to be supplied or relating to any matter the subject of an inspection under this Act;
- (ii) search for and examine goods found thereon;
- (iii) exercise any power under this Act to seize goods without payment;
- (iv) seize without payment any brochures, leaflets, books, writing, documents or other materials that he knows or reasonably suspects have been, are being, or are likely to be used to advertised, promote or likely to be used to advertise, promote or make representations with respect to any matter in contravention of this Act;
- (v) open any room, place or container or package that he knows or reasonably suspects to contains goods;
- (vi) question with respect to matters under this Act any person he finds there on;
- (vii) such inquiry and examination as he believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Act or to ascertain whether any contravention of this Act has been, is being, or is likely to be committed.

No provision of this subsection shall be taken to authorize forcible entry by an Inspector to any premises save under the authority of a warrant obtained by him pursuant to subsection (3).

(2) Before an Inspector enters any part of premises which is or may be used as a dwelling he shall, save where he has the permission of the occupier of that part of his entry, obtain from a Resident Magistrate a search warrant to enter.

(3) A Resident Magistrate who is satisfied with the information provided by the Inspector that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this Act or for the keeping of records relating to a contravention of this Act or for the keeping of records relating to a contravention of this Act may issue his search warrant directing the Inspector to enter the place specified in the search warrant for the purpose of his exercising therein the powers conferred on an inspector by this Act.

(4) A search warrant issued under this section shall be for a period of one month from its issue, with sufficient authority to the Inspector to whom it is directed—

- (a) and to all persons acting in aid of him to enter the place specified in the search warrant; and
- (b) to exercise in respect of the place specified in the search warrant all the powers conferred on an Inspector by this Act.

(5) For the purpose of gaining entry to any place an Inspector may call to his aid such persons as he considers necessary and such persons, while acting in aid of an Inspector in the lawful exercise by him of his power of entry, shall have a like power of entry.

(6) Where an Inspector has taken possession of records or of other property for the purposes of this Act he may in the case of—

- (i) records retain the same for so long as is necessary for those purposes, but the person otherwise entitled to possession thereof, if he so requests it is entitled to be furnished as soon as practicable with a copy thereof certified by the Director to be a true copy and such a certified copy shall be received in all court and elsewhere as evidence of the matters contained therein as if it were the original;
- (ii) other property, subject to the express provisions of this Act, retains the property for so long as is necessary for those purposes, and thereafter dispose of it as the Director directs.”

(b) inserting a new section 186A after section 186—

*"Power to Obtain Information"*

186A.—(1) In relation to any matter relevant to the operation or enforcement of this Act, an Inspector may require a person (either by oral or written requisition) to furnish any—

- (a) information;
- (b) records or a copy thereof,

in the person's possession.

(2) For the purpose of subsection (1) above, a person shall be taken to be in possession of—

- (a) information, if he has the information or is entitled to access to the information; or
- (b) records, if he has them in his possession or if he has them under control in any place whether for his own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.

(3) A requisition made under subsection (1) above may require that the information or records or copy thereof be furnished—

- (a) to the Inspector or another Inspector or to an officer of the Department specified;
- (b) at the place the requisition is made or at another place;
- (c) forthwith or at, by or within a time specified;
- (d) in person, or by certified mail or in another manner specified;
- (e) by means of, or accompanied by, verification in the form of, a statutory declaration made in accordance;
- (f) in the case of information, orally or in writing.

(4) A person shall not—

- (a) refuse or fail to furnish any information, records or a copy thereof as required of him under this section;
- (b) in response to a requisition made under this section furnish information, records or copies thereof that is or are false or misleading in a material particular,

is guilty of an offence under this Act.

(5) A person shall not be entitled to refuse or fail to furnish information or records or a copy thereof on the ground only that the information, or records or copy thereof would tend to incriminate him.

(6) If in response to a requisition authorized by paragraph (a) of subsection (1), a person furnishes information that would tend to incriminate him in any offence, other than an offence defined in paragraph (b) of subsection (4), the information furnished shall not be admissible in evidence against him in proceedings in any court or tribunal other than the Small Claims Tribunal.

This subsection does not apply to information as to the name and address of the person or as to his ownership of, control over or position in, any business.

(7) Where a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this section to produce any records containing those matters shall be construed as including a duty to produce the matters in written form if that is demanded.

The duty imposed by this section to produce a copy of any records shall be construed as a duty to produce a clear reproduction.

(8) An inspector or officer of the Department may take notes or copies of or extracts from records or a copy thereof produced under this section.

(9) Records furnished under this section may be retained for so long as it is necessary to do so for the purposes of this Act, but the person otherwise entitled to possession thereof, if he so requests it, is entitled to be furnished as soon as practicable with a copy thereof certified by the Director to be a true copy and such a certified copy shall be received in all courts and elsewhere as evidence of the matters contained therein as if it were the original.

*Obstruction*

186B.—(1) A person shall not obstruct an Inspector in the exercise of his powers under this Act.

(2) For the purposes of the Act, a person shall be deemed to obstruct an Inspector in the exercise of his powers under the Act if he—

- (a) assaults, abuses, intimidates or insults an Inspector or any other person assisting an Inspector in the exercise of his powers under this Act;
- (b) directly or indirectly deliberately prevents any person from being questioned by an Inspector or from furnishing under this Act any information or records or copies thereof or attempts to do so; or
- (c) in any other way obstructs or attempts to obstruct an Inspector in the exercise of his powers under this Act.

(3) Any person who contravenes this section shall be guilty of an offence.

*Continuing Offences*

186D.—(1) Where a person commits an offence defined in section 106, by failing to furnish information or to produce records or a copy thereof—

- (a) his obligation to furnish the information or produce the records or a copy thereof, as the case may be, continues until he complies with the requirement notwithstanding that in a particular case a time was specified at, by or within which compliance was required and that time has passed;
- (b) he shall commit a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues;
- (c) he shall be liable to a penalty not less than \$10.00 for each day during which the offence continues; and
- (d) he may be prosecuted from time to time in respect thereof.

*Powers to Institute and Conduct proceedings*

186E. The Director or an inspector may, although he is not a legal practitioner, institute, conduct or defend before a court any charge, information, complaint or other proceeding arising under this Act or any regulations or orders made thereunder.

*Liability of Employer, Agent and Employee*

186F.—(1) Any manager, agent or employee who in the course of his duties does or omits to do any act which if done or omitted to be done by his principal or employer would be an offence against any of the provisions of this Decree or of any regulations or orders made thereunder shall himself be guilty of such offence, and shall be liable to the penalties provided therefor under this Decree or, as the case may be, such regulations or orders

(2) Every principal or employer shall be answerable for the acts or omissions of his manager, agent or employee in relation to the matters provided for by this Decree and any regulations or orders made thereunder, and if any manager, agent, or employee commits an offence against any of the provisions of this Decree or of such regulation or orders the principal or employer shall also be guilty of such offence and shall be liable to the penalties provided therefor under this Decree or, as the case may be, such regulations or orders, unless he proves that the offence was committed without his consent, and connivance and that he took all reasonable steps to prevent its commission.

*Officers of Corporate Bodies*

186G. Where any offence against this Decree or against any regulations or orders made thereunder is committed by a company, firm or other association of individuals, every person who at the time of the offence was a director, manager, secretary or other similar officer of such company, firm or association, or who was at that time concerned in or purported to act, in the management of its affairs, shall be severally liable in prosecution and punishment, in like manner as if he had himself committed the offence, unless he proves that the offence was committed without his consent and connivance and that he took all reasonable steps to prevent its commission.

*Offence due to fault of other Person*

186H. Where the commission by any person of an offence against this Decree or against any regulations or orders made thereunder is due to the act or default of some other person that other person shall be guilty of an offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

*Defence of Mistake, Accident etc.*

186I.—(1) In any proceedings for an offence against this Decree or against any regulations or orders made thereunder it shall, subject to subsection (2), be a defence for the person charged to prove—

- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any case the defence provided by subsection (1) involve the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he had served the prosecutor a notice in writing giving all information in his possession identifying or assisting in the identification of that other person.

*Forfeiture Proceedings*

186J.—(1) The Director may, without instituting any prosecution, apply to the court for the forfeiture of any goods seized under this Decree, and the court in its discretion may make such an order; but if the court declines to make such an order, the Director shall return such goods to the owner.

(2) Where any goods have been seized under this Decree and at the expiration of six months from such seizure—

- (a) no prosecution has been instituted in relation thereto; or
- (b) no application has been made for an order under subsection (1),

the Director shall return them to the owner thereof on the receipt of an application in that behalf made in writing by such owner.

(3) Upon conviction of a person guilty of an offence against this Decree, the court may, if it thinks fit, in addition to or without inflicting any other penalty, order that any goods in respect of which the offence was committed shall be forfeited to the State, unless the owner of such goods or any person acting on his behalf or having a right in those goods shows cause to the contrary.

(4) All goods forfeited to the State under this Decree shall be dealt with or disposed of as the Minister may direct.

*Compensation Provisions*

186K. Where the offence in respect of which any person is convicted is an offence whereby the accused has gained advantage over any other person in consequence of that offence, the court may, if it thinks fit, whether in

addition to or without inflicting any other penalty, order the convicted person to pay to the other person such sum as may in the opinion of the court serve to compensate him for the loss sustained in consequence of the offence and for any loss of time and expenses which he may have incurred.

*Proceedings other than under this Decree*

186L.—(1) No proceeding or conviction for any offence punishable under this Decree shall effect any civil remedy to which, the person aggrieved by the offence may be entitled.

(2) This Decree shall not exempt any person from any other proceeding for an offence which is punishable otherwise than under this Decree, so however, that no person shall be punished twice for the same offence.

*Protection of officers*

186M. No suit, prosecution or other legal proceedings shall lie against the Director, any inspector or any other officer administering this Decree, for anything done in good faith under the provisions of this Decree or of any regulations or orders made thereunder.

*Conduct by Directors, Servants or Agents*

186N.—(1) If, in a proceeding under this Decree in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind

(2) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Decree, to have been engaged in also by the body corporate.

(3) If, in a proceeding under this Decree in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant's or agent's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than body corporate—

- (a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Decree, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

(6) For the purposes of this section, the term "conduct" also includes the making or any omission, inadvertently or otherwise.

*Vicarious Liability*

186O. If a body corporate commits an offence against this Decree, each director or member of the governing body of the body corporate shall, subject to section 124, be deemed also to have committed the offence and is liable to be proceeded against and punished accordingly.

*Defence in proceedings for an offence against this Decree*

186P.—(1) Subject to subsection (3), in a prosecution for an offence against this Decree it is a defence if the defendant establishes—

- (a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake; or
- (b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or
- (c) that—
  - (i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
  - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) In subsection (1) (b) and (1) (c), "another person" does not include a person who was—

- (a) a servant or agent of the defendant; or
- (b) in the case of a defendant being a body corporate, a Director, servant or agent of the defendant, at the time when the contravention occurred.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.

(4) In a proceeding under this Decree in relation to a contravention of a provision of this Decree committed by the publication of an advertisement, it is a defence if it is established that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the defendant received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Decree.

*Preservation of Secrecy*

134.—(1) A person who is or was at any time a member of the Committee, or the Director, an Assistant Director or an officer of the Department, or an inspector shall not, save in the course of his duty under this Decree or where it is competent to him so to do by reason of a provision of this Decree, directly or indirectly, communicate information that came to his knowledge indirectly, communicate information that came to his knowledge as a consequence of his holding that appointment or position.

(2) It is competent—

- (a) to the Director, an Assistant Director, an officer of the Department, and an Inspector to communicate to a person whose complaint concerning any matter has been investigated by the Department, or to a Small Claims Tribunal, information concerning that matter, which has come to his knowledge as a result of the investigation and which is of a class of information that the Director has authorized, whether generally or in a particular case, to be so communicated;



- (b) to the Director or a person authorized in that behalf by the Director to make a disclosure or publication concerning any of the matters referred to in paragraphs (c) to (f) (both inclusive) of section 133 (1);
- (c) to the Director or a person authorized in that behalf by the Director to communicate to the appropriate Minister or official of the State in right of the Republic of Fiji information which the Director considers should be communicated for the purpose of the administration of any law of the Republic of Fiji.

(3) The provisions of subsection (1) shall not be construed to prohibit any person referred to in that subsection when called as a witness in any legal proceeding from answering any question that he is compellable to answer in those proceedings.

(4) In no case shall a person referred to in subsection (1) disclose or be compelled to disclose the source or information that came to his knowledge in consequence of his holding an appointment or position under this Decree.

This subsection does not apply in any case where the person or the body that is the source of the information consents to the disclosure.

Given under my hand this 10th day of September 2010.

EPELI NAILATIKAU  
President of the Republic of Fiji