

EXTRAORDINARY



GOVERNMENT OF FIJI GAZETTE

PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 14

FRIDAY, 12th JULY 2013

No. 68

[835]

GOVERNMENT OF FIJI

INTERNATIONAL SEABED MINERAL MANAGEMENT DECREE 2013
(DECREE NO. 21 OF 2013)

SECTION

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objectives
4. Jurisdiction

PART 2—REGULATION AND ADMINISTRATION OF SEABED MINERAL ACTIVITIES

5. Seabed Mineral Activities
6. Establishment of the Fiji International Seabed Authority
7. Composition of the Authority
8. Objectives of the Authority
9. Functions of the Authority
10. Powers of the Authority
11. Delegation of powers
12. Meetings and proceedings of the Authority
13. Authority may invite others to meetings
14. Disclosure of interest
15. Consultations
16. Funds of the Authority
17. Annual reports
18. Audit
19. Fiji International Seabed Minerals Working Group
20. High Court Jurisdiction
21. Fiji Seabed Mineral Resources Corporation

PART 3—SPONSORSHIP APPLICATION AND APPLICATION TO THE ISA

22. Eligibility to perform Seabed Mineral Activities
23. Invitation for Sponsorship Applications
24. Sponsorship Applications
25. The processing of Sponsorship Applications
26. Contents of a Sponsorship Application
27. Recommendation for issuance of a Sponsorship Certificate
28. Issuance of Sponsorship Certificate
29. Notice of Sponsorship Certificate decision
30. Application by Sponsored Party to ISA
31. Sponsorship agreements

PART 4—OBLIGATIONS PERTAINING TO THE CONDUCT OF SEABED MINERAL ACTIVITIES

- 32. Duties pertaining to Seabed Mineral Activities
- 33. Indemnification

PART 5—ROLE OF SPONSORING STATE

- 34. Duties of Sponsoring State
- 35. Monitoring powers
- 36. Administrative action

PART 6—RECORDS, TERMINATION, TRANSFER AND EXTENSION OF SPONSORSHIP

- 37. Records
- 38. Security of tenure
- 39. Termination
- 40. Surrender of Sponsorship
- 41. Revocation of Sponsorship
- 42. Notice of revocation
- 43. Renewal
- 44. Ongoing liability after termination

PART 7—FISCAL ARRANGEMENTS

- 45. Payments by Sponsored Parties
- 46. Financial payments to the ISA
- 47. Recovery of payments owed by Sponsored Parties
- 48. Security

PART 8—MISCELLANEOUS

- 49. Inquiries into incidents
- 50. Unlawful interference with other sea users
- 51. Rights of other States
- 52. Public officials prohibited from acquiring Seabed Mineral rights
- 53. Offence committed by a body corporate
- 54. Disputes
- 55. Regulations
- 56. Consequential
- 57. Decisions made under this Decree not to be challenged

GOVERNMENT OF FIJI

INTERNATIONAL SEABED MINERAL MANAGEMENT DECREE 2013
(DECREE NO. 21 OF 2013)

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—

A LAW TO GOVERN FIJI'S ENGAGEMENT IN SEABED MINERAL ACTIVITIES
IN THE AREA BEYOND NATIONAL JURISDICTION AND FOR RELATED MATTERS

PART 1—PRELIMINARY

Short title and commencement

1. This Decree may be cited as the International Seabed Mineral Management Decree 2013, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Interpretation

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

“Area” means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, as defined in Article 1 (1) of the UN Convention on the Law of the Sea;

“Authority” means the Fiji International Seabed Authority established under section 6 of this Decree;

“Contract Area” means any part of the Area in respect of which there is in force a contract between a Sponsored Party and the ISA for the conduct of Seabed Mineral Activities;

“exploitation” means the recovery of Seabed Minerals within the Area for commercial purposes and the extraction of minerals from, including the construction and operation of all mining, processing and transportation systems for the production and marketing of metals, insofar as these activities take place at sea;

“exploration” means the exclusive right to—

- (a) search within the Area for Seabed Mineral deposits;
- (b) conduct the sampling and analysis of such deposits;
- (c) conduct the testing of systems and equipment; and
- (d) carry out studies,

for the purpose of investigating whether those minerals can be commercially exploited;

“financial year” means the financial year of the Authority which shall be from the 1st day of January to the 31st day of December of each year;

“International Seabed Authority” or “ISA” means the International Seabed Authority established by Part XI section 4 of the UN Convention on the Law of the Sea as the organisation through which State Parties to the UN Convention on the Law of the Sea shall organise and control Seabed Mineral Activities in the Area;

“marine environment” means the environment of the sea, and includes the physical, chemical, geological, biological and genetic components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and oceans and the airspace above those waters, including the seabed and ocean floor and subsoil thereof;

“Marine Scientific Research” means any lawful study, research or other related scientific activity within the Area, whether fundamental or applied, intended to increase knowledge about the marine environment for the benefit of all mankind, and not undertaken directly for industrial or economic purposes, and not significantly altering the surface or subsurface of the deep seabed nor significantly affecting the marine environment;

“Minister” means the Minister responsible for Lands and Mineral Resources;

“person” means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the State or any subdivision or agency thereof, and any foreign State, subdivision or agency of such State or other entity;

“Precautionary Approach” means that in order to protect the environment, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

“public official” means a person in the permanent or temporary employment of the Government of Fiji;

“Rules of the ISA” means any rules, regulations, or procedures adopted by the ISA pursuant to powers conferred on the ISA by the UN Convention on the Law of the Sea that are from time to time in force, and any contractual terms contained in a contract between the ISA and a Sponsoring Party relating to Seabed Mineral Activities;

“Seabed Mineral” or “Seabed Minerals” means the hard mineral resources of any part of the Area, including those in crust, nodule or hydrothermal deposit form, which contain (in quantities greater than trace) metalliferous or non-metalliferous elements;

“Seabed Mineral Activities” means operations for the exploration or exploitation of Seabed Minerals within the Area under contract with the ISA and under sponsorship by a State Party;

“Sponsored Party” means a person who holds a current Sponsorship Certificate issued under section 28 of this Decree and includes that person’s representatives or officers, and any person or persons to whom the Sponsorship Certificate may lawfully have been assigned;

“Sponsorship Applicant” means a person applying for a Sponsorship Certificate in accordance with section 24 of this Decree;

“Sponsorship Application” means an application made by a person for a Sponsorship Certificate under this Decree;

“Sponsorship Certificate” means a certificate issued in accordance with section 28 of this Decree;

“Sponsoring State” means a State Party to the UN Convention on the Law of the Sea, sponsoring a person to carry out exploration or exploitation in the Area in accordance with Article 153 (2) (b) of the UN Convention on the Law of the Sea;

“State Party” means a State which has consented to be bound by the UN Convention on the Law of the Sea and for which this Convention is in force;

“UN Convention on the Law of the Sea” means the United Nations Convention on the Law of the Sea of 10 December 1982 entered into force on 16 November 1994, the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, and any Annexes thereto; and

“Working Group” means the Fiji International Seabed Minerals Working Group established by section 19 of this Decree.

(2) Unless a contrary intention appears, words and expressions used in this Decree are accorded the same meaning as used in the UN Convention on the Law of the Sea.

Objectives

3.—(1) The objectives of this Decree are to—

- (a) enable Fiji to act as a Sponsoring State for the purposes of engaging in Seabed Mineral Activities;
- (b) empower Fiji to engage in Seabed Mineral Activities through either a body corporate established under this Decree or by way of sponsorship of a Sponsored Party;
- (c) establish a clear and stable legal operating environment for Sponsored Parties or parties engaged by the Authority to undertake Seabed Mineral Activities in the Area;
- (d) ensure that Seabed Mineral Activities are carried out under Fiji’s effective control and in a manner that is consistent with the Rules of the ISA and Fiji’s responsibilities under the UN Convention on the Law of the Sea and other applicable requirements of international law; and
- (e) implement measures to maximise the benefits of Seabed Mineral Activities for present and future generations.

(2) In order to achieve its objectives, this Decree—

- (a) identifies the responsible regulatory authority within Government to manage Fiji’s involvement with Seabed Mineral Activities;
- (b) establishes a system of Sponsorship under which Sponsored Parties shall be authorised to engage in Seabed Mineral Activities; and
- (c) provides for the State to receive payments for its sponsorship of Seabed Mineral Activities.

Jurisdiction

4. By enactment of this Decree, Fiji recognises—

- (a) that the rights to the Area are governed by the UN Convention on the Law of the Sea and the Rules of the ISA;

- (b) the ISA's responsibility under the UN Convention on the Law of the Sea to organise and control activities in the Area and to—
 - (i) process applications for approval of plans of work for exploration and exploitation in the Area;
 - (ii) monitor compliance with plans of work, approved in the form of a contract, including through a staff of inspectors; and
 - (iii) adopt rules, regulations and procedures necessary for the conduct of exploration and exploitation in the Area;
- (c) the rules, regulations, procedures and standards adopted by the ISA for the—
 - (i) protection and preservation of the natural resources of the Area and the prevention of damage to the flora and fauna of marine environment;
 - (ii) prevention, reduction and control of pollution and other hazards to and the interference with the ecological balance of the marine environment; and
 - (iii) exercise of such control over activities in the Area as is necessary for the purpose of securing compliance with the UN Convention on the Law of the Sea and the Rules of the ISA by contractors carrying out activities in the Area;
- (d) the responsibility of State Parties to the UN Convention on the Law of the Sea to assist the ISA in exercising the duty outlined in Part 5 of this Decree;
- (e) that exploration and exploitation activities in the Area shall only be carried out with the approval of the ISA by—
 - (i) State Parties to the UN Convention on the Law of the Sea; or
 - (ii) persons sponsored by State Parties; and
- (f) where a State Party is a Sponsoring State, it is the duty of that State to effectively control any person engaged in activities in the Area under its sponsorship and to ensure conformity of those activities with the UN Convention on the Law of the Sea and the Rules of the ISA.

PART 2—REGULATION AND ADMINISTRATION OF SEABED MINERAL ACTIVITIES

Seabed Mineral Activities

5.—(1) In accordance with the provisions of the UN Convention on the Law of the Sea, Fiji may either directly or in partnership with another body corporate—

- (a) apply to the ISA to be issued a contract to conduct exploration or exploitation activities within the Area; or
- (b) sponsor an application by a body corporate to the ISA for a contract to conduct exploration or exploitation activities within the Area.

(2) Fiji may in accordance with subsection (1), enter into such arrangements as may be necessary to develop the resources of the Area contracted by the ISA.

Establishment of the Fiji International Seabed Authority

6. This section establishes the Fiji International Seabed Authority which shall be a body corporate with perpetual succession and a common seal, and may—

- (a) sue and be sued;
- (b) acquire, hold and dispose of property;
- (c) enter into contract, agreement or any other transaction; and
- (d) do all other acts that may be done in law by a body corporate.

Composition of the Authority

7. The Authority shall consist of the following or their nominees who shall serve in an *ex officio* capacity—

- (a) Permanent Secretary for Lands and Mineral Resources as the Chairperson;
- (b) Solicitor-General;
- (c) Director of the Mineral Resources Department;
- (d) Director of the Department of Fisheries; and
- (e) Director of the Political Treaties Division as the Secretary.

Objectives of the Authority

8. The Authority has the following objectives—

- (a) provide a stable, transparent and accountable process for the sponsorship and supervision of Seabed Mineral Activities;
- (b) ensure the protection and preservation of the marine environment;
- (c) ensure compliance by Sponsored Parties or other parties engaged in Seabed Mineral Activities with relevant rules and internationally agreed standards; and
- (d) ensure that the conduct of Seabed Mineral Activities maximises benefits to Fiji.

Functions of the Authority

9.—(1) The functions of the Authority shall be to—

- (a) facilitate—
 - (i) the application of a body corporate or Sponsored Party to the ISA for a contract to conduct exploration or exploitation activities; and
 - (ii) Fiji's and its Sponsored Parties' understanding of and compliance with relevant international laws, standards and rules;
- (b) monitor, implement and secure compliance of Sponsored Parties and other parties engaged in Seabed Mineral Activities with the Rules of the ISA;
- (c) undertake any advisory, supervisory or enforcement activities in relation to Seabed Mineral Activities or the protection of the marine environment, in the event this is required in addition to the ISA's work in order for Fiji to meet its obligations under the UN Convention of the Law of the Sea, whether as a State enterprise or as a Sponsoring State;
- (d) require and review relevant reports and information provided by Sponsored Parties or other parties engaged in Seabed Mineral Activities;
- (e) maintain appropriate records, pertaining to Seabed Mineral Activities conducted by those Parties specified in (d);
- (f) ensure that contractual arrangements are fair for parties undertaking or proposing to undertake Seabed Mineral Activities in the Area for which a contract has been granted;
- (g) ensure that Seabed Mineral Activities are carried out in a manner that is consistent with the Rules of the ISA and Fiji's responsibilities under the UN Convention on the Law of the Sea, and any other applicable requirement of international law;
- (h) facilitate any applications to the ISA relating to Seabed Mineral Activities;
- (i) set terms and conditions of any licences granted by the Authority to other parties engaged in Seabed Mineral Activities; and
- (j) negotiate fees, royalties and taxes in respect of Seabed Mineral Activities on a case by case basis with Sponsored Parties and other parties engaged in Seabed Mineral Activities.

(2) The Authority shall be responsible for the administration of Fiji's sponsorship responsibilities in accordance with the UN Convention on the Law of the Sea.

(3) In administering Fiji's sponsorship responsibilities, the Authority must regularly consult, refer any technical matter, and take into account in its decision-making any recommendation from the Working Group.

(4) The Minister may give such directions, not inconsistent with the provisions of this Decree and the United Nations Convention on the Law of the Sea, as to the performance of functions and duties by the Authority.

Powers of the Authority

10.—(1) In carrying out the functions and objectives of this Decree, the Authority may exercise the following powers—

- (a) process applications for exploration and exploitation in the Area;
- (b) formulate rules, regulations and procedures incorporating applicable standards for the—
 - (i) conduct of exploration and exploitation in the Area for which a contract has been granted;
 - (ii) protection and preservation of the natural resources of the Area and the prevention of damage to the flora and fauna of marine environment; and

(iii) prevention, reduction and control of pollution and other hazards to, and the interference with the ecological balance of, the marine environment; and

(c) endeavour to exercise reasonable control over activities in the Area by contractors.

(2) The Authority shall have all such powers as may be reasonably necessary or convenient for the purpose of carrying out its functions under this Decree.

Delegation of powers

11.—(1) The Authority may, from time to time, in writing, delegate its powers and functions under this Decree to any person, committee or working group.

(2) A delegation may be made subject to such terms and conditions as the Authority thinks fit, and may be made either generally or in relation to particular circumstances.

(3) Any person, committee or working group purporting to exercise any power of the Authority by virtue of a delegation under this section shall, when required to do so, produce evidence of such Authority to exercise the power.

(4) Any person in breach of subsection (3) shall be guilty of an offence and liable upon conviction to a fine of \$5,000 or a term of imprisonment of 2 years, or both.

Meetings and proceedings of the Authority

12.—(1) The Authority may meet as and when necessary or expedient for the performance of its functions with such meetings held at a time and venue determined by the Chairperson.

(2) The Chairperson shall preside at all meetings of the Authority and in his or her absence, the Minister may appoint a person whether or not a member of the Authority to act as Chairperson.

(3) At a meeting of the Authority, 3 members of the Authority shall form a quorum.

(4) Any issues raised or to be decided shall be decided by a majority of the votes of the members present and voting, and in the event of equality of votes, the Chairperson, or in his or her absence, the person presiding shall have the casting vote.

(5) The validity of any proceedings of the Authority shall not be affected by any vacancy amongst its members or by any defect in the appointment of any member.

Authority may invite others to meetings

13.—(1) The Authority may invite any person to attend a meeting of the Authority for the purpose of advising it on any matter under discussion.

(2) A person invited to attend a meeting under subsection (1) shall not vote at any meeting of the Authority.

Disclosure of interest

14.—(1) Any member of the Authority who has a direct or indirect interest, whether personal or pecuniary in a matter under discussion by the Authority, shall disclose to the Authority the fact and nature of his or her interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Authority.

(3) After a disclosure under subsection (1) the member in question shall not take part in nor be present during any discussion, deliberation or decision of the Authority.

(4) A member who fails to disclose his or her interest as required by subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 and to imprisonment of 5 years, or to both.

Consultations

15. The Authority may consult with persons of relevant expertise, interest groups, or the general public before making a decision or taking an action under this Decree.

Funds of the Authority

16. The funds of the Authority for the purposes of this Decree shall consist of—

(a) any money appropriated by the Government;

(b) rates, fees and other charges received by or on behalf of the Authority by virtue of this Decree; and

(c) any other money received by or on behalf of the Authority.

Annual reports

17.—(1) The Authority shall within 3 months after the end of each financial year, prepare an annual report detailing its activities during that financial year.

(2) The Authority shall send a copy of the annual report to the Minister who shall cause it to be laid before Cabinet as soon as practicable.

(3) An annual report prepared in accordance with subsection (1) shall contain an audited statement of accounts prepared in accordance with generally accepted accounting practice as determined by the Financial Management Act 2004.

Audit

18. The Authority is required to be audited at least once a year.

Fiji International Seabed Minerals Working Group

19.—(1) This section establishes the Fiji International Seabed Minerals Working Group which shall provide technical and policy advice and recommendations to the Authority in the performance of its functions.

(2) The Working Group shall consist of persons appointed by the Minister.

(3) The Working Group shall work in consultation with the Authority on all matters regarding Seabed Mineral Activities.

High Court Jurisdiction

20. The High Court may conduct—

- (a) judicial review of administrative decisions, determinations, actions or inquiries taken under this Decree; or
- (b) proceedings to establish liability and to provide recourse for prompt and adequate compensation in the event of unlawful damage caused by Seabed Mineral Activities, in accordance with Article 235 (2) of the UN Convention on the Law of the Sea.

Fiji Seabed Mineral Resources Corporation

21.—(1) There shall be incorporated a company to be called the Fiji Seabed Mineral Resources Corporation in accordance with the Companies Act (Cap. 247) for the purposes of engaging in partnership or joint venture arrangements to conduct Seabed Mineral Activities.

(2) The Fiji Seabed Mineral Resources Corporation shall be deemed to be a Government Company with limited liability for the purposes of the Public Enterprises Act 1996.

(3) The Fiji Seabed Mineral Resources Corporation, including any entity or party it engages, shall ensure that it operates in a manner consistent with the provisions of this Decree and any other written law.

(4) The Minister for Public Enterprises may give such directions to the performance, operation and administration of the Fiji Seabed Mineral Resources Corporation established under subsection (1).

(5) The Fiji Seabed Mineral Resources Corporation shall comply with any directions issued by the Minister for Public Enterprises in accordance with subsection (4).

PART 3—SPONSORSHIP APPLICATION AND APPLICATION TO THE ISA

Eligibility to perform Seabed Mineral Activities

22. To be eligible to perform Seabed Mineral Activities a Sponsorship Applicant must first—

- (a) obtain a valid Sponsorship Certificate from the Authority; and
- (b) obtain a valid contract from the ISA,

pertaining to those Seabed Mineral Activities.

Invitation for Sponsorship Applications

23. The Authority may invite Sponsorship Applications.

Sponsorship Applications

24. Any person who wishes to engage in Seabed Mineral Activities must make an application in writing to the Authority.

The processing of Sponsorship Applications

25. The Authority must process Sponsorship Applications promptly and may—
- (a) request further information from a Sponsorship Applicant;
 - (b) request the Sponsorship Applicant to amend any part of its Sponsorship Application, at any time before making a recommendation under section 27 of this Decree; or
 - (c) return a Sponsorship Application without a decision if the Sponsorship Applicant fails to comply with a request under this section.

Contents of a Sponsorship Application

- 26.—(1) A Sponsorship Application must be made in writing to the Authority and must provide the following—
- (a) copies of any studies conducted by the Sponsorship Applicant or other data in relation to the potential of the site or sites within which the proposed Seabed Mineral Activities will be conducted;
 - (b) copies or summaries of any studies conducted by the Sponsorship Applicant or other data in relation to potential impact of the Seabed Mineral Activities on the marine environment;
 - (c) documents pertaining to ownership, lease or other arrangement to use vessels and equipment required for the operation of the Seabed Mineral Activities;
 - (d) a list of employees required to operate the Seabed Mineral Activities, and an indication if any of these will be recruited from Fiji; and
 - (e) insurance or contingency funding to cover damage that may be caused by the Seabed Mineral Activities or the costs of responding to an incident.

- (2) The Sponsorship Applicant must also include evidence of the following—

- (a) that it is an existing body corporate, registered in Fiji;
- (b) guarantors who will guarantee that the content of the Sponsorship Application is true and accurate, and intends to apply for a contract with the ISA to conduct exploration or exploitation in the Area under Fiji's sponsorship;
- (c) an indication of the Sponsorship Applicant's proposed methods for financing the Seabed Mineral Activities;
- (d) that it has sufficient financial and technical resources and capability to cover damage that may be caused by the Seabed Mineral Activities or the costs of responding to an incident;
- (e) proof of payment or ability to pay the relevant fees or payments required by this Decree; and
- (f) capacity-building programme providing for the training of Fiji personnel.

- (3) The Sponsorship Application must include a Statutory Declaration as to whether the Sponsored Party or any of its Directors has previously been found to have—

- (a) breached a material term or condition of the Rules of the ISA;
- (b) been convicted of an offence or incurred a civil penalty pertaining to the conduct of Seabed Mineral Activities or similar sea or land based activities in another jurisdiction; or
- (c) been convicted of an offence involving fraud or dishonesty.

- (4) The Sponsorship Applicant shall also be required to provide—

- (a) a written undertaking that the—
 - (i) Sponsorship Applicant will fully comply with his or her obligations under the Rules of the ISA and this Decree; and
 - (ii) proposed Seabed Mineral Activities by the Sponsorship Applicant will fully comply with the Rules of the ISA in relation to environmental management and applicable national and international laws, including those relating to safety at sea; and
- (b) any further matters as may be prescribed by the Minister.

Recommendation for issuance of a Sponsorship Certificate

- 27.—(1) The Authority shall, upon receipt of an application made under section 24 and having consulted the Working Group, make a recommendation to Cabinet for the issuance of a Sponsorship Certificate if it is satisfied that the—

- (a) contents of the Sponsorship Application are in accordance with the requirements under section 26 of this Decree; and

(b) proposed Seabed Mineral Activities—

- (i) will not result in irreparable harm to any community, cultural practice or industry in Fiji; and
- (ii) will be in the interest of the country, taking into account the potential for capacity building, employment and the long term economic benefits to Fiji.

(2) In making a recommendation under subsection (1), the Authority may take into account any or all of the information submitted by the Sponsorship Applicant, and any relevant information in the public domain, received from the Working Group or other consultation, or otherwise held in the Government's records.

(3) A previous decision by the ISA to grant a Sponsorship Applicant a contract for activities similar to those that are the subject of a Sponsorship Application may be considered by the Authority as evidence in relation to any of the requirements of that Sponsorship Application.

Issuance of Sponsorship Certificate

28.—(1) Upon receipt of a recommendation made by the Authority under section 27, Cabinet may decide, whether to issue the Sponsorship Applicant with a Sponsorship Certificate or to deny the application.

(2) Where Cabinet has approved the issuance of a Sponsorship Certificate in accordance with subsection (1), the Sponsorship Certificate shall be signed by the Minister and shall contain—

- (a) the name of the Sponsored Party;
- (b) a statement that the Sponsored Party is—
 - (i) sponsored by Fiji; and
 - (ii) subject to the effective control of Fiji;
- (c) the date of deposit by Fiji of its instrument of ratification of, or accession or succession to, the UN Convention on the Law of the Sea;
- (d) a declaration that Fiji assumes responsibility in accordance with Article 139, paragraph 4 of Article 153 and paragraph 4 of Article 4 of Annex III of the UN Convention on the Law of the Sea;
- (e) the period of time for which the Sponsorship Certificate shall remain in force unless otherwise terminated in accordance with this Decree; and
- (f) any other matter reasonably required by the ISA or that the Authority deems appropriate.

Notice of Sponsorship Certificate decision

29.—(1) Where Cabinet has made a decision in accordance with section 28, the Authority shall inform the Sponsorship Applicant of such a decision within 10 days of that decision being made.

(2) Where a decision is made in accordance with section 28 to deny the Sponsorship Certificate, the Authority may provide the Sponsorship Applicant with a written statement of reasons for that decision, and will give the Sponsorship Applicant a reasonable opportunity to re-submit an amended version of that Sponsorship Application, without requiring another Application fee.

Application by Sponsored Party to ISA

30.—(1) A Sponsored Party may submit an application to the ISA for a contract for exploration or exploitation in the Area under Fiji's sponsorship.

(2) The Authority shall provide all reasonable co-operations to the Sponsored Party to facilitate the preparation, submission and support of the application to the ISA.

(3) The costs of presenting that application to the ISA, including any costs incurred by Fiji in supporting the application before the ISA, shall be met by the Sponsored Party.

Sponsorship agreements

31.—(1) The Minister, with Cabinet's approval and upon the Authority's recommendation, may enter into written agreements with the Sponsored Party, at any time after the Sponsorship Certificate has been granted, to establish additional terms and conditions as to the sponsorship arrangement, provided that the—

- (a) Working Group has been consulted, and its views taken into account by the Authority; and
- (b) terms of such an agreement do not or are not likely to lead to a contravention by Fiji or the Sponsored Party of the Rules of the ISA or this Decree.

(2) The Sponsored Party or any other entity engaged by Fiji for the purposes of Seabed Mineral Activities shall enjoy exemption from taxes and such other privileges as may be provided by an agreement under subsection (1).

PART 4—OBLIGATIONS PERTAINING TO THE CONDUCT OF SEABED MINERAL ACTIVITIES

Duties pertaining to Seabed Mineral Activities

32. Any person engaged in Seabed Mineral Activities, whether directly or indirectly, shall be required to—
- (a) adhere to the Rules of the ISA and this Decree;
 - (b) provide sufficient training, supervision and resources to employees, agents or officers so as to ensure compliance with the Rules of the ISA and any other instructions or requests of the ISA;
 - (c) ensure that the proposed Seabed Mineral Activities will not unduly affect—
 - (i) the rights of other legitimate sea users; or
 - (ii) international peace and security;
 - (d) facilitate the ISA's regulation and the Authority's monitoring of Seabed Mineral Activities in accordance with the Rules of the ISA and this Decree and comply with the reasonable requests, directions or orders of ISA inspectors, or of Authority observers made pursuant to section 35 of this Decree;
 - (e) apply the Precautionary Approach, and employ best environmental practice in accordance with prevailing international standards in order to avoid, mitigate, or remedy adverse effects of Seabed Mineral Activities on the marine environment;
 - (f) offer Fiji opportunities for training in relation to, and participation in, the Seabed Mineral Activities;
 - (g) maintain appropriate insurance policies that provide adequate cover for identified risks and costs of damages that may be caused by the Seabed Mineral Activities, or otherwise provide satisfactory evidence of its financial and technical capability to respond to potential incidents;
 - (h) report to the ISA and the Authority immediately in the event of an incident occurring or appearing or reasonably likely to occur and respond efficiently and responsibly to the incident, including seeking and following the ISA's and the Authority's directions where appropriate;
 - (i) submit to the ISA and the Authority immediately in writing notice of any new information arising or data collected that materially affect—
 - (i) the requirements for a Sponsorship Application listed under section 26;
 - (ii) the exploration and exploitation plans of the Sponsored Party; or
 - (iii) the Sponsored Party's ability to adhere to the terms of the Rules of the ISA;
 - (j) ensure, at all material times, that—
 - (i) any vessels, installations and equipment engaged in Seabed Mineral Activities are in good repair and comply with the laws of the flag State; and
 - (ii) working conditions for personnel engaged in Seabed Mineral Activities meet applicable employment rules and health and safety standards;
 - (k) refrain from dumping mineral materials or waste from any vessel except in accordance with relevant international law or the Rules of the ISA;
 - (l) immediately cease Seabed Mineral Activities where ISA issues evidence that to proceed is reasonably likely to cause significant adverse impact to the—
 - (i) marine environment that was not anticipated in any environmental impact assessment previously conducted; or
 - (ii) safety, health or welfare of any person or other existing or planned legitimate sea uses including but not limited to Marine Scientific Research, navigation, submarine cables, fisheries or conservation activities;
 - (m) ensure that the contents of data, reports or other information submitted to the ISA in relation to the Seabed Mineral Activities are true, accurate and comprehensive.

Indemnification

33.—(1) A Sponsored Party or a party engaged in a partnership or joint venture with a body corporate wholly owned by Fiji shall be—

- (a) responsible for the performance of all Seabed Mineral Activities carried out within the Contract Area, and their compliance with the Rules of the ISA; and

- (b) liable for the actual amount of any compensation, damage or penalties arising out of its failure to comply, or out of any wrongful acts or omissions in the conduct of the Seabed Mineral Activities.

(2) By operation of this section, Fiji shall be indemnified against all actions, proceedings, costs, charges, claims and demands which may be made or brought in relation to the performance of Seabed Mineral Activities or with respect to the performance of any function or the exercise of any power under this Decree.

PART 5—ROLE OF SPONSORING STATE

Duties of Sponsoring State

34.—(1) Fiji, through the Authority, shall ensure that its conduct in relation to the ISA, the Area and Seabed Mineral Activities adheres to the requirements and standards established by general principles of international law where—

- (a) Fiji is sponsoring a Sponsored Party which holds a contract with the ISA to conduct Seabed Mineral Activities; or
- (b) a government owned body corporate holds a contract with the ISA to conduct Seabed Mineral Activities.

(2) Where any of the criteria in subsection (1) is met, Fiji through the Authority shall—

- (a) seek to ensure that any Seabed Mineral Activities is carried out in conformity with the UN Convention on the Law of the Sea, the Rules of the ISA and other requirements and standards established by general principles of international law;
- (b) take all appropriate means to exercise its effective control over Sponsored Parties or any party or body corporate engaged by Fiji for the purposes of Seabed Mineral Activities;
- (c) do all things reasonably necessary to give effect to its sponsorship of a Sponsored Party, including undertaking any communications with, and providing any assistance, documentation, certificates and undertakings to the ISA or any other relevant party required in respect of the Sponsorship; and
- (d) promote the application of the Precautionary Approach.

Monitoring powers

35.—(1) The Authority shall have the power to make such examinations, inspections and enquiries of Sponsored Parties and the conduct of Seabed Mineral Activities as are necessary to meet its responsibilities under international law, which may include the—

- (a) sending of an observer to the site of the Seabed Mineral Activities and vessel or premises of the Sponsored Party; and
- (b) inspection of relevant books, records and other relevant data, from time to time, upon giving reasonable notice to the Sponsored Party.

(2) An observer engaged in accordance with subsection 1 (a) shall take all reasonable steps to avoid interference with the safe and normal operations on-board vessels.

(3) Where an inspection is carried out in accordance with subsection 1 (b), the Authority may direct any person to furnish within a reasonable time any information it reasonably believes is in that person's possession which—

- (a) relates to any Sponsorship Certificate or Seabed Mineral Activities; or
- (b) is otherwise directly relevant to the discharge of the Authority's functions.

(4) A person or party who fails to comply with a direction issued under this section shall be liable upon conviction to a fine of \$10,000 or a term of imprisonment of 5 years or both.

Administrative action

36.—(1) Where the Authority is of the opinion that a Sponsored Party is at serious risk of materially breaching the Rules of the ISA, or this Decree, the Authority shall—

- (a) issue written warnings, including warnings in relation to possible action the Authority may take in the event of future material breaches;
- (b) enter into a written agreement providing for the Sponsored Party to undertake a programme of remedial action and to mitigate the risk of re-occurrence; and
- (c) issue a written notice requiring the Sponsored Party to take specified action, or not take specified action aimed to stop, remedy or mitigate the risk of occurrence or re-occurrence of material breach.

(2) Where the Authority determines that a Sponsored Party has acted in a manner which constitutes a material breach of the ISA Rules or this Decree, the Authority shall—

- (a) impose upon the Sponsored Party monetary penalties proportionate to the seriousness of the violation or in accordance with penalties prescribed by Regulations, which exclude any compensation payable for damage or harm; or
- (b) commence a process under section 41 of this Decree to revoke the Sponsorship Certificate.

PART 6—REGISTER, TERMINATION, TRANSFER, EXTENSION OF SPONSORSHIP

Records

37. The Authority shall—

- (a) retain updated and accurate records of Sponsorship Applications received, Sponsorship Certificates issued, ISA contracts held, and all communication, reports or other information created or received;
- (b) ensure that all such records are held with appropriate confidentiality; and
- (c) not disclose commercially sensitive information within those records unless otherwise agreed to by the Sponsored Party.

Security of tenure

38. A Sponsorship Certificate shall remain in force unless and until it is terminated in accordance with section 39 of this Decree.

Termination

39.—(1) A Sponsorship Certificate terminates if it is—

- (a) made for a specified term and that term expires without renewal in accordance with section 43 of this Decree;
- (b) surrendered by the Sponsored Party in accordance with section 40 of this Decree; and
- (c) revoked in accordance with section 41 of this Decree.

(2) Upon the termination of a Sponsorship Certificate in accordance with subsection (1) all rights granted by Fiji shall cease.

Surrender of sponsorship

40. A Sponsored Party may at any time surrender a Sponsorship Certificate without penalty by giving to the Authority not less than three months' notice in writing to that effect.

Revocation of sponsorship

41. The Authority may recommend the revocation of a Sponsorship Certificate for the following reasons—

- (a) in any case, with the consent of the Sponsored Party;
- (b) where no material efforts have been made by the Sponsored Party to undertake the Seabed Mineral Activities for a period exceeding five years from the date of signing the contract with the ISA;
- (c) where there has been a serious, persistent or wilful breach by the Sponsored Party of the Rules of the ISA, the requirements of this Decree, or a final binding decision of a dispute settlement body applicable to it;
- (d) where the Sponsored Party knowingly or recklessly provides the ISA or the Authority with information which is false or misleading in a material particular, or fails to retain or wilfully alters, suppresses, conceals or destroys any document which is required to be produced to the ISA or the Authority; or
- (e) where, following at least two written notices given by the Authority in accordance with this Decree, any payment or deposit required under Part 7 of this Decree is in arrears or unpaid for six months following the day on which it ought to have been paid.

Notice of revocation

42. Before making a decision under section 41 of this Decree the Authority shall—

- (a) give the Sponsored Party at least 30 days' written notice of its intention to make the decision, setting out details of that proposed decision and the reasons for it, and inviting the Sponsored Party to make a written submission about the proposed decision within a specified timeframe; and
- (b) where the decision made to revoke the Sponsorship Certificate, give the Sponsored Party no less than 6 months' notice before that revocation takes effect.

Renewal

43.—(1) The Authority with the approval of Cabinet may renew a Sponsorship Certificate for successive periods of up to five years, provided an application for renewal is received from the Sponsored Party by the Authority at least 9 months before the expiration of the initial term.

(2) Where a decision has been made in accordance with subsection (1) to renew a Sponsorship Certificate, the Authority shall provide written notice of such renewal to the Sponsored Party as soon as practicable.

Ongoing liability after termination

44. Where a Sponsorship Certificate of a Sponsored Party has been terminated in accordance with section 39, that Sponsored Party shall remain—

- (a) subjected to any ongoing obligations, including requirements to submit reports and to make payments to the Authority; and
- (b) responsible for any damage from its wrongful acts or otherwise arising from its Seabed Minerals Activities in accordance with this Decree or any agreements made under this Decree.

PART 7—FISCAL ARRANGEMENTS

Payments by Sponsored Parties

45.—(1) The Minister shall, by way of regulations and in consultation with the Authority and the Working Group, set fees for Seabed Mineral Activities which shall include but is not limited to the following—

- (a) non-refundable Sponsorship Application fees;
- (b) Seabed mineral recovery payment fee;
- (c) administration fees; or
- (d) any other fee convenient or necessary to be charged.

(2) In accordance with subsection (1) the Minister shall periodically review the structure of fees within the regulations.

(3) The holder of a Sponsorship Certificate shall pay to the Authority an annual administration fee as determined by the Minister—

- (a) within six months from the date the Sponsorship Certificate was initially issued; and
- (b) every year after that, on the date the Sponsorship Certificate was issued.

(4) During the fifth year of the Sponsorship Certificate term, the Authority may review the amount of administration fee required each year for the remainder of the term of the Sponsorship Certificate.

(5) A Sponsored Party holding an ISA contract for exploration or exploitation under Fiji's sponsorship shall pay to the Authority such sums by way of a recovery payment as and when shall be agreed and specified in a written agreement made under section 31 of this Decree, at least one year prior to the commencement of exploitation by the Sponsored Party.

(6) The recovery payment amount will—

- (a) take into account the set up, exploration and exploitation costs incurred by the Sponsored Party; and
- (b) be based on a percentage of the latest market value of the metal content contained in the Seabed Minerals to be extracted by the Sponsored Party through the Seabed Mineral Activities.

Financial payments to the ISA

46. A Sponsored Party shall make prompt and full payment of any sums due to the ISA, under the Rules of the ISA.

Recovery of payments owed by Sponsored Parties

47.—(1) A sum of money payable pursuant to section 45 is a debt due to Fiji and may be recovered in a court of competent jurisdiction, and in any such proceedings a certificate of the Authority certifying that a specified sum of money is so payable, shall be received as evidence of the fact.

(2) Any debt of the Sponsored Party may at the court's discretion be recovered from any security deposited by the same Sponsored Party and interest on the amount outstanding may additionally be charged at a prescribed rate.

Security

48.—(1) The Authority may, within one year before exploitation is due to commence, require a Sponsored Party to deposit security as a guarantee of performance of its obligations under the Rules of the ISA and this Decree.

(2) The form and value of any such security required, and the terms upon which it will be held, will be specified in a written agreement made under section 31 of this Decree.

(3) A security deposited in accordance with this section may be used by the Authority to take steps towards fulfilling any obligations that the Sponsored Party fails to fulfil under this Decree, or to rectify any damage of loss caused as a result of such failure.

PART 8—MISCELLANEOUS

Inquiries into incidents

49.—(1) The Authority may hold or may commission inquiries into incidents.

(2) An incident occurs when—

- (a) any ship or installation or other similar item or structure while engaged in Seabed Mineral Activities is lost, abandoned, capsized or incurs significant damage;
- (b) loss of life or injury requiring hospitalisation occurs on board any ship or installation while engaged in Seabed Mineral Activities, except in the case of a loss of life that is certified by an independent medical practitioner as being the result of natural causes;
- (c) the conduct of Seabed Mineral Activities results in significant adverse impact to or unlawful pollution of the marine environment; or
- (d) the ISA issues an emergency order in connection with the Seabed Mineral Activities.

Unlawful interference with other sea users

50. Nothing in this Decree authorises the unlawful interference with the freedom of the high seas or the conduct of Marine Scientific Research by other persons or nation under the general principles of international law.

Rights of other States

51. Nothing in this Decree shall in any way affect the rights of coastal States in accordance with Article 142 and other relevant provisions of the UN Convention on the Law of the Sea.

Public officials prohibited from acquiring Seabed Mineral rights

52.—(1) A public official—

- (a) engaged by the Authority shall not directly or indirectly acquire or retain any personal share-holding in a body corporate carrying on Seabed Mineral Activities; or
- (b) shall not act, directly or indirectly, to personally acquire any right or interest in any Sponsored Party contract for Seabed Mineral Activities.

(2) Any document or transaction purporting to confer any right or interest on any such public officer who has acted in breach of subsection (1) shall be null and void.

(3) Any public official in breach of subsection (1) shall be liable upon conviction to a fine not less than \$2,000 or to a term of imprisonment of 5 years, or to both.

Offence committed by a body corporate

53. Where an offence under this Decree has been committed by a body corporate is committed with the consent or connivance, or is attributable to the neglect, of any Director or officer of the body corporate, that officer as well as the body corporate shall be guilty of that offence.

Disputes

54.—(1) Any dispute arising between Fiji and another State in connection with Seabed Mineral Activities shall be resolved pursuant to the provisions of the UN Convention on the Law of the Sea.

(2) Any dispute between Fiji and the Authority, Fiji and the Sponsored Party, the Authority and the Sponsored Party, the Authority and a body corporate or Fiji and a body corporate, arising in connection with the administration of this Decree shall be dealt with by the parties attempting to reach settlement by mutual agreement or mediation, and in the event this is not successful then by referral to arbitration to be conducted in accordance with the Arbitration Act (Cap. 38).

Regulations

55. The Minister may make regulations to give effect to the provisions of this Decree.

Consequential

56. This Decree has effect notwithstanding any provision of any written law and to the extent that there is any inconsistency between this Decree and any other written law, this Decree prevails.

Decisions made under this Decree not to be challenged

57.—(1) No Court, Tribunal, Commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body which that seeks or purports to challenge or question—

- (a) the validity, legality or propriety of this Decree; and
- (b) any decision of any Minister or any public official or body, made under this Decree.

(2) Any proceeding, claim, challenge or dispute of any nature whatsoever in any Court, Tribunal, Commission or before any other person or body exercising an adjudicating function, in respect of any of the subject matters in subsection (1) that had been instituted before the commencement of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, and any order whether preliminary or substantive made therein shall be wholly vacated, and a Certificate to that effect shall be issued by the Chief Registrar.

(3) Where any proceeding, claim, challenge, application or dispute of any form whatsoever, is brought before any Court, Tribunal, Commission or any other adjudicating body, in respect of any of the subject matters in subsection (1), the presiding judicial officer, without hearing or in any way determining the proceedings or the application, shall immediately transfer the proceeding or the application to the Chief Registrar, for termination of the proceeding or issuance of a Certificate under subsection (2).

(4) A Certificate under subsection (2) is, for the purposes of any proceeding in a Court, Tribunal, Commission or any other person exercising a judicial function, conclusive of the matters stated in the Certificate.

(5) A decision of the Chief Registrar to issue a Certificate under subsection (2) shall not be subject to challenge in any Court, Tribunal, Commission or any other adjudicating body.

GIVEN under my hand this 8th day of July 2013.

EPELI NAILATIKAU
President of the Republic of Fiji