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GOVERNMENT OF FIJI

FIJI NATIONAL PROVIDENT FUND TRANSITION DECREE 2011
 (DECREE No. 51)

ARRANGEMENT OF SECTIONS

SECTION

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2—CURRENT ANNUITIES

4. Object of this Part
5. Annuities cease to be payable
6. Conversion amounts
7. Payment of conversion amounts
8. Top ups
9. Retirement Income Fund to be debited

PART 3—SHARE INVESTMENT SCHEME

10. Regulations may provide for winding up of share investment scheme

PART 4—PROTECTIONS

11. Protections

PART 5—REGULATIONS

12. Regulations

GOVERNMENT OF FIJI

FIJI NATIONAL PROVIDENT FUND TRANSITION DECREE 2011
(DECREE NO. 51 OF 2011)

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—

A DECREE TO MAKE PROVISION IN RELATION TO CURRENT PENSIONS OFFERED BY THE FIJI NATIONAL PROVIDENT FUND, TO MAKE PROVISION FOR WINDING UP THE SHARE INVESTMENT SCHEME UNDER PART IXA OF THE FIJI NATIONAL PROVIDENT FUND ACT (CAP. 219), AND FOR RELATED PURPOSES

PART 1—PRELIMINARY

Short title

1. This Decree may be cited as the Fiji National Provident Fund Transition Decree 2011.

Commencement

2. This Decree shall come into force on the date it is published in the *Gazette*.

Interpretation

- 3.—(1) In this Decree, unless the context otherwise requires—

“Board” means the Board of the Fiji National Provident Fund;

“conversion amount”, for a current annuitant, means the amount of the current annuitant’s entitlement that was required to be used to calculate the amount of the annuitant’s annuity under the Fiji National Provident Fund (Annuity) Order of 1 July 1999 or the Fiji National Provident Fund (Annuity) Order of 24 May 1974;

“current annuitant” means a person who is entitled to payment of an annuity under current annuity arrangements, but not a person who applied for an annuity under the new Decree;

“current annuity arrangements” means arrangements under section 64 of the Fiji National Provident Fund Act (Cap. 219), the Fiji National Provident Fund (Annuities) Regulations and the Fiji National Provident Fund (Annuity) Order of 1 July 1999 or the Fiji National Provident Fund (Annuity) Order of 24 May 1974, under which amounts were payable by way of annuity to a person immediately before the commencement of this Decree;

“FNPF” means the fund of that name established by the Fiji National Provident Fund Act (Cap. 219);

“new Decree” means the Fiji National Provident Fund Decree 2011;

“share investment scheme” means the scheme provided for in Part IXA of the Fiji National Provident Fund Act (Cap. 219).

- (2) Other words and expressions have the meanings they have under the new Decree.

PART 2—CURRENT ANNUITIES

Object of this Part

4.—(1) The principal object of this Part is to ensure that the arrangements for the provision of annuities by the Board are sustainable, non-discriminatory and do not involve cross subsidy of one group (pensioners and annuitants) by another (FNPF members).

(2) This object recognises advice from The World Bank, the International Monetary Fund, the International Labour Organisation and others that the current annuity arrangements do not meet these criteria; in particular, that—

- (a) the Board's annuity liabilities under the current annuity arrangements are increasing and are expected to continue to increase;
- (b) actuarial calculations have shown that, as at 30 June 2011, the present value of the Board's future annuity liabilities is approximately \$565,000,000, while the total of the amounts converted into current annuities since 1975 is in the order of \$310,000,000;
- (c) accordingly, under the current annuity arrangements, the Board's annuity liability for current annuitants cannot continue to be met from the annuitants' conversion amounts plus investment returns, and so must be met by applying a proportion of FNPF member contributions to that purpose (including by way of reserving against these liabilities);
- (d) therefore, the current annuity arrangements require FNPF members to subsidise current annuitants, and to lose the value of that proportion of their contributions that are applied to meeting annuity liabilities to current annuitants;
- (e) because the current annuity arrangements encourage FNPF members with high savings to take their savings by way of life annuities, FNPF members with low incomes are subsidising annuitants who have had higher incomes through their working lives; and
- (f) therefore, the current annuity arrangements are—
 - (i) unsustainable; and
 - (ii) create funding shortfalls with the associated risk of insolvency; and
 - (iii) inequitable and discriminatory as between annuitants and FNPF members.

Annuities cease to be payable

5. Each current annuitant ceases to be entitled to any payment under the current annuity arrangements after the payment to that annuitant in respect of the month of February 2012 is made.

Conversion amounts

6.—(1) If, but for this Part, an amount would be payable to a current annuitant in respect of March 2012 or a later month, there is payable by the Board, in respect of the annuitant, an amount equal to the annuitant's conversion amount. The amount is to be paid or applied in accordance with this Part.

(2) To avoid doubt, a current annuitant is not liable to repay to the Board any amount in respect of annuity payments made to the annuitant, but this subsection does not affect any liability of an annuitant to repay overpayments of annuity amounts.

Payment of conversion amounts

7.—(1) The Board must credit to the Supplementary Fund an amount equal to the sum of all conversion amounts, and must allocate to that fund assets of the Board (not inadmissible assets) the value of which is equal to the sum of all the conversion amounts.

(2) The Board must give each current annuitant, as soon as practicable after the commencement of this Decree, a notice that—

- (a) states the annuitant's conversion amount;
- (b) sets out the requirements of the Board for verifying the identity of the annuitant when claiming the conversion amount or making an application under this Part, and how they can be satisfied;
- (c) describes, in a form approved by the Chief Executive Officer, the options available to the annuitant to take the conversion amount as a lump sum, or to use the conversion amount (or some of it) to buy a life annuity or a term annuity from the Board;
- (d) provides a key features statement about life annuities and term annuities;
- (e) if section 8 will apply in respect of the annuitant — tells the annuitant how that section will apply;

- (f) specifies the period within which the annuitant must apply to the Board to use the conversion amount (or some of it) to buy a specified life annuity or term annuity from the Board, and how to make that application; and
 - (g) tells the annuitant that, if no application as mentioned in subsection (2) (f) is made within the specified period, the conversion amount will, subject to verification of the annuitant's identity, be paid as a lump sum.
- (3) Subject to this Part, if a current annuitant applies as mentioned in section (2) (f)—
- (a) the Board must deal with the application; and
 - (b) if the annuity is provided, the current annuitant's entitlement to the conversion amount is reduced to the extent that that amount is applied to buy the annuity; and
 - (c) the Board must pay the balance (if any) of the conversion amount as a lump sum to the annuitant.

Top ups

8.—(1) This section applies in relation to an annuity provided in accordance with section 7 to a person who, immediately before the commencement of this Decree, was being paid an annuity under current annuity arrangements.

- (2) If—
- (a) the monthly amount payable under a current annuitant's annuity is less than \$100; and
 - (b) the annuitant uses the whole of the conversion amount to buy a life annuity (single or joint) from the Board;

the monthly amount payable under the life annuity is to be \$100.

- (3) If—
- (a) the monthly amount payable under a current annuitant's current annuity arrangements is more than \$100; and
 - (b) the annuitant uses the whole of the conversion amount to buy a life annuity (single or joint) from the Board;

the monthly amount payable under the annuity that is purchased is to be the lesser of—

- (c) the monthly amount payable under the annuitant's current annuity arrangements; and
- (d) \$300.

- (4) If—
- (a) the monthly amount payable under a current annuitant's annuity is more than \$300;
 - (b) the annuitant uses the whole of the conversion amount to buy a life annuity (single or joint) from the Board; and

- (c) the annuitant elects in writing not to have subsection (3) apply;

the amount of the annuitant's conversion amount is to be increased by the lesser of:

- (d) 25% of the amount of the conversion amount; and
- (e) \$10,000.

Supplementary Fund to be debited

9. Despite any provision of the new Decree, conversion amounts, and amounts paid under life annuities or term annuities bought from the Board under this Part, are to be debited to the Supplementary Fund.

PART 3—SHARE INVESTMENT SCHEME

Regulations may provide for winding up of share investment scheme

10.—(1) The Minister may, after considering advice of the Board, make regulations, not inconsistent with this Decree and the new Decree, to make provision for winding up the share investment scheme and the disposal of the shares the subject of the scheme.

- (2) Without limiting what the regulations may provide, the regulations may—
- (a) make provision in respect of the transfer of the right, title and interest in the shares the subject of the scheme (both legal and equitable) to the Board, including provision transferring that right, title and interest by force of the regulations;
 - (b) provide for shares acquired under the scheme for a particular FNPF member to be transferred to the member, or disposed of at the member's direction;
 - (c) provide for pooling of shares and placement of those shares as a single placement;
 - (d) provide for the disposal (including to the Board) of shares acquired under the scheme, where the FNPF member concerned has not given a direction mentioned in paragraph (b) by a specified time;
 - (e) exempt any transfer or disposal of shares from stamp duty under the Stamp Duties Act (Cap. 205) and similar imposts;
 - (f) make provision requiring registrars and other persons having responsibilities in relation to the shares to make entries and give certificates to give effect to, or to evidence, a transfer or disposal of shares required or effected by the regulations;
 - (g) make provision in respect of winding up the company nominated by the Board under section 42F of the former law; and
 - (h) make provision for the costs and expenses of transferring the shares and otherwise winding up the scheme, including authorising the costs and expenses to be debited to the FNPF.
- (3) Regulations under this Part have effect despite any other written law, contract or instrument.

PART 4—PROTECTIONS

Protections

11.—(1) The relevant provisions are not to be taken to be inconsistent with a human right or a similar right of any person.

(2) Without limiting subsection (1), the relevant provisions are not to be taken to provide for a deprivation of property of anyone.

(3) No court, tribunal or any other adjudicating body has jurisdiction or power to accept, hear, determine or in any other way entertain any challenge by any person to, or to grant any remedy or relief to any person in respect of:

- (a) the validity or effect of the relevant provisions or of any regulations made under or for the purpose of any of the relevant provisions;
- (b) the validity or effect of any transfer, assignment or disposition made under or for the purposes of any of the relevant provisions; or
- (c) any loss or damage suffered by any person because of anything done in compliance or purported compliance with, or to give effect to, any of the relevant provisions.

(4) Where any relevant proceeding, claim, challenge, application or dispute of any form whatsoever is brought before any court, tribunal, commission or any other adjudicating body, the presiding judicial officer, without hearing or in any way determining the proceeding or the application, shall immediately transfer the proceeding or the application to the Chief Registrar of the High Court for the termination of the proceeding or the application, and a certificate to that effect shall be issued by the Chief Registrar of the High Court.

(5) Any proceeding, claim, challenge or dispute before a court, tribunal or any other adjudicating body that was commenced, but had not been finally determined, before the commencement of this Part in relation to a matter the subject of this Part is hereby wholly terminated on the date of commencement of this Part, and all orders (however described), whether interlocutory or final, in the proceeding are hereby wholly terminated on that date.

(6) A court, tribunal or any other adjudicating body in which a proceeding, claim, challenge or dispute to which subsection (5) applies had been commenced must, on application by the Attorney-General or a person authorised in writing by the Attorney-General, issue a certificate to the effect that the proceeding, claim, challenge or dispute, and all orders (however described) in the proceeding, have been wholly terminated on the date of commencement of this Part.

(7) A certificate under subsection (4) or (6) is admissible as evidence of the matters stated in it, and is conclusive of those matters.

(8) No court, tribunal or any other adjudicating body has jurisdiction or power to accept, hear, determine or in any other way entertain any challenge by any person to, or to grant any remedy or relief to any person in respect of the issue of a certificate under subsection (4) or (6).

(9) In this Part—

“relevant proceeding, claim, challenge, application or dispute” means relevant proceeding, claim, challenge, application or dispute about any of the matters mentioned in subsection (1), (2) or (3);

“relevant provisions” means Parts 2 and 3 of this Decree.

PART 5—REGULATIONS

Regulations

12. The Minister may, after considering advice from the Board, make regulations, not inconsistent with this Decree and the Transition Decree, to give effect to the provisions of this Decree.

GIVEN under my hand this 25th day of November 2011.

EPELI NAILATIKAU
President of the Republic of Fiji