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GOVERNMENT OF FIJI

COMPULSORY REGISTRATION OF CUSTOMERS FOR TELEPHONE SERVICES DECREE 2010
 (DECREE NO. 34 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—

PART 1—PRELIMINARY

Citation and Commencement

1.—(1) This Decree may be cited as the Compulsory Registration of Customers for Telephone Services Decree 2010.

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

Definitions

2. In this Decree unless the context otherwise requires—

“authorised reseller” means any person authorised by a service provider to sell SIM cards or fixed line telephones to customers and to which the service provider will provide telephone communications services;

“customer” means any person who is assigned a telephone number by a service provider and may include a purchaser or a recipient of a SIM Card or fixed line telephone.

“dormant telephone number” means a telephone number issued by a service provider which has not accessed telephone communications services for 180 consecutive days.

“Minister” means the Minister responsible for Communications.

“mobile telephone” means any cellular phone for which the customer purchases telephone communications services from a service provider;

“SIM card” means a Subscriber Identity Module or functionally equivalent data storage device which establishes the account user or owner and facilitates the making and receiving of telephone calls;

“telephone” means an instrument that converts voice and other signals into a form that can be transmitted to remote locations and that receives and reconverts waves into sound and other signals, and includes both mobile and fixed line telephones;

“telephone communication services” means the enabling of a telephone to make or receive telephone calls and includes the package of services provided by a service provider to its customers through the customers telephone;

“service provider” means a provider of public mobile and fixed line telephone communications services (including any mobile virtual network operators).

PART 2—REGISTRATION

Registration by current SIM card and telephone customers

3.—(1) All telephone numbers issued by a service provider to a customer on or by the commencement date must be registered by the relevant service provider within one month from the commencement of this Decree in accordance with this section.

(2) Service providers shall require all customers to provide the following details for registration—

- (a) name and date of birth as it appears on the birth certificate and any aliases by which the customer is known;
- (b) permanent home address or address in Fiji if visiting;
- (c) copy of valid passport, FNPF card or other photo identification;
- (d) parent or guardian's signature if the customer is below 18 years of age.

(3) Service providers must suspend any and all telephone communications services to a telephone number which has not been registered pursuant to this section.

(4) A service provider who fails to cancel telephone communications services within two weeks from the date in subsection (1) for each telephone number which has not been registered at that date shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$200,000.

(5) The Minister may by Public Notice in a local newspaper and in the Gazette extend the dates prescribed in this section.

Registration of new customer details

4. Prior to the completion of any sale of a fixed line telephone or a SIM card, whether sold with or without a mobile telephone after the commencement date, an authorised reseller shall—

(a) if the purchaser is a natural person, obtain from that person the following information—

- (i) name and date of birth as it appears on the birth certificate and any aliases by which the customer is known;
- (ii) permanent home address or address in Fiji if visiting;
- (iii) copy of valid passport, FNPF card or other photo identification;
- (iv) parent or guardian's signature if the customer is below 18 years of age.

(b) if the owner is an incorporated or unincorporated body, obtain from the purchaser representing that body—

- (i) a copy of the telephone or SIM card purchaser's identification document on which his or her full name and birth date appears;
- (ii) the business name and address and, if registered as such in terms of any law, the registration number of the body on behalf of whom the purchase is made; and
- (iii) where a SIM Card is purchased, a letter on business letterhead setting out the names and official positions of the intended recipients of the SIM cards.

Identification Verification

5.—(1) Notwithstanding sections 3 and 4, an authorised reseller making a sale to a customer not in person shall verify the customer information provided under section 3 by requiring the customer to submit the following information—

- (i) Valid credit or debit card account information;
- (ii) Driver's license or learner's permit number; or

- (iii) Any other personal identifying information that the Minister finds, by Regulation, to be necessary for purposes of this section.

(2) Where the customer under section 3 or section 4 is visiting Fiji in any capacity, the service provider or an authorised reseller, as the case may be, shall verify registration information by requiring the customer to display his or her passport.

(3) The service provider or authorised reseller shall, further to the requirement in subsection (2), also register the following details in relation to the customer who is visiting Fiji—

- (i) passport number and country of issuance;
- (ii) address in Fiji.

Dormant telephone numbers

6.—(1) A service provider must suspend services to a dormant telephone number immediately upon it becoming dormant.

(2) Telephone communications services to a dormant number shall only be reconnected upon registration of customer details in accordance with section 3 of this Decree.

(3) A service provider who fails to suspend telephone communications services to a dormant number shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$200,000.

Variation of registration details

7.—(1) The registered customer for a SIM Card or fixed line telephone must inform the relevant service provider of any change to registration details under this Decree, immediately upon such change taking place.

(2) A registered customer for a SIM Card or fixed line telephone who breaches subsection (1) shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$10,000 or imprisonment for 6 months.

Lost, stolen, disposed of, gifted or destruction of SIM card or telephone to be reported

8.—(1) Whenever a SIM card or mobile telephone is lost, stolen, disposed of, gifted or destroyed, the owner of that SIM card or telephone, or any other person who was in possession, or had control thereof when it was lost, stolen disposed of, given or destroyed, must immediately after having become aware of the loss, theft, gift or destruction of the SIM card or telephone, report such loss, theft, gift or destruction in person or through a person authorised thereto by him or her to the relevant service provider.

(2) A service provider shall provide a telephone number for the reporting of lost, stolen, disposed of, gifted or destruction of SIM card or telephones.

(3) Upon receipt of the report under subsection (1), the service provider shall immediately cancel telephone communications services to the relevant SIM card or telephone, provided that telephone communications services to the SIM card or telephone may be reconnected upon registration or verification of customer details in accordance with this Decree.

PART 3—COMPULSORY RECORD KEEPING

Record of sale

9. Upon completion of a sale of a SIM card or fixed line telephone, an authorised reseller shall make a record of the sale that includes the following information—

- (a) The information obtained from the purchaser under section 4 and, if applicable, the information submitted by the purchaser under subsection (2)(b) of section 5.
- (b) The date of sale;
- (c) The service provider that will provide telephone communication service to the SIM card or fixed line telephone;
- (d) Any assigned number or other subscriber or account identifier known at the time of purchase.

Record Transmission Requirement

10.—(1) Not later than 21 days after the sale of a SIM card or telephone, an authorised reseller shall transmit the record of the sale made in accordance with section 6 to the service provider that will provide telephone communication services to the SIM card or telephone.

(2) In complying with the requirements of subsection (1), an authorised reseller may transmit the sale record to the service provider by means of secure electronic transmission.

(3) Information on sale records is confidential and must not be divulged by the authorised reseller except in accordance with the provisions of this Decree.

(4) An authorised reseller who breaches subsection (3) or fails to take reasonable steps for the protection of confidentiality in the information on sales records shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$10,000.

Record Keeping Requirement

11.—(1) After an authorised reseller has transmitted the sale record to the service provider in accordance with section 7, a service provider shall—

- (a) provide a transmission confirmation receipt to the authorised reseller, after the receipt of which the authorised reseller shall dispose promptly of any retained copy of the record; and
- (b) register the details of the customer on the record of sale.

(2) An authorised reseller must dispose of sale records under subsection (1)(a) of this section in a manner that protects the confidentiality of the information on the sale records.

(3) A service provider must retain all information registered by a customer under this Decree and may only discard the information when telephone communications services to the relevant telephone number has been discontinued or if the telephone number has become dormant.

PART 4—DISCLOSURE OF INFORMATION

Prohibition on disclosure of information

12. No person may disclose any information which he or she obtained in the exercising of his or her powers or the performance of his or her duties under this Decree, except in accordance with a search warrant issued by a Magistrate in the exercise of his or her powers under this Decree.

Issuance of search warrant

13.—(1) A Magistrate on being satisfied upon information and after any inquiry which the magistrate may think necessary that there is good reason to believe that information required under this Decree is necessary for investigations relating to prank calls to national emergency telephone numbers and also to investigations under the Crimes Decree 2009 relating to—

- (i) treason and other offences against Government authority;
- (ii) offence against public order;
- (iii) offences against international order;
- (iv) offences against the person;
- (v) threat of injury to person employed in the public service;

may by warrant, authorise any police officer named in the warrant to obtain customer registration details connected to one or more telephone numbers which are to be specified in the warrant, from a service provider.

(2) Notwithstanding subsection (1), the High Court may issue a warrant upon application by a police officer or by a State lawyer authorising one or more police officers named in the warrant to obtain call records relating to registered customer details.

Prohibition on use of information

14.—(1) Service providers and authorised resellers must not use any information obtained under this Decree for any commercial, non-commercial or any other purpose whatsoever except as authorised by a customer or as authorised by this Decree.

(2) A service provider or an authorised reseller who breaches subsection (1) shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$200,000.

PART 5—PENALTIES AND OFFENCES*False and misleading information*

15. A customer who provides false or misleading information required under sections 3, 4 and 5 shall be guilty of an offence and shall be liable on conviction to a maximum fine of \$10,000 or 1 year imprisonment or both.

General penalty

16. An authorised reseller or service provider who fails to comply with any requirement of this Decree shall upon conviction be subject to a maximum fine of \$200,000 per offence.

PART 6—GENERAL*No liability for cancellation or suspension of services*

17. No civil action shall lie against a service provider who has cancelled or suspended telephone communications services in accordance with this Decree.

Vicarious liability

18. A service provider shall be held vicariously liable for any breach of this Decree by its agents or authorised resellers.

Regulations

19. The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Decree.

Application of the Decree

20. This Decree binds the State.

GIVEN under my hand this 1st day of July 2010.

EPELI NAILATIKAU
President of the Republic of Fiji