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DAIRY RESTRUCTURE DECREE 2010
(DECREE NO. 62 OF 2010)

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DAIRY RESTRUCTURE DECREE 2010
(DECREE NO. 62 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—

**TO TRANSFER FROM FIJI COOPERATIVE DAIRY COMPANY LIMITED TO FIJI DAIRY LIMITED
ALL INTERESTS FOR SEPARATING MILK SUPPLY FROM MILK PROCESSING**

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Decree may be cited as the Dairy Restructure Decree 2010.
- (2) This Decree comes into force on the date or dates appointed by the Minister by notice in the *Gazette*.
- (3) The Minister may appoint different dates for the commencement of different provisions of this Decree.

Application

2. This Decree binds the State.

Purposes

3. The purposes of this Decree are to—
 - (i) facilitate the restructure of the dairy industry in Fiji through—
 - (a) the change of name from “Rewa Co-operative Dairy Company Limited” to FCDL and to separate the supply of milk and milk products from the processing of such products;
 - (b) the transfer of the interests from FCDL to FDL to enable FDL to commence the business of processing milk and dairy products in Fiji;
 - (ii) ensure the shares in FCDL continue to be owned by its existing shareholders in accordance with its constituent documents and the Co-operative Dairy Companies Act [Cap 119]; and
 - (iii) enable FCDL to continue to hold an equitable stake in FDL.

Interpretation

4. In this Decree, unless the context otherwise requires—

“assets” include any assets listed in the transfer instrument;

“appointed date” means the date or dates the Minister appoints for the transfer instruments to become effective;

“approvals” includes any approval, consent or permission referred to in the transfer instrument or otherwise necessary to give effect to this Decree;

“board means the FCDL board of directors;

“business day” means a day that is not a Saturday, Sunday, public holiday or a bank holiday in Fiji;

“director” has the same meaning as in the Companies Act [Cap. 247];

“document” includes:

- (a) paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any material or source from which sounds, images, writing or messages can be reproduced;

“employee” means any FCDL employee whose employment is transferred to FDL in accordance with this Decree;

“FDL” means Fiji Dairy Limited, a company incorporated under the Companies Act [Cap. 247];

“FCDL” means Fiji Co-operative Dairy Company Limited, a dairy co-operative company established under the Companies Act Cap. 247 and the Co-operative Dairy Companies Act Cap. 119 and formerly known as Rewa Co-operative Dairy Company Limited;

“interests” includes all the assets, liabilities, property, approvals, employees, securities and any other things referred to in the transfer instrument which are necessary for FDL to commence its business;

"liabilities" includes any duties and obligations, other than actions, suits or proceedings, whether civil, criminal or administrative, pending or proposed as of the appointed time and listed in the transfer instrument;

"Minister" means the Minister responsible for this Decree;

"registrar" means the person holding such office so named under a written law;

"securities" mean mortgages (whether legal or equitable), charges, debentures, bills of exchange, bills of sale, promissory notes, guarantees, liens, deeds, pledges or any other means of securing the payment of a debt, whether present or future or the discharge of an obligation or liability, whether actual or contingent, and includes any other instruments created by and brought into existence by FCDL in the context of or relating to the business prior to the commencement date;

"transfer instrument" means the instrument transferring the interests from FCDL to FDL in a form approved by the Minister..

PART 2—TRANSFER AND VESTING

Board must give transfer instrument to Minister.

5. The board must give the certified transfer instrument to the Minister.

Certificate

6. The transfer instrument must be accompanied by a certificate signed by the Chairman of the board as to the accuracy of the prescription of the interests transferred under the transfer instrument with a certified copy of a board resolution approving the transfer instrument and its accuracy thereof.

Decision on transfer instrument

7. On receipt of the transfer instrument, the Minister must decide whether to approve it.

Approval of transfer instrument

8. In the event the Minister is satisfied with and able to give written approval to the transfer instrument, such approval comes into force on an appointed date by notice in the *gazette*.

Variation to any schedules to transfer instrument after Approval

9. In the event any matter contained in the schedules to the transfer instrument need to be amended after the Minister's approval is given under section 8, any such amendments are deemed to be approved provided the Minister approves them in writing and if, ordered by the Minister by *gazette*.

PART 3—DIRECTIONS AS TO TRANSFER

Transfer

10. At the appointed date—

- (a) all interests, including but not limited to property, securities, approvals, agreements, conveyances, deeds, leases, licences, permissions, consents and other instruments or undertakings set out in the transfer instrument are deemed to have been divested from FCDL and vested absolutely in FDL and to be binding and have effect in every respect in favour of or against FDL as if, FDL had been an original party; and
- (b) the actual and contingent liabilities and obligations, lawfully chargeable to FCDL, which are set out in the transfer instrument are assumed absolutely and solely by FDL.

Application to employment contracts

- 11.—(1) At the appointed date, FDL—

- (a) assumes responsibility as employer for each employee
- (b) is bound by any contract of employment, oral or written, entered into by FCDL for an employee;
- (c) for all purposes, assumes the same rights, entitlements, responsibilities and liabilities in respect of each employee as FCDL had immediately before the commencement date.

- (2) All employees relinquish all rights to any claims of any description against FCDL.

- (3) All persons employed by FCDL who do not consent or for any other reason, does not continue employment with FCDL, relinquish all rights and claims against any person, FCDL or the Minister.

(4) No employee referred to under subsection (3) is deprived of their accrued entitlements for annual leave, sick leave, long service leave accrued but not taken or any other entitlement resulting from their employment.

No stamp duty or taxes payable

12. All documents or instruments brought into existence for the purpose of this Decree are exempted from stamp duty under the Stamp Duties Act Cap. 205 and from any taxes, assessments, penalties, or other imposts under the Income Tax Act Cap. 201, the Value Added Tax Decree 1991 or any other written law.

No invalidation

13. Without limiting the generality of any other provision of this Decree, nothing in the State Acquisition of Lands Act, State Lands Act, Forest Act, Land Sales Act, Land Transfer Act, Companies Act, Consumer Credit Act 1999, Property Law Act any other written law invalidates or affects the transfer or assignment of the interests or the transfer instrument.

No further action

14.—(1) No further consent, permit, certification, or ratification, shall be required to be given in respect of any document or instrument sought to be registered for the purpose of evidencing, recording or effecting the matters the subject of this Decree.

(2) No specific power or remedy conferred upon FCDL or FDL by this decree shall be limited or restricted in any way by the provisions of or non-compliance of such power or remedy with any written law.

Transfer of Interests

15. Without prejudice to the generality of the foregoing provisions of this Decree, the following provisions shall have effect with relation to the transfer of instruments under the transfer instrument apply—

- (a) any relationship, right, duty or liability of or between FCDL and any customer or supplier at the appointed time shall give rise to the same rights and the same duties (including rights of set-off) as if such relationship had been between FDL and the customer or supplier, and
- (b) any security transferred under the transfer instrument for the payment of debts or liabilities (whether present or future, actual or contingent) of any person is transferred to FDL at the appointed date.

Actions, etc not to abate

16. No existing or pending action, arbitration or proceeding by or in favour of FCDL shall abate or be discontinued or be in any way prejudicially affected by this Decree, but the same may be prosecuted, continued and enforced by or in favour of FDL and any book, record or document which if this Decree had not been made, would have been evidence in respect of any matter for or against FCDL shall, on and after the appointed time, be admitted in evidence in respect of the same matter for or against FDL.

Registration

17. The Registrar of Titles must upon application and lodgement for registration by FDL make all such entries upon any grant or certificate of title or mortgage or lease or other instrument or document under his or her control or custody as may be necessary or expedient in consequence of the transfer of any property under the transfer instrument, and the holder of any such grant, certificate of title, mortgage or lease or other instrument or document shall without charge produce the same to the Registrar of Titles for that purpose.

Approval of name to FDL

18.—(1) Nothing in section 21 of the Companies Act Cap. 247 or any other written law, shall limit the use of the term "Fiji" in the registration of FDL under that Act.

(2) Notwithstanding the Companies Act Cap. 247 or any other provision or requirement, FCDL is not required to take any action to change its name from "Rewa Co-operative Dairy Company Limited" to "Fiji Co-operative Dairy Limited".

Change of Name of Rewa Dairy Cooperative Company Limited

19.—(1) The change of name takes effect at the commencement date.

(2) The Registrar of Companies must—

- (i) enter the new name on the register in place of the former name and
- (ii) issue to FCDL a certificate of change of name.

Revocation of previous amendment

20. Notwithstanding the Companies Act Cap. 247 or any other requirement or provision, the resolution dated 15 March, 2005 which was passed at an extraordinary general meeting of and by the members of Rewa Dairy Cooperative Company Limited is revoked, and the following provision is inserted—

“The directors of the Company must—

- (a) not number less than three (3) nor exceed five (5);
- (b) be a supplying shareholder or a person who qualifies under Article 86 before they can be nominated and elected as directors.”

Securities and charges registered

21.—(1) The Registrar of Companies must, upon application made by FDL, make all such entries upon or in relation to any security and the register of charges under the Companies Act [Cap. 247], as may be necessary or expedient to record the transfer of property to FDL under this Decree.

(2) This Decree prevails over the provisions of any written law relating to or affecting companies.

PART 4—MISCELLANEOUS

Non-disclosure of information

22.—(1) In the event the Minister requests information in connection with the restructure of the dairy industry or with the composition of the prices paid for farm-gate milk from a person, such information by that person must not be withheld.

(2) A person who—

- (a) provides false and misleading information;
- (b) refuses to provide the requested information;

shall be guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to an imprisonment for a term not exceeding 2 years or both.

Immunity for the conduct of Directors

23. No conduct, action, omission, decision or resolution of the Board of Directors or of any of the directors taken, omitted or made by a director in utmost good faith and without negligence as a Director of FCDL or FDL, shall be actionable or impugned.

Decisions made under the Decree not to be challenged

24. No Court, Tribunal, Commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any challenge at law, in equity or otherwise (including any applications for judicial review) by any person or body, or to award any compensation or grant any other remedy to any person or body in relation to—

- (a) the validity or legality or propriety of this Decree; or
- (b) decision of the Minister or any officer under this Decree.

Given under my hand this 9th day of December 2010.

EPELI NAILATIKAU
President of the Republic of Fiji