

EXTRAORDINARY



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GOVERNMENT OF FIJI

PROCEEDS OF CRIME (AMENDMENT) DECREE 2012  
(DECREE NO. 61 OF 2012)

IN exercise of the powers vested in me as the 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—

TO AMEND THE PROCEEDS OF CRIME ACT 1997

*Short title and commencement*

- 1.—(1) This Decree may be cited as the Proceeds of Crime (Amendment) Decree 2012.
- (2) This Decree shall come into force on the date of its publication in the *Gazette*.
- (3) The Proceeds of Crime Act 1997 is referred to as the “Principal Act”.

*Section 3 amended*

2. Section 3 of the Principal Act is amended—

(a) in the definition of—

(i) ‘document’, by inserting the following after ‘(e)’—

“(f) a copy, reproduction or duplicate of such a thing or a part of such a copy, reproduction or duplicate;”

(ii) ‘property’, by inserting the following after the word ‘elsewhere’—

“and also includes a legal or equitable interest therein;” and

(b) by inserting the following new definitions—

“corporation” means any body corporate, however formed, and includes a—

(a) financial institution; and

(b) company within the meaning of the Companies Act (Cap. 247);

“Council” means the National Anti-Money Laundering Council established by section 35 of the Financial Transactions Reporting Act 2004;

“instrument” in relation to a dealing with land, shall have the same meaning as in the Land Transfer Act (Cap. 131);

“respondent” means the person against whom the declaration is sought in relation to an application for an unexplained wealth declaration;

“unexplained wealth” has the meaning provided in section 71H; and

“unexplained wealth declaration” means a declaration under section 71G.

*Section 71A amended*

3. Section 71A of the Principal Act is amended by deleting it and substituting with the following—

*“Establishment of Forfeited Assets Fund*

71A. This section establishes the Forfeited Assets Fund for the purposes of receiving credits in accordance with section 71B and making payments in accordance with section 71D and the administration and use of the Fund are subject to Regulations made by the Minister.”

*New sections inserted*

4. The Principal Act is amended by inserting the following new sections after section 27C—

*“Stay or adjournment of proceedings*

27D. Proceedings for an order or declaration are not to be stayed or adjourned for the purpose of awaiting the outcome of any criminal proceedings that have commenced or are to commence involving a person whose property is or may be affected by the proceedings.

*Appearance by the Attorney-General*

27E. The Attorney-General, or his or her representative, may appear in any proceedings in which the State has an interest.”

*New section inserted*

5. The Principal Act is amended by inserting the following new section after section 30—

*“Obstructing members of the Fiji Police Force*

30A.—(1) A person commits an offence if the person wilfully delays or obstructs a member of the Fiji Police Force in the performance of the member’s functions or wilfully delays or obstructs a person assisting a member of the Fiji Police Force in the performance of those functions.

(2) Any person found guilty of an offence under subsection (1) is liable for a fine not exceeding \$1,000 and/or 6 months imprisonment and if the offender is a body corporate, is liable for a fine not exceeding \$10,000 per day.

(3) A person commits an offence if the person wilfully fails to produce any property to, or wilfully conceals or attempts to conceal any property from, a member of the Fiji Police Force in the performance of the member’s functions or a person assisting a member of the Fiji Police Force in the performance of those functions.

(4) Any person found guilty of an offence under subsection (3) is liable for a fine not exceeding \$15,000 and/or 5 years imprisonment and if the offender is a body corporate, is liable for a fine not exceeding \$30,000 per day.”

*New section inserted*

6. The Principal Act is amended by inserting the following new section after section 70A—

*“Person shall deliver up restrained or forfeited property*

70B.—(1) A person who fails to—

- (a) deliver up forfeited property to the State on demand; or
- (b) permit the State to take possession of forfeited property,

commits an offence.

(2) A failure in subsection (1) shall result in a fine of \$10,000 and/or 12 months imprisonment or if the offender is a body corporate, a fine of \$10,000 per day.”

*New Part inserted*

7. The Principal Act is amended by inserting the following new Part after section 71E—

*“PART VB – UNEXPLAINED WEALTH**Possession of unexplained wealth*

71F. Any person who—

- (a) maintains a standard of living above that which is commensurate with his or her present or past lawful emoluments; or

- (b) is in control of pecuniary resources or property disproportionate to his or her present or past lawful emoluments,

shall, unless he or she provides a satisfactory explanation to the court as to how he or she was able to maintain such a standard of living or how such pecuniary resources or property came under his or her control, be required to pay to the Forfeited Assets Fund the amount specified in the unexplained wealth declaration under section 71K.

*Application for unexplained wealth declaration*

71G.—(1) The Director of Public Prosecutions may make an application in court for an unexplained wealth declaration against a person.

(2) An application under subsection (1) may be made in conjunction with an application under section 34 of the Act for a restraining order or at any other time.

(3) If the court makes an unexplained wealth declaration under subsection (1), the Director of Public Prosecutions may also make an application in court that the unexplained wealth is forfeitable.

*Division 1 – Unexplained wealth*

*Unexplained wealth*

71H.—(1) For the purposes of this Decree, a person has unexplained wealth if the value of the person's total wealth as described in subsection (2) is greater than the value of the person's lawfully acquired wealth as described in subsection (3).

(2) The value of the person's total wealth is the total value of all the items of property and all the services, advantages and benefits that together constitute the person's wealth.

(3) The value of the person's lawfully acquired wealth is that person's total wealth that was lawfully acquired.

*Assessing the value of unexplained wealth*

71I. When assessing the respondent's wealth, the court shall consider the following—

- (a) the value of any property, service, advantage or benefit is to be taken as its greater value—
- (i) at the time that it was acquired; and
  - (ii) on the day that the application for the unexplained wealth declaration was made;
- (b) the value of any property, service, advantage or benefit that was a constituent of the respondent's wealth but has been given away, used, consumed or discarded, or that is for any other reason no longer available, is taken to be an outgoing at the greater of its value—
- (i) at the time that it was acquired; and
  - (ii) immediately before it was given away, or was used, consumed or discarded, or is unavailable; and
- (c) when hearing an application under section 71G, it shall not take account of any property—
- (i) that has been forfeited under this Decree or any other written law; or
  - (ii) service, advantage or benefit that was taken into account for the purpose of making an earlier unexplained wealth declaration against the respondent.

*Division 2 – The constituents of a person's wealth*

*The constituents of a person's wealth*

71J. The following property, services, advantages and benefits constitute a person's wealth—

- (a) all property that the person owns, whether the property was acquired before or after the commencement of this Decree;
- (b) all property that the person effectively controls, whether the person acquired effective control of the property before or after the commencement of this Decree;
- (c) all property that the person has given away at any time, whether before or after the commencement of this Decree;

- (d) all other property acquired by the person at any time, whether before or after the commencement of this Decree, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life);
- (e) all services, advantages and benefits that the person has acquired at any time, whether before or after the commencement of this Decree;
- (f) all property, services, advantages and benefits acquired, at the request or direction of the person, by another person at any time, whether before or after the commencement of this Decree, including consumer goods and consumer durables that have been consumed or discarded (but not including necessary food, clothing and other items reasonably necessary for ordinary daily requirements of life); and
- (g) anything of monetary value acquired by the person or another person, in Fiji or elsewhere, from the commercial exploitation of any product or any broadcast, telecast or other publication, where the commercial value of the product, broadcast, telecast or other publication depends on or is derived from the person's involvement in the commission of a serious offence, whether or not the thing was lawfully acquired and whether or not the person has been charged with or convicted of the offence.

*Unexplained wealth declaration*

71K.—(1) The court that is hearing an application under section 71G shall declare that the respondent has unexplained wealth if it is more likely than not that the respondent's total wealth is greater than his or her lawfully acquired wealth.

(2) Any property, service, advantage or benefit that is a constituent of the respondent's total wealth is presumed not to have been lawfully acquired unless the respondent establishes the contrary.

(3) Without limiting the matters to which a court may have regard for the purpose of deciding whether the respondent has unexplained wealth, the court may have regard to the amount of the respondent's lawful income and outgoings at any time or at all times.

(4) When a court makes an unexplained wealth declaration, the court shall—

- (a) assess the respondent's total unexplained wealth in accordance with section 71I and 71J;
- (b) specify the assessed value of the unexplained wealth in the declaration; and
- (c) order the respondent to pay to the Forfeited Assets Fund the amount specified in the declaration as the value of his or her unexplained wealth.

(5) When making an unexplained wealth declaration, the court may make any necessary or convenient ancillary orders and declarations, including awarding costs as the court sees fit.

*Opinion evidence*

71L.—(1) For the purposes of making an unexplained wealth declaration or any other applications under the Act, despite any other written law or any practice relating to hearsay evidence, a court may receive evidence of the opinion of a person who is experienced in the relevant field of speciality or in the investigation of illegal activities involving prohibited plants or dangerous drugs about—

- (a) the market value at a particular time of a particular kind of prohibited plant or dangerous drug;
- (b) the amount, or range of amounts, ordinarily paid at a particular time for doing anything in relation to a particular kind of prohibited plant or dangerous drug;
- (c) the relative quality of plant material; or
- (d) any other matter in which the court may require guidance.

(2) For the purposes of subsection (1), persons who are experienced in the matters mentioned in that subsection include—

- (a) a member of the Fiji Police Force;
- (b) an officer of Customs within the meaning of the Customs Act 1986;
- (c) the Attorney-General or his or her representative;

- (d) a botanist or other plant specialist;
- (e) a person who uses a particular type of drug or grows a particular type of plant;
- (f) the Government Analyst or a person acting under his or her supervision;
- (g) a registered or licensed pharmacist; or
- (h) any other person duly qualified and approved in any particular case by the Attorney-General or the Commissioner of Police.

*Unexplained wealth payable to the Forfeited Assets Fund*

71M.—(1) If a court makes an unexplained wealth declaration, the respondent shall pay to the Forfeited Assets Fund the amount ordered by the court.

(2) The amount payable to the Forfeited Assets Fund may be satisfied, wholly or in part, by forfeiture under Part II, Division 2 of the Act.”

GIVEN under my hand this 14th day of September 2012.

EPELI NAILATIKAU  
President of the Republic of Fiji