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GOVERNMENT OF FIJI

SCRAP METAL TRADE DECREE 2011
 (DECREE NO. 22 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—

PART 1—PRELIMINARY

Short title and commencement

1. This Decree may be cited as the Scrap Metal Trade Decree 2011 and shall come into force on the date of its publication in the *Gazette*.

Interpretation

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

“body” includes any business, companies, partnerships, trader or any legal entity whether incorporated or unincorporated;

“Licence” means a scrap metal licence issued under Part 3;

“licencee” means any person or body holding a licence issued under Part 3;

“Licensing Authority” means the Permanent Secretary responsible for the Ministry of Industry and Trade;

“Recycler” means any person that recycles scrap metal;

“Minister” means the Minister responsible for Industry and Trade.

“Public infrastructure metal” includes any property in any form, whether recycled or not belonging to the Government of Fiji or any statutory authority, Government entity or Government Commercial Company and shall, in particular include power cables, telephone cables, water meters, power meters, manhole covers, street signs, railway lines and any other property which may be declared by Order in the *Gazette* by the Minister, to be a “public infrastructure metal”;

“Scrap metal” means any recyclable object that has a metallic content and has a resale value, but excludes aluminium beverage containers;

“Scrap metal dealer” means any person, firm, corporation, association or other recognised legal entity engaged in the business of buying or selling scrap metal, and a person or body is presumed (in the absence of evidence to the contrary) to be engaged in business as a scrap metal dealer if, in any 12-month period, the person or body buys, sells or deals in scrap metal—

(a) on 6 or more different days; or

(b) for the value exceeding \$100.00 in any one transaction;

“Trade” means the collecting, receiving, exchange, buying, selling or dealing scrap metal in any manner.

PART 2—TRADE OF PUBLIC INFRASTRUCTURE METAL

Trade of public infrastructure metal prohibited

3. Subject to this Part, the trade of any public infrastructure metal is prohibited.

Special approval for sale of public infrastructure metal

4.—(1) Any person or body seeking to sell any public infrastructure metal, must make an application in writing to the Licensing Authority for special approval.

(2) The Licensing Authority, may upon receipt of an application in writing, permit any person or body to sell any public infrastructure metal on such terms and conditions as the Licensing Authority may deem fit and proper.

(3) The Licensing Authority may require such particulars from the person or body applying to sell public infrastructure metal, as the Licensing Authority may in its absolute discretion require, including in particular, proof of ownership or legal possession of the public infrastructure metal by that person or body.

(4) Any special approval granted to any person for the sale of public infrastructure metal under this section must be limited to a single transaction, and approvals must be sought for any second or subsequent sale of any public infrastructure metal.

(5) Any special approval granted to any person or body for the sale of public infrastructure metal under this section shall be in writing, and such written special approval must be produced to any scrap metal dealer at the time of the sale.

(6) Any scrap metal dealer must ensure that any person selling any public infrastructure metal is duly authorised by the Licensing Authority in accordance with this section to sell public infrastructure metal and must obtain—

- (a) a copy of the seller's written special approval from the Licensing Authority;
- (b) the name and address of the seller;
- (c) the telephone contact of the seller;
- (d) the Tax Identification Number of the seller;
- (e) the description and weight of the Public Infrastructure metal sold by the seller;
- (f) vehicle registration number of the delivery vehicle and the details of the driver delivering the public infrastructure metal including the driver's licence number which must be verified by the buyer upon sighting of the relevant driver's licence; and
- (g) FNPF number or passport number of the seller.

(7) Any scrap metal dealer buying any public infrastructure metal from any person must, within 7 days of the sale, forward all the particulars prescribed in subsection (6) to the Licensing Authority for every single sale.

Offences

5.—(1) Any person or body who trades or attempts to trade or solicits another person to trade any public infrastructure without the approval of the Licensing Authority shall be guilty of an offence, and shall be liable upon conviction in the case of a natural person to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or to both, and in the case of a company to a fine not exceeding \$100,000.

(2) Any scrap metal dealer who buys any public infrastructure metal from any person who is not authorised by the Licensing Authority, shall be guilty of an offence, and shall be liable upon conviction in the case of a natural person to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or to both, and in the case of a company to a fine not exceeding \$100,000.

(3) Any scrap metal dealer who fails to obtain any of the particulars prescribed in section 4(6) or fails to forward any such particulars to the Licensing Authority pursuant to section 4(7) shall be guilty of an offence, and shall be liable upon conviction in the case of a natural person to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or to both, and in the case of a company to a fine not exceeding \$100,000.

PART 3 – LICENSING OF SCRAP METAL DEALERS

Scrap metal dealers to be licensed

6. Every person or body who engages in business as a scrap metal dealer must hold a licence issued by the Licensing Authority under this Decree.

Application for licences

7.—(1) An applicant must apply to the Licensing Authority for a licence to trade as a scrap metal dealer.

(2) Every application must be—

- (a) in a form prescribed by the Licensing Authority;
- (b) accompanied by the prescribed fee; and
- (c) accompanied by a police clearance showing—
 - (i) whether the applicant has been convicted of a specified offence within the past 5 years;
 - (ii) whether the applicant has been convicted of an offence under this Decree; and
 - (iii) whether the applicant has been sentenced to imprisonment in Fiji or elsewhere at any time within the past 5 years.

Grant or renewal of licence

8.—(1) The Licensing Authority may, in its discretion, grant a licence to an applicant, or renew a licence granted under this section, on such terms and conditions as the Authority deems fit and proper, if—

- (a) the applicant, in the case of a natural person, is more than 18 years of age;
- (b) the applicant is eligible to hold a licence under this Decree;
- (c) the application complies with the requirements of section 7(2); and
- (d) has not had a licence issued under this Decree cancelled.

Reason for refusal to be provided

9. If the Licensing Authority refuses to grant or renew an application for a licence, the Authority must immediately notify the applicant in writing of the decision, including reasons for the refusal.

Cancellation of licence

10.—(1) The Licensing Authority may cancel a licence if—

- (a) it appears to the Licensing Authority that the terms and conditions of a licence have been breached;
- (b) the licensee ceases to be eligible to hold a licence;
- (c) if the Licensing Authority upon due enquiry and after hearing any explanation by the licensee is satisfied that the licence was issued by fraud or mistake; or
- (d) if the Licensing Authority upon due enquiry and after hearing, any explanation by the licensee is satisfied that the licensee has breached any provision of this Decree.

(2) The Licensing Authority must cancel a licence if the licensee is convicted of an offence under this Decree.

(3) A cancellation must be in writing, with reasons, and state the date on which the cancellation takes effect.

(4) The Licensing Authority may at any time suspend any licence issued to any person or body pending the completion of any enquiry under this section.

(5) Any person or body whose licence is cancelled or suspended under this section must not engage in the trade of scrap metal.

(6) Any person or body who continues to trade or attempts to trade or solicits another person to trade on their behalf after their licence has been cancelled or suspended under this section shall be guilty of an offence, and shall be liable upon conviction in the case of a natural person to a fine not exceeding \$10,000 penalty units or to imprisonment for a term not exceeding 5 years or to both, and in the case of a company to a fine not exceeding \$100,000 penalty units.

Appeals

11.—(1) Any person or body aggrieved by a decision of the Licencing Authority in relation to the non-issue, suspension or cancellation of a licence under this Decree may appeal the decision of the Licencing Authority to the Minister.

(2) An appeal under this section must be brought within 20 days of the date of the decision appealed against, or within any longer period that the Minister, on application made before the expiration of that period, allows.

PART 4: RECORDS OF SCRAP METAL DEALERS*Records of Scrap Metal Sellers*

12.—(1) Every scrap metal dealer who intends to engage in the activity of selling scrap metal shall produce the following information to the scrap metal dealer who is engaged in the business of buying scrap metal and the latter must demand from the former the following—

- (a) details of licence or special approval issued under this Decree;
- (b) name and address of the seller;
- (c) vehicle registration number, FNPF or passport number of the seller;
- (d) tax identification number of the seller;
- (e) telephone contact of the seller;
- (f) statement showing that either the seller is the owner of the delivered articles or that the seller has obtained authority to act as agent;
- (g) if the articles are being delivered by a person other than the seller, the vehicle registration number of the delivery vehicle, the name and address of the driver; and
- (h) the delivery driver's licence number which must be verified by the buyer upon sighting of the relevant driver's licence.

(2) The scrap metal dealer who intends to engage in the business of buying scrap metal must not buy scrap metal from a scrap metal seller who fails to provide any of the information required under subsection (1).

Records of Scrap Metal Buyers

13.—(1) In addition to particulars in section 12, every scrap metal dealer or recycler shall, at each place occupied by him or her as a scrap metal store, keep a written record, to the satisfaction of the Licensing Authority, with respect to—

- (a) all scrap metal received at that place;
- (b) all scrap metal either processed at, or dispatched from, that place;
- (c) the description and weight of the scrap metal;
- (d) the date and time of the receipt of the scrap metal;
- (e) the exact location from where the scrap metal was taken from;
- (f) the price, if any, payable in respect of the receipt of the scrap metal, if that price has been ascertained at the time when the entry in the book relating to that scrap metal is to be made; and
- (g) where the last preceding paragraph does not apply, the value of the scrap metal at the time when the entry is to be made as estimated by the dealer.

Penalties for non-compliance

14.—(1) Any person who fails to comply with any of the requirements imposed on him or her by section 12 or section 13 shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 5 years or to both, and in the case of a company, to a fine not exceeding \$100,000.

(2) Any person or body, who, on selling scrap metal to a scrap metal dealer or recycler, gives a false name or false address or any false information to such dealer shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term of 1 year or both.

PART 5: ENTRY AND INSPECTION

Right of entry, inspection and seizure

15.—(1) The Licensing Authority or any person authorised in writing by the Licensing Authority or any law enforcement officer shall have a right at all times—

- (a) to enter and inspect any place for the time being entered in a register as required under section 16 as a place which is occupied by a scrap metal dealer as a scrap metal store, or as a place which is occupied by a scrap metal dealer wholly or partly for the purposes of his or her business;
- (b) to require production of, and to inspect, any scrap metal kept at that place and any records which the dealer is required by this Decree to keep at that place, or, as the case may be, any receipt which the dealer is required to keep, and to take copies of or extracts from any such book or receipt.

(2) If the Licensing Authority or any person authorised in writing by the Licensing Authority or any law enforcement officer has reasonable grounds for believing that a place is being used as a scrap metal store, and that place is not for the time being entered in the register kept by the Licensing Authority under section 16 as a place which is occupied as a scrap metal store, the Licensing Authority or any person authorised in writing by the Licensing Authority or any law enforcement officer shall have a right at any time, on producing (if required to do so) evidence of his authority, to enter that place for the purpose of ascertaining whether it is being used as a scrap metal store.

(3) In exercising powers under subsection (1) or (2) the Licensing Authority or any person authorised in writing by the Licensing Authority or any law enforcement officer may, without requiring any further authorisation, seize and detain any item or any property of any nature whatsoever, for the purposes of investigation for any breach of this Decree.

PART 6—REGISTERS

Public registers of licence holders

16.—(1) The Licensing Authority must establish, and must maintain a Register of all persons or bodies licensed as scrap metal dealers under this Decree.

(2) The Register of scrap metal dealers established under subsection (1) must include the following information—

- (a) the full name of the licence holder;
- (b) the licence holder's principal place of business;
- (c) the number of the licence;
- (d) the date of issue of the licence;
- (e) in the case of a licence holder who is an individual, whether the person is in partnership and, if so, the full names of every partner;
- (f) in the case of a licence holder that is a company, the name of every person concerned in the management of the company;
- (g) the street address of every place of business used by the licence holder; and
- (h) the business phone number of the licence holder.

(3) The register of scrap metal dealers established under subsection (1) shall be available to members of the public to view during normal office hours, and any person may obtain a certified copy of the information contained in the Register upon payment of the prescribed fees.

Minister may exempt

17. The Minister may, upon receipt of an application in writing, exempt any person or body from the provisions of this Decree.

Power to make regulations

18. The Minister may make regulations prescribing matters that are required or permitted by this Decree to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Decree.

Decree and decisions made under this Decree not to be challenged

19. 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 any decision of the Minister or the Licensing Authority or any person acting under the authorisation of the Licensing Authority, except for such appeals from the decision of the Licensing Authority to the Minister under section 11.

GIVEN UNDER my hand this 13th day of May 2011.

EPELI NAILATIKAU
President of the Republic of Fiji