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GOVERNMENT OF FIJI

LEGAL PRACTITIONERS (AMENDMENT) DECREE 2012
 (DECREE NO. 53 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—

Short title and commencement

1. This Decree may be cited as the Legal Practitioners (Amendment) Decree 2012 and shall come into force on the date of its publication in the *Gazette*.

New section inserted

2. The Legal Practitioners Decree 2009 ("the Decree") is amended by inserting the following new section after section 56—

"Foreign law firms

56A. Notwithstanding anything contained in this Decree, any law firm established in a country prescribed by the Minister by notice published in the *Gazette* may establish a branch or office in Fiji; provided however, that any such law firm must—

- (a) open and operate a trust account in Fiji in accordance with the provisions of the Trust Accounts Act 1996; and
- (b) ensure its branch or office in Fiji is at all times managed by a legal practitioner who is admitted to practice as a practitioner in accordance with the provisions of this Decree and who is issued with a practising certificate by the Registrar under this Decree."

Section 78 amended

3. Section 78 of the Decree is repealed and replaced with the following—

"Contingency fees

78.—(1) A legal practitioner or law firm may enter into any agreement with a client under which the amount payable by the client to the legal practitioner or the law firm, or any part of that amount, is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in any proceeding or claim by or for on behalf of the client; provided however, that no such agreement shall entitle the legal practitioner or the law firm to take more than 10 percent of the total amount awarded or settled for or value of any property recovered by or for on behalf of the client in any such proceeding or claim.

(2) A legal practitioner or law firm may enter into any agreement under which the client's interest in any proceeding or claim to which the agreement relates is transferred to the legal practitioner or the law firm instead of the client being required to pay an amount payable to the legal practitioner or law firm; provided however, that no such agreement shall entitle the legal practitioner or the law firm to take more than 10 percent of the client's interest in any proceeding or claim to which the agreement relates.

(3) At the date of the commencement of this section, any agreement which is contrary to subsections (1) or (2) and is in relation to any proceeding or claim which is still pending at the date of commencement of this section, shall be deemed to be invalid, and the legal practitioner or law firm which is a party to any such agreement, shall immediately upon the commencement of this section, inform the client accordingly, and may enter into such agreements for the payment of fees, other than an agreement that is contrary to subsections (1) or (2).

(4) Any legal practitioner who enters into any agreement which is contrary to subsections (1) or (2), or who fails to comply with subsection (3), shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years, or to both."

New section inserted

4. The Decree is amended by inserting the following new sections after section 78—

"Payment to the client

78A.—(1) Any legal practitioner or law firm who enters into an agreement as provided under section 78 with a client must only receive the amount of any award or settlement or the value of any property recovered in any proceeding or claim by or for on behalf of the client in the trust account of the legal practitioner or the law firm.

(2) Any legal practitioner or law firm who enters into an agreement as provided under section 78 with a client must, within 7 days upon receipt of the amount of any award or settlement or the value of any property recovered in any proceeding or claim by or for on behalf of the client, transfer to the client from the trust account of the legal practitioner or the law firm, the amount which the client is entitled to receive, and no deduction exceeding 10 percent of the total amount received shall be made by the legal practitioner or the law firm.

(3) Any legal practitioner who fails to comply with the provisions of subsections (1) and (2), shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years, or to both.

Filing of affidavit

78B.—(1) Any legal practitioner or law firm who enters into an agreement as provided under section 78 with a client must, within 7 days upon the transfer of the amount to the client under section 78A, file an affidavit in the High Court containing the following particulars —

- (a) Certified true copy of the agreement entered with the client under section 78;
- (b) Documentary evidence of the total amount of any award or settlement or the value of any property recovered in any proceeding or claim by or for on behalf of the client received into the trust account of the legal practitioner or law firm;
- (c) Documentary evidence of the amount of deductions made from the total amount of any award or settlement or the value of any property recovered in any proceeding or claim by or for on behalf of the client; and
- (d) Documentary evidence of the total amount transferred or paid to the client.

(2) Any legal practitioner who fails to comply with the provisions of subsection (1), shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years, or to both."

GIVEN under my hand this 21st day of June 2012.

EPELI NAILATIKAU
President of the Republic of Fiji