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ACT NO. 6 OF 2006

I assent.

[L.S.]

J. I. ULUIVUDA
President

[22nd March 2006]

AN ACT

TO REPEAL THE PUBLIC TRUSTEE ACT (CAP. 64) AND TO PROVIDE FOR THE REORGANISATION OF THE OFFICE OF THE PUBLIC TRUSTEE, AND FOR RELATED MATTERS

Compendent Date: 25th April 2006.

ENACTED by the Parliament of the Fiji Islands –

PART 1 – PRELIMINARY

Short title and commencement

1. – (1) This Act may be cited as the Fiji Public Trustee Corporation Act 2006.

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

Interpretation

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

“Board of Directors” means the Board of Directors of the Fiji Public Trustee Corporation Limited;

“Chief Executive Officer” means the Chief Executive Officer of the Fiji Public Trustee Corporation Limited;

“Commerce Commission” means the Commerce Commission constituted under Part 2 of the Commerce Act 1998;

“Corporation” means the Fiji Public Trustee Corporation Limited;

“the Court” means the High Court of Fiji;

“Minister” means the Minister of Justice;

“minor” means any person who has not attained the age of 21 years;

“Office of the Public Trustee” means the body corporate known as the Public Trustee and recognised under section 4(2) of the repealed Act;

“person of unsound mind” means any person who is –

- (a) determined to be of unsound mind in accordance with any law related to the treatment of people who are suffering from mental illness or incapacity;
- (b) found by a Court to be not guilty of any offence by reason of insanity; and
- (c) found by a Court to be of unsound mind and incapable of defending a charge of a criminal offence;

“repealed Act” means the *Public Trustee Act (Cap. 64)*;

“Reorganisation Charter” means the Reorganisation Charter for the Office of the Public Trustee approved, and amended from time to time, under the *Public Enterprise Act 1996*;

“repealed Act” means the *Public Trustee Act (Cap. 64)*.

Inconsistency with the Public Enterprise Act

3. In the event of any inconsistency between a provision of this Act and the *Public Enterprise Act 1996* –

- (a) if the provision relates to the reorganisation of the Office of the Public Trustee or the administration of the Corporation, the *Public Enterprise Act 1996* shall prevail; or
- (b) if the provision relates to any aspect of the administration and management of trust funds or property, or the performance of any obligation as trustee, the provision of this Act shall prevail.

Objectives of this Act

4. The objectives of this Act are—

- (a) to give effect to the reorganisation of the management and operations of the Office of the Public Trustee in accordance with the *Public Enterprise Act 1996*;
- (b) to vest the monies and property held on trust by the former Office of the Public Trustee in the Fiji Public Trust Corporation Limited, and to require

- the effective maintenance of accounts and records in relation to such monies and property;
- (c) to safeguard the monies and property held on trust by the former Office of the Public Trustee while enhancing the returns on such assets through proper investment and effective management and accounting;
 - (d) to ensure that the trustee services provided by the Corporation are undertaken with the highest degree of professional competence and integrity and with a commitment to the rights of the Corporation's clients;
 - (e) to create and enhance opportunities for the operation of a regulated and responsible trustee industry recognising the importance of such activities in the context of Fiji's financial sector;
 - (f) to clarify the application of relevant legislation regulating the responsibilities and powers of trustees and trustee corporations in the context of the management and operations of the Corporation; and
 - (g) otherwise, to facilitate the future divestment of the Corporation, or any part of the Corporation, in accordance with the Reorganisation Charter.

PART 2 – FIJI PUBLIC TRUSTEE CORPORATION LIMITED

The Fiji Public Trustee Corporation Limited

5.—(1) Responsibility for assuming the functions and management of the former Office of the Public Trustee shall be vested in the Fiji Public Trustee Corporation Limited.

- (2) The Board of Directors shall include Directors with experience in—
 - (a) accounting and accounting systems;
 - (b) the legal requirements applying to trusts and trustees; and
 - (c) the investment and management of funds.

(3) Nothing in this section shall prevent the further reorganisation of the functions and management of the former Office of the Public Trustee in accordance with the *Public Enterprise Act 1996* by—

- (a) the formation of any other trustee corporation in accordance with the *Public Enterprise Act 1996* and any other relevant law; and
- (b) the vesting in such a trustee corporation of responsibility for the management of—
 - (i) any of the functions and powers of the former Office of the Public Trustee; or

- (ii) any other trust function for which the government has some responsibility.

(4) The provisions of this Act shall apply to any other trustee corporation established under sub-section (3)(a), and for that purpose any reference in this Act to the "Corporation" shall be deemed to be a reference to such a trustee corporation.

- (5) The Corporation, shall be managed and operated in accordance with—
 - (a) its Memorandum and Articles of Association;
 - (b) the applicable provisions of the *Companies Act (Cap. 247)*;
 - (c) the provisions of any law relating to the administration of trusts and trustee corporations, and the affairs of persons of unsound mind or who suffer from any other relevant legal disability;
 - (d) the provisions of the *Public Enterprise Act 1996*;
 - (e) the requirements and objectives stated in the Reorganisation Charter;
 - (f) any directions given by the Minister of Justice or the Minister for Public Enterprise which are not inconsistent with the provisions of the above documents and laws.

Application of the Trustee Corporations Act

6.—(1) The Corporation is deemed to be a trustee corporation registered under the *Trustee Corporations Act (Cap. 66)* without the need for formal registration under section 3 of that Act.

(2) With the exception of sections 3, 4 and 17 of the *Trustee Corporations Act (Cap. 66)*, the provisions of that Act shall apply to the management and operations of the Corporation.

Chief Executive Officer

7.—(1) Responsibility for the day to day management of the Corporation shall be vested in a Chief Executive Officer, who shall be appointed by and accountable to the Board of Directors in accordance with the *Public Enterprise Act 1996*.

- (2) The Chief Executive Officer—
 - (a) shall be responsible to the Board of Directors for the execution of its policies and directions;
 - (b) may exercise, subject to any direction given by the Board of Directors, any lawful power in accordance with—
 - (i) any law related to the administration of trusts and the powers and duties of trustees;

- (ii) any law related to trustee corporations;
 - (iii) this Act;
 - (iv) the *Public Enterprise Act 1996*; and
 - (v) any other law which vests any powers, responsibilities or functions in the Chief Executive Officer; and
- (c) is authorised to do all things necessary or convenient to be done in connection with the management of the Corporation.

(3) The exercise by the Chief Executive Officer of a power under this section is subject to the provisions of this Act, the *Public Enterprise Act 1996* and any other applicable law, and to any resolution passed or direction given by the Board of Directors.

(4) It shall be the responsibility of the Chief Executive Officer to ensure that the management of the Corporation is in accordance with section 5(5).

(5) If the Chief Executive Officer is prevented by illness, absence or other similar cause from performing the duties prescribed in this section, or if the office becomes vacant, the Board of Directors may appoint any appropriate person to perform those duties for the required period.

(6) The Chief Executive Officer may delegate in writing all or any of the powers prescribed by this section to another officer of the Corporation, and any such delegation—

- (a) may be made subject to such conditions, exceptions or qualifications as are specified in the written notice of delegation;
- (b) is revocable at will; and
- (c) does not affect the exercise of a power or the performance of a function by the Chief Executive Officer.

Powers of the Corporation

8. The Corporation shall have the power—

- (a) to appoint an investment manager in accordance with section 24, and to arrange for the proper investment and management of trust funds in accordance with law;
- (b) to do any act or thing and to undertake any enterprise consistent with its memorandum and articles of association;
- (c) to take any action necessary to implement the Reorganisation Charter;

- (d) to perform any function, exercise any power and do any act or thing authorised by this Act or any other law;
- (e) to do anything in relation to the provision of trustee services and the management of trusts in accordance with the provisions of this Act, the *Trustee Act (Cap. 65)*, the *Trustee Corporations Act (Cap. 66)* and any other law.

No Government liability

9. In accordance with section 60 of the *Public Enterprise Act 1996*, the Government shall not be liable for any act or omission of the Corporation.

PART 3 – TRANSFER OF FILES, ASSETS AND LIABILITIES

Transfer of property to Fiji Public Trustee Corporation Limited

10.—(1) Notwithstanding the provisions of the *Land Transfer Act*, and in a manner consistent with the provisions of the *Public Enterprise Act 1996*, all land and property vested in the Office of the Public Trustee shall vest in Fiji Public Trust Corporation Limited upon the commencement of this Act, or as otherwise determined in accordance with the provisions of the *Public Enterprise Act 1996*.

(2) All transfers of land and property made in accordance with this section shall not be subject to transfer fees, stamp duties or any other tax or charge applying under any law.

(3) The Corporation may acquire any land or property in accordance with any requirements imposed by its Board of Directors, and all such land and property shall be vested in the Corporation or relevant trustee corporation.

Transfer of other lands and property

11.—(1) In accordance with section 36 of the *Public Enterprise Act 1996*, the Minister for Public Enterprise may, with the approval of the Minister for Lands, prescribe by Regulations any lands vested in or belonging to the State be transferred, on such conditions as the Minister for Public Enterprise determines, to the Corporation to enable it to perform its functions under this Act.

(2) A transfer of land made under sub-section (1) shall be given effect to notwithstanding the provisions of the *Land Transfer Act*.

(3) Upon a transfer of land under this section all debts, liabilities and obligations in connection with or appertaining to the land and property shall be transferred to Corporation, and shall be deemed to have been incurred by it.

Surplus Funds of the Office of Public Trustee

12.—(1) As soon as practicable after the commencement of this Act, the Board

of Directors shall make arrangements for an appropriately qualified accountant to determine—

- (a) the total funds standing to the credit of the former Office of the Public Trustee as at the commencement of this Act;
- (b) the total of the funds ascertained under paragraph (a) which are held on trust as the commencement of this Act;
- (c) the total amount of interest required under the provisions of the repealed Act and the practices being applied by the former Office of the Public Trustee to be credited to the accounts of the beneficiaries of the trust monies as at the commencement of this Act;
- (d) the total amount being surplus funds calculated by deducting the amounts determined under paragraphs (b) and (c) from the amount determined under paragraph (a); and
- (e) the total amount of monies previously lent by the former Office of the Public Trustee, which should be regarded as unrecoverable.

(2) As soon as practicable after the determinations have been made in accordance with sub-section (1) the Board of Directors shall appoint a duly qualified auditor to audit and certify the determinations made under sub-section (1).

(3) The certification provided under sub-section (2) may vary the determinations made under sub-section (1) if such variations are considered warranted by the auditors.

(4) In accordance with the certification given in accordance with sub-section (3)—

- (a) the surplus funds of the former Office of the Public Trustee shall vest in the Corporation to be utilised for its recurrent expenditure requirements and to be otherwise lawfully dealt with as directed by the Board of Directors; and
- (b) the Board of Directors may approve the write-off of the amount determined in accordance with sub-section (1)(e).

(5) Any loans of the former Office of the Public Trustee approved to be written off in accordance with this section shall remain payable to the Corporation and the Chief Executive Officer shall continue to take all possible steps to recover the monies outstanding.

Transfer of client's files and records

13. Upon the commencement of this Act, all estates and property under the management and control of the Office of the Public Trustee shall be administered by

the Corporation, and the Corporation shall become entitled to the possession of all properties, books, accounts, letters, papers and documents of every description held by the former Office of the Public Trustee, or to which the Office of the Public Trustee is entitled to possession.

Liabilities of the Office of Public Trustee

14.—(1) The Corporation shall not assume any liability of the former Office of the Public Trustee arising from any breach of trust or breach of any legal obligation applying to the former Office.

(2) Any action arising from any breach of trust or other legal obligation applying to the former Office of the Public Trustee may be taken or continued against the Government provided that—

- (a) the proceedings were commenced against the former Office of the Public Trustee prior to the commencement of this Act;
- (b) notice of the intention to take proceedings was given to the Public Trustee prior to the commencement of this Act;
- (c) proceedings are commenced against the Government within 12 months of the date of commencement of this Act; or
- (d) notice of the intention to take proceedings against the Government is given to the Solicitor General within 12 months of the date of commencement of this Act or the date on which the prospective plaintiff became aware of the breach.

Limitations on share dealings

15.—(1) Notwithstanding any provision of any Act to the contrary, no allotment, allocation or transfer of shares in Fiji Public Trustee Corporation Limited may be effected unless authorised by Cabinet.

(2) Any allotment, allocation or transfer of shares without Cabinet approval a required by sub-section (1) shall be void and of no effect.

PART 4 – THE CORPORATION AS TRUSTEE

Appointment of the Corporation to act in various capacities

16.—(1) In the exercise of any lawful power of appointment, a Court or any person may appoint the Corporation to perform any function of a trustee corporation, including an appointment as trustee, receiver, guardian, trustee in bankruptcy, liquidator, surety or guarantor.

(2) The Corporation may act either alone or jointly with any person or body of persons in any capacity as a trustee, and shall—

- (a) have all the same powers, duties and liabilities;

- (b) be entitled to the same rights and immunities; and
- (c) be subject to the same control and orders of the Court—

as a private trustee acting in the same capacity in accordance with the provisions of any law.

(3) Subject to obligations vested in the Corporation under the provisions of any law, the Corporation may decline to accept, or may conditionally accept, any appointment as trustee.

(4) In addition to any other powers conferred by this Act, the Corporation may exercise all rights, powers and authorities under the provisions of the *Trustee Act (Cap. 65)* and the *Trustee Corporations Act (Cap. 66)*.

(5) The Corporation may administer the affairs of any person declared to be of unsound mind or who is under any other legal disability in accordance with—

- (a) any power vested in this Act or any law relating to mental health; or
- (b) any order of a Court.

Corporation may appoint agents

17.—(1) For the purpose of discharging any lawful function, the Corporation may appoint agents to more effectively discharge its responsibilities as a trustee or representative of any person.

- (2) An agent appointed under sub-section (1) shall be either—
 - (a) a duly admitted legal practitioner; or
 - (b) a registered trustee corporation.

Corporation as executor and administrator

18.—(1) The Corporation shall act as executor or administrator of the estate of any deceased person if the Corporation is—

- (a) named as executor in any will and the Corporation has obtained a grant of probate or is otherwise lawfully entitled to act in that capacity;
- (b) granted probate or letters of administration by the Court on the application of the Corporation where a deceased person has—
 - (i) died intestate;
 - (ii) has omitted to appoint an executor;
 - (iii) appointed an executor who is for any reason unable or unwilling to act as executor of the estate; or
 - (iv) appointed an executor who is for any reason unable or unwilling to complete the administration of the estate;

- (c) appointed by the Court to be executor or administrator with the consent of any—
 - (a) executor or executors named in the will of a deceased person;
 - (b) person or persons entitled to be appointed as executor or administrator of the estate; or
 - (c) executor or administrator who wishes to transfer the responsibility of administering the deceased estate to the Corporation, and who has accounted for all receipts and disbursements relating to the estate up to that time;
- (d) appointed by the Court on the application of the Corporation or any interested person to take the place of any executor or administrator of an estate, where an order for replacing the executor or administrator appears to the Court to be justified on the terms and conditions determined by the Court;
- (e) is granted probate or letters of administration by the Court in any other circumstances.

(2) Where the Court makes any order under sub-section (1) appointing the Corporation to assume the responsibilities of acting as executor or administrator of any estate from an existing trustee—

- (a) all trust property, powers, rights and liabilities properly incurred in the administration of the estate shall become vested in the Corporation; and
- (b) the Court may at any time during the administration of the estate make any necessary order to permit its proper administration.

(3) The Corporation shall be entitled to a grant of administration of the estate of a deceased person in preference to any creditor applying in that capacity for administration of the estate, unless the creditor proves to the satisfaction of the Court that it will be more beneficial to the estate that it should be administered by the creditor.

(4) Where the Corporation is administering a deceased estate which has no real property and an estimated gross value of less than \$10,000, the Corporation shall become the administrator of the estate upon filing an election with the Court which shall—

- (a) state the name, address and occupation of the deceased;
- (b) give the estimated value of the property of the deceased;
- (c) provide any other particulars required from time to time by the Court; and
- (d) be notified by the Corporation by notice published in the *Gazette*, which shall be conclusive evidence of the right to act as administrator.

(5) An election filed and notified under sub-section (4) shall cease to authorise the administration of the estate by the Corporation if—

- (a) a will is subsequently found;
- (b) if the gross value of the estate is found to exceed \$20,000; or
- (c) there is real property forming part of the estate—

and in those events the Corporation shall make application for probate or letters of administration.

Corporation as custodian trustee

19.—(1) The Corporation may be appointed a custodian trustee of any trust by—

- (a) order of the Court made on the application of any person on whose application the Court may order the appointment of a new trustee;
- (b) the Government or any government agency in relation to any public trust established on behalf of the Government;
- (c) the testator, settler or other creator of any trust; or
- (d) the person having power to appoint new trustees.

(2) Where the Public Trustee is appointed custodian trustee of any trust—

- (a) the trust property shall be transferred to the custodian trustee as if it were sole trustee and for that purpose vesting orders may be made under the provisions of the *Trustee Act (Cap.65)*;
- (b) the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees);
- (c) as between the custodian trustee and the managing trustees and without prejudice to the rights of any other person, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have a right of free access and shall be entitled to take copies or extracts of the documents;
- (d) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into Court) unless the matter in which it is requested to concur is a breach of trust or involves a personal liability in respect of calls or otherwise, but unless it so concurs the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them;

- (e) sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee, but the custodian trustee may allow the dividends and other income derived from the trust property to be paid to—
- (i) the managing trustees;
 - (ii) to such person as they direct; or
 - (iii) into such bank to the credit of such person as it may direct—

and in such cases the custodian trustee shall be exonerated from seeing to the application of the monies and shall not be answerable for any loss or mis-application;

- (f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the power to apply to the Court for the appointment of new trustees as any other trustee;
- (g) in determining the number of trustees for the purposes of the *Trustee Act (Cap. 65)*, the custodian trustee shall not be reckoned as a trustee;
- (h) the custodian trustee, if it acts in good faith, shall not be liable for accepting as correct and acting upon the faith of—
- (i) any written statement by the managing trustees as to any birth, death, marriage or other matter of relationship; or
 - (ii) any written statement by the managing trustees as to any other matter of fact upon which the title to the trust property or any part of it may depend; or
 - (iii) for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee;
- (i) the Court may—
- (i) on the application of either the custodian trustee or any of the managing trustees or of any beneficiary; and
 - (ii) on proof to its satisfaction that it is the general wish of the beneficiaries or that it is otherwise expedient to terminate the custodian trusteeship—

make an order for that purpose, and the Court may make such other orders and give such directions as it considers necessary or expedient.

Administering the affairs of persons of unsound mind

20.—(1) The Corporation shall have the management and care of the property of—

- (a) every person of unsound mind, until such time as arrangements are made

for the administration of the affairs of such a person by any other person or entity in accordance with law;

- (b) every person of unsound mind whose affairs are made the lawful responsibility of the Corporation by an order of the Court; and
- (c) any other incapable person in accordance with an order of the Court.

(2) In administering the affairs of a person under sub-section (1), the Corporation—

- (a) shall comply with any order made by the Court with respect to—
 - (i) the property of the person and the application of the property;
 - (ii) the payment of the person's debts;
 - (iv) the maintenance of the person and the dependents of the person;
 - (v) the carrying on of the trade or business of the person; and
 - (vi) any other matter that the Court thinks fit;
- (b) shall observe any obligation and procedure prescribed in any law relating to the affairs of persons under a mental disability;
- (c) may pay to the person the whole or any part of the estate of that person upon their release from a mental hospital, or otherwise in accordance with the provisions of any law relating to the treatment of the person;
- (d) may transfer all property held on behalf of the person, during the life of the person or upon their death, to any other appropriate trustee lawfully appointed or entitled to administer the affairs of the person;
- (e) may, upon the death of the person, open any document held on behalf of the person which may be a will, and hand any such document to the executor nominated in the person's will; and
- (e) may impose any charge or recover any expense involved in the management of the affairs of the person in accordance with this law.

(3) Where the property of a person whose affairs are administered by the Corporation in accordance with this section is insufficient to cover the fees and expenses of the Corporation, the management of the person's affairs are deemed to be a non-commercial activity of the Corporation and the fees and expenses shall be paid to the Corporation by the Government in accordance with section 69 of the *Public Enterprise Act 1996*.

(4) Subject to the provisions of this Act and any other law, the Corporation shall cease to administer the affairs of a person in accordance with this section—

- (a) upon the death of the person;
- (b) on an order of the Court to that effect; and

- (c) upon receiving lawful notice given in accordance with any law dealing with the treatment of persons under mental disability that the person is no longer to be regarded as of unsound mind or incapable.

PART 5 – TRUSTEE INVESTMENTS AND CLIENT ACCOUNTS

Specific accounting capabilities to be implemented

21.—(1) As soon as practicable after the commencement of this Act, the Board of Directors shall make arrangements for the enhancement of the Corporation's accounting and technology systems, with a particular focus on—

- (a) applying bank reconciliation processes conforming to generally accepted accounting practices;
- (b) the provision of monthly financial reports including reconciled bank balances, statements of other sources of funds held by the Corporation, advances to beneficiaries and details of all overdrawn client accounts;
- (c) the determination of the interest entitlement of each client account in accordance with section 25;
- (d) the maintenance of appropriate client accounts incorporating details of—
 - (i) each entitlement to capital;
 - (ii) interest accrued from time to time;
 - (iii) advances and repayments of advances;
- (e) tracing and assigning unallocated transactions to the correct client accounts;
- (f) appropriate security of accounts and records, including the keeping of back-ups;
- (g) applying technologies to permit the electronic transfer of funds and the implementation of other appropriate arrangements with banks and other financial institutions; and
- (h) any other matter considered necessary or appropriate by the Board of Directors.

(2) The Board of Directors may commit funds to the purposes provided for in sub-section (1) prior to the final determination and vesting of the surplus funds in accordance section 12.

Prohibitions on lending trust monies

22.—(1) Notwithstanding the provisions of the *Trustee Act (Cap. 65)* and any other law, the Corporation shall not lend any trust monies held by it by way of any secured or unsecured loan to any person, and no approval purportedly given for any such loan shall be valid.

(2) Subject to section 12, the Board of Directors shall take all necessary steps to recover all monies lent by the former Office of the Public Trustee.

(3) The Board of Directors may authorise the writing off any monies lent by the former Office of the Trustee—

(a) in accordance with section 12(4) (b); or

(b) if the Corporation's auditors certify that any additional loan monies are unrecoverable.

Common Fund Investments

23.—(1) In the exercise of its power under section 15 of the *Trustee Corporations Act (Cap. 66)* to invest trust monies from more than one estate in a common investment fund, the Corporation may establish and manage more than one Common Fund for this purpose.

(2) The Board of Directors may approve, and amend from time to time, Governing Rules for the operation of any Common Fund, and these rules shall be complied with in relation to all investments by the Corporation in a Common Fund established in accordance with sub-section (1).

Appointment of Investment Manager

24.—(1) The Board of Directors may appoint one or more investment managers to manage and account for the trust monies held by the Corporation.

(2) The monies managed by an investment manager appointed under this section shall be invested in accordance with any law relating to the investment of trust monies by trustees.

(3) An investment manager appointed under this section must be—

(a) a licensed financial institution in Fiji;

(b) any other company in Fiji holding a licence to provide financial services issued by the Reserve Bank of Fiji; or

(c) a licensed foreign financial institution appointed in accordance with an investment management plan prepared by the Corporation and approved by the Reserve Bank of Fiji.

Entitlement to accrued interest

25.—(1) Notwithstanding the provision of any other law, the practice of the former Office of the Public Trustee of crediting each client account with annual interest fixed at 5% shall cease upon the commencement of this Act.

(2) The Corporation shall credit interest to each client account being the amount of earnings of the invested funds of the account after deducting the management fees and expenses due to the Corporation in accordance with Part 7.

PART 6 – PROVISION FOR THE BENEFIT OF BENEFICIARIES

Payment of residue under \$2,000 for the benefit of a minor

26. Where the net amount payable to any minor out of the residue of any estate of which administration has been granted to the Corporation is under \$2,000, the share to which such infant may be paid out for the benefit of the minor without the Corporation incurring any liability in respect of such payment.

Application of FNPF entitlements for nominated beneficiaries

27.—(1) The Corporation shall discharge the functions of the Public Trustee as provided by section 35(2) of the *Fiji National Provident Fund Act (Cap.219)*.

(2) The funds administered by the Corporation in accordance with sub-section (1) shall be applied for the benefit of the minor nominee in accordance with a policy developed, endorsed and applied by the Corporation, in consultation with the Fiji National Provident Fund, which shall provide for—

- (a) the determination of procedures to ensure that funds are applied for the maintenance, advancement or education of the minor nominee while the nominee is a minor ; or
- (b) invested for the benefit of the nominated infant beneficiary and paid to the nominee when he or she ceases to be a minor.

(3) Notwithstanding the provisions of section 35(2) of the *Fiji National Provident Fund Act (Cap.219)*, the Corporation and the Fiji National Provident Fund may make arrangements for the management of the entitlements of minor nominees which may provide for—

- (a) entitlements of minor nominees to be retained and invested for the nominee by the Fiji National Provident Fund;
- (b) entitlements of a minor nominee to be applied for the maintenance, advancement or education of the nominee by the Fiji National Provident Fund in accordance with agreed procedures; and
- (c) any other procedure, requirement or matter relevant to the proper application of the entitlements for the benefit of the minor nominee.

(4) The Corporation may impose a charge and recover expenses in accordance with Part 7 in relation to the performance of management and investment functions under this section.

Other advances for the benefit of minors

28. The Corporation may, for the maintenance, advancement and education of minors—

- (a) advance income in accordance with section 54 of the *Trustee Act (Cap. 65)*;
- (b) advance capital in accordance with section 55 of the *Trustee Act (Cap. 65)*;

- (c) expend the whole or part of the minor's entitlement in accordance with an order of the Court made under section 15 of the *Succession, Probate and Administration Act (Cap. 60)*; and
- (d) otherwise deal with the entitlement of the minor in accordance with law.

PART 7 – FEES AND EXPENSES OF THE CORPORATION

Fees and charges

29.—(1) The following fees shall be chargeable by the Corporation and may be recovered from the monies held by the Corporation in accordance with this Act—

- (a) acceptance fees payable for the acceptance of instructions to administer any estate or trust;
- (b) income fees payable from income earned on trustee investments;
- (c) investment fees payable on the gross total of investments made and managed by, or on behalf of the Corporation;
- (d) realisation fees payable from the realisation of the sale of trust properties in the administration of a trust;
- (e) management fees for the management of any business or enterprise entrusted to the Corporation in the administration of any trust;
- (f) distribution fees payable on the gross value of a distributed estate or entitlement;
- (g) negotiation fees payable for any necessary negotiations undertaken by the Corporation in the administration of any estate or trust;
- (h) miscellaneous funds management fees payable for the management of any other monies received, administered or distributed by the Corporation; and
- (i) any other fee as prescribed by Regulation for any other service provided by, or on behalf of, the Corporation.

(2) The fees recoverable under sub-section (1) shall be fixed by Regulations which may—

- (a) set the actual fee payable, as a percentage of the value of funds or property actually dealt with by the Corporation, or as a fixed sum; or
- (b) set the range of fees which may be chargeable by the Corporation and which may be subject to negotiation between the Corporation and any agent, client or representative of a client's interests.

(3) Where the Corporation provides any services other than those to which fees are set in accordance with this section, the Board of Directors may set the fee to be charged by the Corporation.

(4) Where the fees due to the Corporation arise from the management of funds or property belonging to more than one estate, the Corporation shall apportion the liability to pay the fee equitably amongst the relevant estates.

(5) The fees set by Regulation or by the Board of Directors in accordance with this section shall be subject to review by the Commerce Commission.

Administration and management expenses

30. The Corporation shall be entitled to charge and retain any cost or expense incurred in the administration of any estate, trust or other responsibility, or in relation to the management of any funds or property entrusted to it, which relate to—

- (a) the taking or defending of any legal proceeding;
- (b) the advertising of any relevant matter;
- (c) the identification of any beneficiary, creditor or debtor;
- (d) the necessary disbursement of money by the Corporation; and
- (d) any other matter for which the Corporation reasonably incurs a cost or expense.

PART 8 – FINANCES OF THE CORPORATION

No exemption from taxation

31.—(1) Subject to sub-section (2), in accordance with section 60 of the *Public Enterprise Act 1996*, the Corporation is not exempt from any tax imposed under any law.

(2) Sub-section (1) does not affect the status of any charitable trust administered by the Corporation.

Borrowing powers

32. Subject to the approval of its Board of Directors, and subject to any provision of an applicable law, the Corporation may borrow money for any purpose associated with its functions.

Powers of investment of surplus funds

33.—(1) All investments by the Corporation shall be subject to approval by its Board of Directors and shall comply with the provisions of any applicable law.

(2) Where any investment by a Corporation includes any trust monies held by it, the provisions of Part 5 shall apply to the investment.

(3) All enterprises undertaken and investments made by the Corporation shall be in accordance with its memorandum and articles of association and the provisions of this Act and all other applicable laws.

(4) Surplus funds of the Corporation shall be invested so as to maximise the profitability of the company.

Other financial, reporting, accounting and planning requirements

34.—(1) The Corporation shall comply with the following provisions of the *Public Enterprise Act 1996*—

- (a) the provisions of Part 5 relating to—
 - (i) corporate plans;
 - (ii) statements on corporate intent;
 - (iii) audit of accounts;
 - (iv) half-yearly reports;
 - (v) annual reports;
 - (vi) unaudited and audited accounts; and
 - (vii) information to be laid before Parliament.
- (b) the adoption of an Employment and Industrial Relations Plan in accordance with section 51;
- (c) the payment of dividends in accordance with section 52; and
- (d) the payment of interim dividends if required under section 53.

(2) The Board of Directors and the Chief Executive Officer shall be responsible for ensuring that the Corporation is in full compliance with the requirements of sub-section (1) at all times.

(3) Other aspects of the financial management of the Corporation, including matters relating to lending monies, hedging and the giving of guarantees shall be subject to approval by its Board of Directors and to the provisions of any applicable law.

PART 9 – DIVESTMENT OF THE CORPORATION

Objectives of divestment

35. The divestment of all or any part of the Corporation shall have the following objects—

- (a) the promotion of local involvement in a sound trustee corporation industry in Fiji;
- (b) the promotion of competition and improved operations and standards in the trustee corporation industry in Fiji;
- (c) the realisation of a fair return to Government upon the sale or transfer of its assets; and
- (d) the implementation and attainment of any other object stated in the Reorganisation Charter.

Processes to be applied for divestment

36.—(1) The divestment of all or any part of the Corporation shall be undertaken

in accordance with—

- (a) the Reorganisation Charter (as amended);
- (b) the *Public Enterprise Act 1996*;
- (c) any lawful direction given by the Minister for Justice or the Minister for Public Enterprise;
- (d) any decision of Cabinet; and
- (e) any other applicable law.

(2) The provisions of Parts 4 to 7 (inclusive) of this Act shall apply to the Corporation after its divestment, unless regulations prescribe any provision or matter which shall not continue to have application, or the application of which may be modified in some way.

PART 10 – MISCELLANEOUS PROVISIONS

Property not subject to distress

37. No property, apparatus or equipment belonging to the Fiji Public Trustee Corporation Limited may be subject to distress, and shall not be taken or dealt in execution under any process of any court or in any proceedings in bankruptcy.

Act binds the Government

38. This Act shall bind the Government.

Regulations

39.—(1) The Minister may make regulations for efficient management of the Corporation and the proper administration of the trust funds properties and monies entrusted to it, and for the any purpose related to the implementation of this Act.

(2) Without limiting the generality of sub-section (1), regulations made under this section may relate to the following matters—

- (a) any matter associated with the application or implementation of the Reorganisation Charter;
- (b) the appointment, role and remuneration of an investment manager, and any related matter;
- (c) the management of Common Fund Investments in accordance with this Act, and the application of any Governing Rules to apply to a Common Fund;
- (d) the transfer of any Government property to the Corporation in accordance with section 11;
- (e) dealing with liabilities of the former Office of the Public Trustee for the breach of any trust obligation;
- (f) managing the affairs of person of unsound mind, consistent with the provision of any applicable law;

- (g) the implementation of additional accounting capabilities to those specified in section 21;
- (h) the implementation of any arrangements agreed between the Corporation and the Fiji National Provident Fund in accordance with section 26;
- (i) arrangements for the maintenance, education and advancement of minors which are consistent with any other applicable law;
- (j) the fees and expenses chargeable by the Corporation in accordance with Part 7;
- (x) the manner of the divestment of the Corporation, or any part of the Corporation, and any related matter.

(3) Matters related to the procedures of the Court concerning the administration of estates and trusts under this Act and for the filing of elections under section 18(4) and for other appropriate procedures, may be made as Rules of the Court.

PART 11 – REPEAL, TRANSITIONAL AND SAVINGS PROVISIONS

Repeal of the Public Trustee Act (Cap. 64)

40. The *Public Trustee Act (Cap. 64)* is repealed.

Savings of contracts, proceedings etc

41.—(1) All contracts entered into by the Office of the Public Trustee and current as at the commencement of this Act shall be deemed to have been made by Fiji Public Trustee Corporation Limited and shall continue to be of full force and effect.

(2) All lawful acts, decisions and advances made by the Office of the Public Trustee and valid as at the commencement of this Act shall be deemed to have been given by Fiji Public Trustee Corporation Limited, and shall continue to be of full force and effect.

(3) All legal proceedings and applications taken by or against the Office of the Public Trustee and current as at the commencement of this Act shall be deemed to have been taken by or against Fiji Public Trustee Corporation Limited.

(4) All fees, dues, charges and advances owing to the Office of the Public Trustee and unpaid as at the commencement of this Act are payable to Fiji Public Trustee Corporation Limited.

Winding up of the Office of the Public Trustee

42.—(1) Subject to the provisions of Part 3, all assets and liabilities of the Office of the Public Trustee are hereby vested in Fiji Public Trustee Corporation Limited in accordance with this Act and the Reorganisation Charter.

(2) The Minister for Public Enterprise may give directions in relation to any matter associated with the transfer of the assets and liabilities under sub-section (1), and may make any determinations and exercise any powers necessary to formalise the winding up of the Office of the Public Trustee.

References to the Public Trustee

43.—(1) From the commencement of this Act, all references to the Public Trustee in any contract, instrument, register, other public or private document, court proceedings or law shall, unless the context otherwise requires, be read and construed as a reference to Fiji Public Trustee Corporation Limited.

(2) Where any law requires that notice of any matter be given to the Public Trustee, the person obliged to give the notice shall provide the notice to the Corporation and to the Chief Executive Officer of the Ministry responsible for Public Enterprise.

Passed by House of Representatives on 20th February 2006.

Passed by Senate on 14th March 2006.