

GUARANTEE (PORTS AUTHORITY OF FIJI) DECREE, 1989

A DECREE TO AUTHORISE THE GOVERNMENT TO GUARANTEE A LOAN NOT EXCEEDING AN AMOUNT EQUIVALENT TO SIX MILLION EUROPEAN CURRENCY UNITS BY THE PORTS AUTHORITY OF FIJI FOR THE PURPOSE OF ITS PORT OF LAUTOKA PROJECT

IN exercise of the powers vested in me as President and Commander-in-Chief of the Republic of Fiji and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decree—

*Short title, etc.*

1.—(1) This Decree may be cited as the Ports Authority of Fiji (Loan Guarantee) Decree, 1989.

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

“European currency unit” means the unit of currency as from time to time defined by the Council of the European Communities pursuant to Regulation of the Council of European Communities No. 3180/78 in use as the unit of account of the European Investment Bank;

“European Investment Bank” means the European Investment Bank established by Article 129 of the Treaty of Rome (the Treaty establishing the European Economic Community);

“Government” means the Government of the Republic of Fiji;

“Minister” means the Minister of the Government responsible for finance;

“Ports Authority of Fiji” means the Ports Authority of Fiji established by section 4 of the Ports Authority of Fiji Act (Cap. 181).

*Commencement*

2. This Decree shall come into operation on the day on which it is made.

*Provision of credit deemed to be a borrowing*

3. For the purposes of this Decree, the provision of credit shall be deemed to be borrowing to the extent of the amount of that credit.

*Guarantee of certain loans*

4.—(1) The Minister may, on behalf of the Government, and subject to the conditions required by this Decree, guarantee—

(a) the repayment by the Ports Authority of Fiji of amounts borrowed by it from the European Investment Bank not exceeding in the aggregate its expenditure in relation to the Port of Lautoka Project;

(b) the payment of interest (including any interest on that interest) on amounts so borrowed.

(2) A guarantee or guarantees shall not be given under subsection (1) in respect of moneys borrowed in European currency units or in any other currency, exceeding in the aggregate six million European currency units.

(3) The power of the Minister to give a guarantee under this section includes—

(a) a power to agree, on behalf of the Government, that proceedings under the guarantee may be taken in a court of a country other than Fiji; and

(b) a power to waive, on behalf of the Government, the immunity of the Government from suit in a court of a country other than Fiji, in relation to any proceedings that may be taken under the guarantee in such a court.

(4) Where moneys borrowed referred to in subsection (2) are borrowed in a currency other than European currency units the amount borrowed in that other currency shall, for the purposes of this Decree, be taken to be the amount in European currency units that is equivalent to the first-mentioned amount, as ascertained in accordance with the agreement under which such moneys are borrowed.

*Conditions of guarantees*

5. For the purpose of the protection of the financial interests of the Government, the Minister shall not give a guarantee under section 4 unless—

- (a) the moneys are borrowed on terms and conditions that the Minister is satisfied are reasonable;
- (b) such security, as he may request, is, or is to be given to the Government over property of the Authority;
- (c) undertakings to the satisfaction of the Minister are given that the property of the Authority over which security is, or is to be, taken in accordance with paragraph (b)—
  - (i) will be insured, against all risks against which it is customary to insure, and to the full insurable value of that property; and
  - (ii) will not be sold or made the subject of a mortgage or charge having priority over the security of the Government in respect of the guarantee; and
- (d) such other conditions as the Minister thinks necessary are fulfilled.

*Delegation*

6.—(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate to an officer of the Government all or any of the powers or functions of the Government under this Decree, other than this power of delegation.

(2) A power or function so delegated, when exercised or performed by the delegate, shall for the purposes of this Decree, be deemed to have been exercised or performed by the Minister.

(3) A delegate is, in the exercise or performance of a power or function so delegated, subject to the directions of the Minister.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

Made this 4th day of August 1989.

PENAIA K. GANILAU  
President and Commander-in-Chief

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