



REPUBLIC OF FIJI ISLANDS GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 11

MONDAY, 13th DECEMBER 2010

No. 143

[2142]

GOVERNMENT OF FIJI

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 (DECREE NO. 63 OF 2010)

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TOBACCO CONTROL DECREE 2010
(DECREE NO. 63 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—

PART 1—PRELIMINARY

Short title, commencement and application

- 1.—(1) This Decree may be cited as the Tobacco Control Decree 2010.
- (2) This Decree shall come into effect on 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.
- (4) Nothing in this Decree applies to any tobacco product or the labelling of any tobacco product container if the tobacco product is packed exclusively for sale outside Fiji and is not sold in Fiji; or

Interpretation

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

“amusement centre” means any building, erection, structure, watercraft or any other such place, whether temporary or permanent and whether partially or completely enclosed, in or at which a public amusement takes place and to which the public are admitted with or without payment;

“authorised officer” means a person of a class or classes of persons appointed by the Minister as such in section 27;

“cigarette” means any product which—

- (a) consists wholly or partially of cut, shredded or manufactured tobacco, or of any tobacco derivative or substitute, rolled up in paper or otherwise; and

(b) is capable of being immediately used for smoking;

“clinic” means any building or premises used or intended to be used by a medical practitioner, dental practitioner or any other person for the diagnosis or treatment of persons suffering from, or believed to be suffering from any mental or physical disease and includes any such place operated by the Government;

“container” includes a tin, pouch or packet, but does not include any outer wrapper, cellophane, box, cartons or other transparent material;

“council of municipality” means the council of a city, town or district constituted under section 8 of the Local Government Act;

“eating-house” means any place or any part thereof, where the principal business is the serving of meals or refreshments to the public for consumption at such place;

“exempt sponsored event” means any event, including a sporting, cultural, entertainment or recreational event, other than a community festival—

(a) which is open to the public;

(b) for which a sponsorship, gift, prize, reward, scholarship or other like benefit is or is to be given in exchange for the promotion or publicity at the event of-

(i) a tobacco product, or a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or

(ii) the name or interests of a manufacturer or distributor of a tobacco product (whether or not that manufacturer or distributor also manufactures or distributes a product other than the tobacco product) in association directly or indirectly with the tobacco product;

(c) which is not targeted primarily at persons under the age of 18 years;

(d) the duration of which does not exceed the period, if any, prescribed by the Minister by regulations; and

(e) which otherwise complies with any regulations made by the Minister;

“hospital” means any building in which 2 or more patients are or may be maintained at the same time and includes any such place operated by the Government; semi government or private organisation

“importer” means any person, association or corporation engaged in importing tobacco products manufactured outside Fiji for sale or distribution within Fiji including ship stores and designated Duty Free outlets.;

“ISO standard” means the standard specified by the International Standards Organisation;

“local authority” means any local authority constituted under the provisions of the Public Health Act;

“manufacture” in respect of tobacco products, includes the packaging, labelling, distributing, exporting and importing of tobacco products for sale within Fiji;

“manufacturer”, in respect of tobacco products, includes any entity that is associated with a manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer;

“Minister” means the Minister of Health;

“package” means the container, receptacle or wrapper in which a tobacco product is sold;

“permit” means a permit issued under this Decree

“Permanent Secretary” means the Permanent Secretary responsible for Health;

“prescribed smoke-free area” means any part of any building which is prescribed by regulations or an order under section 20 as a smoke-free area;

“prescribed smoke-free building” means any building that is prescribed by regulations or an order under section 20 as a smoke-free building;

“public” includes a section of the public;

“public service vehicle” means a motor vehicle licensed under Part VI of the Land Transport Act 1998 for the purpose of carrying passengers for hire or reward;

“public amusement” means any game of any kind whatsoever provided for the public in which a member or members of the public may take part;

“retailer” means a person who is engaged in a business that may include the sale of a tobacco product to consumers in whole or part.;

“regulations” means regulations made by the Minister under section 40.

“register” means a register maintained by the Minister for Health;

“sell” includes—

- (a) barter or exchange;
- (b) offer or expose for sale, barter or exchange;
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

“smoking” with its grammatical variations, means puffing or inhaling and expelling the smoke of any tobacco product and includes the holding of, or control over, any ignited tobacco product;

“sports stand” means any building, erection or structure, whether temporary or permanent, which is partially or completely enclosed and which is used for the seating of members of the public, with or without payment, primarily to view any sporting contest, but does not include an such building, erection or structure belonging to any club, association, institution or other body intended for the benefit primarily of its members;

“suki” means native tobacco, grown and air cured by farmers in Fiji. Also, known as chop chop or twist or hand rolled [in form of rope] tobacco when sold.

“tar” means the Condensate Particulate Matter (CPM) which results from the ignition of any tobacco product;

“theatre” means the auditorium of any building used for the performance or presentation of any stage play or any musical, singing or dancing show or recital or any competition, sporting contest, exhibition, variety act or other entertainment, or the exhibition of films, to which members of the public are admitted upon payment of an admission fee, but does not include any part of the building of any club, association, institution, or other body in which any of the same are performed, presented, or exhibited for the benefit primarily of its members;

“tobacco control fixed penalty notice” means a notice issued under section 21.

“tobacco product” means any tobacco, cigarette, cigars, pipe tobacco, cigarillos or any other product with the main ingredient of which is tobacco and which is designed for human consumption by smoking;

“tobacco product advertisement” means any words, whether written, printed, spoken, broadcast or telecast, including on film, video recording or other medium, and any pictorial representation, design, device, visual image, sign, symbol, trademark, brand name, or company name, or part of a trademark, brand or company name, or a combination of 2 or more of the foregoing, used to encourage the use or to notify the availability or to promote the sale of any tobacco product or to promote smoking;

“vending machine” means a machine or device that is constructed to contain tobacco products and which can automatically retail any tobacco product upon the insertion of a coin, token or similar object into the machine or device;

“watercraft” means any vessel designated to float on water, whether or not it is suitable, adapted or used for transportation;

“wholesaler” means a person who sells or offers for sale of tobacco products for the purpose of resale.

PART 2—PROHIBITION ON ADVERTISING AND PROMOTION OF TOBACCO PRODUCTS

Prohibition of certain tobacco product advertisements

3.—(1) A person must not for any direct or indirect benefit or on behalf of another person—

- (a) display, exhibit, announce, broadcast or telecast, or cause or permit to be displayed, exhibited, announced, broadcast, or telecast, or authorise the display, exhibition, announcement, broadcast or telecast to the public of, a tobacco product advertisement;
- (b) sell or distribute, or cause or permit to be sold or distributed, or authorise the sale of, any film or video tape or Compact Disk, that contains a tobacco product advertisement;
- (c) distribute, or cause or permit to be distributed, or authorise the distribution, to the public of any leaflet, handbill, or document that is a tobacco product advertisement; or

(d) print or publish, or cause or permit to be printed or published; or authorise the printing or publication, of a tobacco product advertisement in any printed publication, book, magazine, leaflet, handbill, newspaper or other printed matter intended for the public.

(2) Subsection (1) does not apply to—

- (a) a tobacco product advertisement in or on a container containing a tobacco product;
- (b) a tobacco advertisement containing only the company name of a tobacco manufacturer or distributor and any trade mark or brand name of a tobacco product or any part or combination thereof which is placed on or adjacent to a place of business of the manufacturer or distributor;
- (c) the publication by a tobacco manufacturer of a tobacco product advertisement in a magazine, newsletter, chart or poster which is intended only for use by employees on the manufacturer's premises or for distribution only to employees of the manufacturer;
- (d) any tobacco product advertisement included in any book, magazine, or newspaper printed outside Fiji, or in any radio or television transmission originating outside Fiji, or any film or video recording made outside Fiji, unless—
 - (i) the principal purpose of the book, magazine, newspaper, broadcast, telecast, film, or video recording is the promotion of the use of a tobacco product;
 - (ii) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in Fiji;
 - (iii) in the case of a tobacco product advertisement in any radio or television transmission, the advertisement is targeted primarily at a Fiji audience;
- (e) a tobacco product advertisement that is an incidental accompaniment to the subject of a film, video recording, broadcast or telecast (not being a film video recording, broadcast or telecast which is wholly or mainly concerned with the promotion of tobacco products); or
- (f) an invoice, statement, order, letterhead, business card, cheque, manuals, office stationary, manufacturer price list or other document that is ordinarily used in the course of business.

Prohibition on giving or distributing of free samples

4.—(1) A person must not, for the purpose of inducing or promoting the sale of any tobacco product, offer, give or distribute to any person a free sample of a tobacco product.

(2) A person found to be contravening subsection (1) commits an offence and is liable to a fixed penalty in Schedule 7.

Restrictions on sponsorship

5.—(1) A person must not, under a contract of agreement whether verbal or written undertake with another person, promote or publicise, or agree to promote or publicise—

- (a) a tobacco product or trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
- (b) the name or interests of a manufacturer or distributor of a tobacco product (whether or not that manufacturer or distributor also manufactures or distributes a product other than the tobacco product);

in exchange for a sponsorship, gift, price, reward, scholarship or like benefit given or agreed to be given by another person.

(2) A person who contravenes this section shall be guilty of an offence and liable upon conviction to a fine not exceeding 50 penalty points.

Competitions

6.—(1) A person must not, in connection with the sale of a tobacco product or for the purpose of promoting the sale of a tobacco product—

- (a) supply to the purchaser or any other person—
 - (i) a prize, gift or other benefit;

- (ii) a stamp, coupon, token, voucher, ticket or any other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional); or
 - (iii) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, a prize, gift, or other benefit (whether the entitlement or qualification is absolute or conditional); or
- (b) conduct a scheme declared by Regulations to be a scheme to promote the sale of tobacco product or to promote smoking generally.

(2) A person who contravenes subsection (1) commits an offence and shall be liable upon conviction to fine not exceeding 50 penalty points.

(3) In proceedings for an offence against subsection (2), it is a defence to prove that the benefit or thing supplied or participation in the scheme, was only incidentally connected with the purchase of a tobacco product and that equal opportunity to receive the benefit or thing, or to participate in the scheme, was afforded generally to persons who purchased products whether or not they were tobacco products.

Prohibition on Brand Stretching

7.—(1) A person must not advertise, display for sale or distribution, sell, or distribute any goods which are not a tobacco product, or any service, in any manner or form that contains any writing, picture, image, graphic, logo message, colour or other matter, in whole or part, that is commonly identified or associated with, or is likely to be identified or associated with a tobacco product or trademark or brand name, or part of a trademark or brand name of a tobacco product or manufacturer.

(2) A person must not display on any building (including, but not limited to any building which is or houses a club, restaurant, or stadium) or on any other structure or in any other place any name, writing, picture, image graphic, logo message, colour or other matter, in whole or part, which is commonly identified or associated with, or is likely or intended to be identified or associated with a tobacco product or trademark or brand name, or part of a trademark or brand name, of a tobacco product or manufacturer.

(3) Nothing in subsection (2) applies in respect of the business premises of any manufacturer or seller whose sole or principal business is either the manufacture or sale of tobacco products.

- (4) Any person who contravenes subsection (1) or (2) commits an offence and is liable upon conviction:
- (a) in the case of a body corporate, to a fine not exceeding 200 penalty points
 - (b) in the case of an individual, to a fine not exceeding 50 penalty points or a term of imprisonment of not more than one year, or both.

Prohibition against reverse brand stretching.

8.—(1) A person must not display (either in whole or in part) on a tobacco product, any brand name, trademark or other sign, symbol, logo, or similar visual matter which is commonly associated with any goods which are not a tobacco product, or any service.

- (2) A person who contravenes subsection (1) commits an offence and is liable upon conviction —
- (a) in the case of a body corporate to a fine not exceeding 200 penalty points; or
 - (b) in the case of an individual to a fine not exceeding 50 penalty points or a term of imprisonment of not more than one year, or both.

PART 3—LABELLING OF TOBACCO CONTAINERS

Obligation to print health warnings etc

9.—(1) There must be clearly and conspicuously printed or otherwise marked on every container of a tobacco product sold in the course of any trade or business in the prescribed form and manner, the health warnings required by the regulations about the health hazards and health effects arising from the use of the tobacco product.

(2) The notice specified in Part A of Schedule 1 must appear in the appropriate language below the health warning prescribed under the regulations.

(3) The health warning required by subsection (1), together with the notice required by subsection (2), must be placed in a block which must cover not less than—

- (a) 30% of the front surface; and
- (b) 90% of the back surface of the packet only.

(4) A manufacturer or distributor of tobacco products must ensure that during each calendar year the different health warnings prescribed by regulation, insofar as practicable, appear on equal numbers of containers of each brand of any tobacco product sold or distributed by that manufacturer or distributor.

(5) If the health warning and notice appear on a label, the label must be securely affixed to the container.

(6) The Minister for Health may make regulations in respect to the health warning that must appear on the container.

(7) A person who contravenes this section or with any regulations made by the Minister under this section commits an offence and liable upon conviction to fine not exceeding 50 penalty points and in the case of a body corporate, to a fine not exceeding 200 penalty points.

Obligation to print tar and nicotine content

10.—(1) There must be clearly and conspicuously printed or otherwise marked on every cigarette container a statement of the level or maximum level of tar and nicotine in milligrams (mg) per cigarette in the container.

(2) The statement of the level of tar and nicotine must comply with any regulations made by the Minister as to the size, placement, colour, style or any other aspect of the statement.

(3) A person must not sell any cigarette—

- (a) in any container which is not marked in accordance with subsection (1) or with any regulations made by the Minister; or
- (b) which contains tar or nicotine in excess of the level stated on the container.

(4) Any person who contravenes this section or with any regulations made by the Minister under this section commits an offence and shall be liable upon conviction to fine not exceeding 50 penalty points and in the case of a body corporate, to a fine not exceeding 200 penalty points.

Misleading labelling

11.—(1) A person must not sell or distribute, or cause or permit to be sold or distributed, or authorise the sale of a tobacco product in a package that is marked or printed with any misleading labelling.

(2) The Minister for Health may make regulations—

- (a) respecting prohibited misleading labels on packages.
- (b) amend, add to or replace the prohibited misleading labels.

(3) A person who contravenes this section or against any regulations made by the Minister under this section commits an offence and shall be liable upon conviction to fine not exceeding 50 penalty points and in the case of a body corporate, to a fine not exceeding 200 penalty points

PART 4—RESTRICTIONS ON TAR AND NICOTINE CONTENT

Restrictions on tar and nicotine content

12.—(1) The level of tar in any cigarette must not exceed 15 milligrams (mg) (ISO standard) and the level of nicotine must not exceed 1.5 milligrams (mg) (ISO standard).

(2) The Minister may, by regulations, increase or decrease the maximum allowable levels of tar and of nicotine per cigarette specified in subsection (1).

(3) A person must not sell any cigarette which contains tar or nicotine in excess of the maximum level prescribed by subsection (1) or under subsection (2).

(4) A person who contravenes this section or with any regulations made by the Minister under this section commits an offence and shall be liable upon conviction to fine not exceeding 100 penalty points.

PART 5—RESTRICTIONS ON SALE AND SMOKING OF TOBACCO PRODUCTS

Prohibition on supplying tobacco to persons under 18 years old

13.—(1) A person must not—

- (a) sell or supply any tobacco product to a person under the age of 18 years;
- (b) purchase a tobacco product for the use of a person under the age of 18 years;

(2) A person retailing in tobacco products must—

- (a) place a clear and prominent notice inside the retail outlet, notifying on prohibition of sale of tobacco products to any persons under 18 years old and;
- (b) prior to selling a tobacco product to any person suspected to be under the age of 18 years, must request for a document of identification.

(3) In this section, “document of identification”, of a person means an evidence of age document within the meaning of the Liquor Act 2006 that—

- (a) is a driving licence or passport or identification card issued by an educational institution or the Fiji National Provident Fund;
- (b) contains a photograph that could reasonably be taken to be of the person; and
- (c) indicates that the person to whom the document was issued is at least above the age of 18 years.

(4) A person found to be contravening subsections (1) and (2) commits an offence and shall be liable to a fixed penalty in Schedule 7.

(5) In a proceeding for an offence under subsection (1), it is a defence if it is established that the person attempted to verify that the person was at least eighteen years of age by asking for and being shown “document of identification” for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic.

Prohibition on sale of tobacco via Vending Machines

14.—(1) A person must not place, or cause or permit to be placed, a vending machine for sale of tobacco products or use by members of the public in any place within Fiji.

(2) Any person who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding 50 penalty points and in the case of a body corporate, to a fine not exceeding 200 penalty points.

Number of cigarettes in package

15.—(1) A person must not sell—

- (a) cigarettes in a package containing less than 10 cigarettes;
- (b) portions of the product.

(2) A person found to be contravening subsection (1) commits an offence and shall be liable to a fixed penalty in Schedule 7.

Restriction on sale of tobacco products in small quantities

16.—(1) A person must not sell or cause or permit to be sold—

- (a) loose cigarette sticks or cigarette roll; or
- (b) loose tobacco in a package that contains less than twenty (20) grams of tobacco.

(2) A person found to be contravening subsection (1) commits an offence and shall be liable to a fixed penalty in Schedule 7.

Confectionery and toys

17.—(1) A person must not sell—

- (a) any confectionery or other food, or
- (b) any toy, amusement or other product;

that resembles a tobacco product, contains brand name, trademark of a tobacco product or is packaged to resemble a tobacco product.

(2) A person found to be contravening subsection (1) commits an offence and shall be liable to a fixed penalty in Schedule 7.

Prohibition on chewing tobacco

18.—(1) A person must not sell or distribute, or cause or permit to be sold or distributed, or authorise the sale of any product containing chewing tobacco or labelled as containing tobacco which is marked as suitable for chewing or for any other oral use.

(2) A person found to be contravening subsection (1) commits an offence and shall be liable to a fixed penalty in Schedule 7.

Prohibition on smoking in public places

19.—(1) A person must not smoke any tobacco product in any of the following public places—

- (a) amusement centre, theatre or sports stand;
- (b) hospital or clinic;
- (c) lifts;
- (d) public service vehicle (within the meaning of the Land Transport Act 1998);
- (e) airport terminal building except in duty free outlets and designated smoking area;
- (f) prescribed smoke-free building or prescribed smoke-free area;
- (g) eating-houses;
- (h) bus stations except for a designated smoking area;
- (i) internet shops;
- (j) any water transport including ships, ferries or any other means which transports passengers by sea or river; and
- (k) any other public place to which the public has access as the Minister may designate by way of a *gazette* notice.

(2) A person found to be contravening subsection (1) commits an offence and shall be liable to a fixed penalty in Schedule 7.

(3) The registered owner of the place and the person in charge of any place referred to in subsection (1) must both ensure that—

- (a) no person smokes; and
- (b) a 'no smoking' sign is clearly and conspicuously displayed, in that place.

(4) A person found to be contravening subsection (3) commits an offence and is liable to a fixed penalty in Schedule 7.

Minister may prescribe smoke-free buildings or smoke-free areas

20.—(1) The Minister may by regulations and subject to any conditions he thinks fit, prescribe any class of buildings or any part thereof to which members of the public have access to be places in which smoking is prohibited.

(2) The Minister may, by order in the Gazette and subject to any conditions he thinks fit, prescribe any specific building, or part thereof, to which members of the public have access to be a place in which smoking is prohibited either permanently or for any period he thinks fit.

Tobacco Control Fixed Penalty Notice

21.—(1) An authorised officer may issue a Tobacco Control Fixed Penalty Notice in Schedule 2 to a person who commits an offence under the relevant sections in this Decree as stipulated in Schedule 7.

(2) Subject to subsection (1), where a tobacco control fixed penalty notice served upon a person has not been accepted by compliance with the prescribed penalty within 21 days of the date of the tobacco control fixed penalty notice, the tobacco control fixed penalty notice shall be regarded for all purposes as a summon issued under the provisions of the Criminal Procedure Decree.

Proceedings for Tobacco Control Fixed Penalty Notice

22.—(1) Notwithstanding the other requirement of the Criminal Procedure Decree, but subject to the provision of section 37 (1) and (2) of this Decree, an authorised officer may institute proceedings in respect of the alleged

commission of an offence by serving personally upon the person alleged by him to have committed the offence a Tobacco Control Fixed Penalty Notice as in Schedule 2.

(2) A Tobacco Control Fixed Penalty Notice shall comply with the following requirements —

- (a) state the place, date and time of alleged offence;
- (b) state the name and address of the person to whom the notice is issued;
- (c) notify the person to whom the notice is issued when and where the fixed penalty may be paid;
- (d) require the person to whom the notice is issued to pay within 21 days. In the event of failure to pay the fixed penalty legal proceedings shall be instituted within the next 21 days and the person may have a barrister and solicitor or enter a written plea of guilty on their behalf;
- (e) notify the person to whom the notice is issued that, in case of default in payment within the time specified in the notice, the court may, if the person is found guilty by the court, impose a penalty which is more than the fixed penalty for the offence or if unable to pay apply section 37 (1) and (2) of the Sentencing and Penalties Decree 2009 (Decree No. 42); and
- (f) shall bear the date on which it was served on the person charged as the case requires.

(3) A tobacco control fixed penalty notice shall not be served upon a person more than 14 days after the day on which the offence is alleged to have been committed.

(4) The authorised officer who issues a tobacco control fixed penalty notice shall cause a signed copy of that notice to be placed before the court specified in the notice no later than 7 days after the date of the notice.

(5) Nothing in this section shall be taken to prevent the institution of proceedings under any other provision of this Decree.

PART 6—REGISTRATION OF WHOLESALERS, RETAILERS OF TOBACCO PRODUCTS AND SUKI VENDORS

Wholesalers, retailers of tobacco products and Suki vendors to be registered

23.—(1) No person shall conduct in whole or in part, the business of selling tobacco products including Suki by retail, or wholesale without first being registered.

(2) The Minister shall, on the commencement of this section, cause to be established and maintained a register of all persons who carry on the business of selling tobacco products including Suki by wholesale and retail.

(3) An application under this section must be made in writing in the prescribed form in Schedule 5 and must—

- (a) specify the name of the applicant and the address at which he or she ordinarily resides,
- (b) specify the address of each premises at which the applicant carries on, in whole or in part, the business of selling tobacco products by retail and or wholesale;
- (c) contain such other information as may be prescribed by regulations made by the Minister.

(4) Subject to subsection (3), a person who knowingly provides information or a particular that is false or misleading, shall be guilty of an offence and is liable upon conviction to a fine not exceeding 10 penalty points.

(5) The Minister may, by regulation and subject to any conditions he thinks fit, prescribe the conditions for registration in relation to wholesalers, retailers and distributors.

(6) A person who sell or distribute, or cause or permit to be sold or distributed, or authorise the sale of tobacco products without being registered under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 50 penalty points.

Notification of change of name, address, etc

24.—(1) Any person registered pursuant to this Decree, shall notify the Minister within 28 days of any change which may affect the records with regards to—

- (a) a persons name;
- (b) a person's employment or business address; or
- (c) any other detail requiring notification pursuant to this Decree.

(2) Notification of any change under subsection (1) shall be made—

- (a) on the approved form;
- (b) accompanied by the relevant certificate of registration.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 10 penalty points.

PART 7—LICENSING OF MANUFACTURERS, IMPORTERS, DISTRIBUTORS AND SUKI VENDORS.

Licence required for Manufacturers, Importers and Distributors of tobacco products

25.—(1) No manufacturer, importer, distributor or person, partnership, corporation or other entity shall conduct on any premises the business of manufacture, importation, production, distribution, of tobacco products without first obtaining a Tobacco control manufacture or Importation licence upon payment of the fee specified in Schedule 3.

(2) The Minister shall serve as the licensing authority and shall have the authority to prescribe the requirement under the regulation for the grant of new, renewal of a licence or revocation of licence.

(3) A licence once granted shall be valid for a period up to one calendar year.

(4) Applications for the issue or renewal of a licence shall be made in writing to the Minister for Health on an annual basis in the appropriate application form;

(5) Any person who operates without a licence commits an offence and is liable upon conviction to a fine not exceeding 500 penalty points.

Licence required for selling of suki or hand rolled tobacco

26.—(1) A person must not conduct on any premises in whole or in part the business to sell, barter, cause or permit to be sold suki without a valid suki vendor licence.

(2) The Minister shall serve as the licensing authority and shall have the authority to prescribe the requirement under the regulation for the grant of new, renewal of a licence or revocation of licence.

(3) Applications for the issue or renewal of a licence shall be made in writing to the Minister for Health on an annual basis on the approved form in schedule 4 with the specified fee in Schedule 3.

(4) Any person who operates without a licence commits an offence and is liable upon conviction to a fine not exceeding 50 penalty points.

PART 8—AUTHORISED OFFICER

Appointment of authorised officer

27.—(1) The Minister upon the recommendation of the Permanent Secretary may by notice in the Gazette appoint any person or class of persons as officers authorised to carry out inspections and investigations as necessary or appropriate under this Decree and to take enforcement actions against persons found to have violated any provision of this Decree.

(2) While carrying out their duties, authorised officers shall present proof of identity of their appointment if requested by the person being inspected or investigated.

Powers of entry, search and seizure

28.—(1) For the purposes of this Decree, an authorised officer may at all reasonable times—

- (a) enter any premises he knows or reasonably suspects—
 - (i) are being used for the production, manufacture, assembly, preparation, storage or sale of any tobacco product, tobacco product container or tobacco product advertisement;
 - (ii) have been or are being or are likely to be used by any person in connection with a contravention of this Decree;
- (b) enter any premises where he knows or reasonably suspects that records are kept relating to the sale or manufacture of tobacco products or to tobacco product advertisements or relating to a contravention of this Decree;

- (c) enter any premises which he knows or reasonably suspects are being used by any person for the printing, or as an office in connection with the printing, of any newspaper or other publication, or the manufacture or distribution of any videotape, associated with any contravention of this Decree;
- (d) enter any broadcasting or television station which he knows or reasonably suspects is associated with any contravention in this Decree;

(2) In any premises entered by him—

- (a) search for, take possession of, or make copies of, or extracts from records relating to any tobacco product, or tobacco product advertisement, or container supplied or to be supplied, or relating to any matter the subject of an investigation under this Decree;
- (b) search for and examine goods found thereon;
- (c) seize any tobacco product or tobacco product advertisement or container without payment or take any such thing found thereon, upon payment or tendering of a reasonable price for the product or advertisement;
- (d) seize without payment any brochures, leaflets, books, writing, documents or other materials that he knows or reasonably suspects have been, are being, or are likely to be used to advertise, promote, publicise or packaging any tobacco product in contravention of this Decree;
- (e) open any room, place, container or package that he knows or reasonably suspects contains any tobacco product or tobacco product advertisement;
- (f) question with respect to matter under this Decree any person he finds thereon;
- (g) make such inquiry and examination as he believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Decree or to ascertain whether any contravention of this Decree has been, is being or is likely to be committed.

(3) Subsection (1) does not authorise forcible entry by an authorised officer to any premises except under the authority of a warrant obtained pursuant to subsection (4) or (5).

(4) Before an authorised officer enters part of any premises, he must, if the part is used as a dwelling, and unless he has the permission of the occupier of that part to enter, obtain from a Resident Magistrate a search warrant to enter that part.

(5) A Resident Magistrate, if satisfied upon the information of an authorised officer that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this Decree or for the keeping of records relating to a contravention of this Decree, may issue a search warrant directing the authorised officer to enter the place specified in the search warrant for the purpose of exercising the powers conferred on an authorised officer by this Decree.

(6) A search warrant issued under this section is, for a period of one month from its issue, sufficient authority—

- (a) to the authorised officer to whom it is directed and to all persons acting in aid of the officer to enter the place specified in the search warrant; and
- (b) to the authorised officer to whom it is directed to exercise in respect of the place specified in the search warrant all the powers conferred on an authorised officer by this Decree.

(7) For the purpose of gaining entry to any place an authorised officer may call in aid such persons as he considers necessary and such persons, while acting in aid of an authorised officer in the lawful exercise of a power of entry, have a like power of entry.

(8) If an authorised officer has taken possession of records or of other property for the purposes of this Decree he may—

- (a) in the case of records, retain them for as long as necessary for those purposes, but the person otherwise entitled to possession of the records, if he so requests, is entitled to be furnished as soon as practicable with a certified copy must be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original.
- (b) in the case of other property, subject to this Decree, retain the property for as long as it is necessary for those purposes, and thereafter dispose of it as the Court directs.

Power to obtain information

29.—(1) In relation to any matter relevant to the operation or enforcement of this Decree, an authorised officer may require a person (either by oral or written requisition) to furnish—

- (a) any information,
- (b) any records or a copy thereof,

in the person's possession.

(2) For the purpose of subsection (1), a person is to be taken to be in possession of—

- (a) information, if the person has the information or is entitled to access to the information;
- (b) records, if the person has them in his possession or under his control in any place, whether for his own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.

(3) A requisition made under subsection (1) may require that the information or records or copy thereof be furnished—

- (a) to the authorised officer or another authorised officer or to an officer of a specified department of the Government;
- (b) at the place the requisition is made or at another place;
- (c) forthwith or at, by or within a time specified;
- (d) in person, or by registered mail or in another manner specified;
- (e) by means of, or accompanied by, verification in the form of a statutory declaration;
- (f) in the case of information, orally or in writing.

(4) A person must not without reasonable cause—

- (a) refuse or fail to furnish any information, records or copy as required under this section;
- (b) in response to a requisition made under this section furnish information, records or copies that is or are false or misleading in a material particular.

(5) A person may not refuse to furnish any information, records or copy on the ground that its contents may incriminate him, but if a person, at the time he supplies any information, records or copy states in writing that the information, records or copy is, or may be, incriminating of him, the information, records or copy may not be used in any proceedings against that person for an offence against this Decree.

(6) If a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this section to produce any records containing those matters is to be construed as including a duty to produce the matters in written form if that is demanded.

(7) The duty imposed by this section to produce a copy of any records is to be construed as a duty to produce a clear reproduction.

(8) An authorised officer may take notes or copies of or extracts from records or a copy of any records produced under this section.

Continuing offence

30.—(1) If a person commits an offence by failing to furnish information required under section 29 or to produce any records or a copy of any records—

- (a) the obligation to furnish the information or produce the records or a copy of them, as the case may be, continues until the person complies with the requirement notwithstanding that in a particular case a time was specified at, by or within which compliance was required and that time has passed;
- (b) the person commits a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues;
- (c) the person is liable to a fine of 1 penalty unit for each day during which the offence continues; and
- (d) the person may be prosecuted from time to time in respect of the offence.

Obstruction

31.—(1) A person must not obstruct an authorised officer in the exercise of his powers under this Decree.

(2) For the purposes of this Decree, a person obstructs an authorised officer in the exercise of his powers under this Decree if he—

- (a) assaults, abuses, intimidates or insults the authorised officer or any other person assisting the authorised officer in the exercise of his powers under this Decree;
- (b) directly or indirectly deliberately prevents any person from being questioned by an authorised officer or from furnishing under this Decree any information or records or copies or attempts to do so; or
- (c) in any other way obstructs or attempts to obstruct an authorised officer in the exercise of his powers under this Decree.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 10 penalty points or imprisonment for a term not exceeding three months or both.

Directions may be issued to secure compliance

32.—(1) If—

- (a) any tobacco product, container, label, tobacco product advertisement, eating-house, smoke-free building, smoke-free area, or other place or thing does not comply in every respect with the provisions of the Decree; or
- (b) any provision of this Decree has not been complied with in relation to any of the aforementioned,

an authorised officer may, issue a Compliance Notice in Schedule 6 to any person who has contravened the provision by such non-compliance to take within a specified time, not exceeding 14 days, such steps as may be specified to prevent any future contravention and to remedy the matters in respect of which the non-compliance has occurred.

(2) The issue of a direction under this section does not affect any proceeding under this Decree which has been or may be taken for the non-compliance which gave rise to the direction.

(3) A person to whom a direction is issued under this section and who does not comply with the direction commits an offence.

Removal of advertisements and destruction of tobacco products

33.—(1) If a person is convicted of an offence under section 3, the Court, in addition to imposing any other penalty, may order—

- (a) that the advertisement be removed or obscured or destroyed by an authorised officer; and;
- (b) that the person convicted pay the reasonable costs incurred by the authorised officer in removing or obscuring or destroying the advertisement.

(2) If the person is convicted of an offence under section 9, 10, 11 or 12, the Court, in addition to imposing any other penalty, may order—

- (a) that the tobacco product be forfeited and thereafter confiscated and destroyed by an authorised officer and
- (b) that the person convicted pay the reasonable costs incurred by an authorised officer in confiscating and destroying the tobacco product.

(3) Costs payable under subsection (1) or (2) may be recovered as a debt due to the State or to the council of a municipality or local authority or to a statutory body, as the case requires.

PART 9—MISCELLANEOUS

Power to exempt

34.—(1) The Minister may, by regulations and subject to any conditions he or she thinks fit, exempt a class of persons, advertisements or events wholly or in part from the operation of section 3 or 5.

(2) The Minister may, by order in the *Gazette*, and subject to any conditions he or she thinks fit, exempt a person, advertisement or event wholly or in part from the operation of section 3 or 5.

Offences and penalty

35. A person who contravenes or fails to comply with any provision of this Decree creating an offence commits an offence and upon conviction is liable, if no other penalty is specified, to a fine not exceeding 50 penalty points for a first offence and a fine not exceeding 100 penalty points for a second or subsequent offence.

Offences by body corporate

36. If a body corporate commits an offence against this Decree, each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for, that offence unless the director or other person proves that he exercised reasonable diligence to prevent the commission of the offence.

Procedures and proceedings

37.—(1) Proceedings for an offence under this Decree may be brought—

- (a) by or on behalf of the Director of Public Prosecutions;
- (b) by a member of the police force; or
- (c) by an authorised officer.

(2) A person referred to in subsection (1) (b) or (c), whether or not a legal practitioner, may lay, institute or conduct any charge, information, complaint or other proceeding arising under this Decree, subject to any directions issued by the Director of Public Prosecutions.

Application of penalties

38. Penalties under this Decree form part of and must be paid into the Ministry of Health General revenue fund and shall be transferred to the Consolidated Fund.

Contracts etc. void

39.—(1) A contract, agreement, undertaking or understanding which is in effect when this Decree comes into force is void to the extent to which it is inconsistent with this Decree.

(2) Neither the State nor any person is liable to pay any damages or other compensation to any other person in consequence of subsection (1).

Regulations

40. The Minister may make regulations, not inconsistent with this Decree, prescribing matters necessary or convenient to be made for carrying out or giving effect to this Decree.

Repeals and savings

41. The Tobacco Control Act of 1998 and all its subsidiary laws are repealed except for the following provisions under the Tobacco Control Regulations 2000—

- (a) Regulations 1,2 and 3 of Part 1;
- (b) Regulation 9 of Part 4;
- (c) Regulations 16, 17 18, 19,20, 21 and 22 of Part 6;
- (d) Regulations 25 and 26 of Part 8;
- (e) Regulations 27,28, 29, 30,31, 33, 34 and 35 of Part 9;
- (f) Regulations 37, 38, 39, 40, 41 of Part 10; and
- (g) Schedule 2,

until at such a time when these regulations maybe repealed.

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

EPELI NAILATIKAU
President of the Republic of Fiji

SCHEDULE 1
(Section 9)

PART A

FIJI GOVERNMENT HEALTH WARNING

SCHEDULE 2

TOBACCO CONTROL FIXED PENALTY NOTICE

To: _____ of _____

Place of Offence: _____

Date of Offence: _____

Time of Offence: _____

YOU ARE HEREBY CHARGED as follows:

Statement of Offence: _____

contrary to _____

Maximum Penalty: _____ penalty points (\$ _____).

Particulars of Offence: _____

TAKE NOTICE that, if not later than 21 days from the date hereof, payment of the fixed penalty of penalty points (\$ _____) which is equivalent to is received as specified below at a Ministry of Health office, all liability in respect of the offence will be discharged and no further action will be taken. **HOWEVER**, if the fixed penalty is not paid within the specified time you will be required to attend court at _____ Magistrates Court to answer the charges set out above on the _____ day of _____ 20____.

UNLESS—

- (a) You admit the offence and plead guilty in writing; **OR**
- (b) An appearance is made on your behalf by a barrister and solicitor, in which case your personal attendance will be excused and the case will be disposed off in your absence.*

NOTICE: In case of default in payment within the time specified in the notice, the court may, if the person is found guilty by the court, impose a penalty which is more than the fixed penalty for the offence or if unable to pay the fixed penalty may apply section 37 (1) and (2) of the Sentencing and Penalties Decree 2009 (Decree No. 42 of 2009).

Signed.....

Authorised officer

Designation:

Date: _____

**see back of form for affidavit of Service*

AFFIDAVIT OF SERVICE
(To be completed in all cases)

I, _____ as the authorised officer whose signature appears at the foot of the Tobacco Control Fixed Penalty Notice above, make oath and say that, on the _____ day of _____ at _____ I did serve upon the accused person specified therein.

A true copy of that Tobacco Control Fixed Penalty Notice.

Sworn by the above named Authorised Officer at this _____ day of _____ 20 _____

Before: _____
 Justice of Peace or Commissioner of Oaths

 Authorised Officer

WRITTEN PLEA OF GUILTY

I, _____ being the person named above hereby enter a plea of guilty to the charge specified

Signed _____ Date: _____

SCHEDULE 3
ANNUAL LICENCE FEES

Section	Licensee	Fees Payable (VIP)
25 (1)	Local Manufacturers (including importer & distributor of Tobacco products)	\$250,000.00
25 (1)	Importers (whether for domestic distribution, ship stores or duty free)	\$150,000.00
26 (2)	Suki vendors	\$200.00

SCHEDULE 4

Application for Manufacturer, Importer, distributor of Tobacco Products and Suki vendor Licence Form
(Section 25 & 26)

Licence No:.....

Section 1: Business Information

New

Renewal

1. Registered Business name

.....
.....

2. Registered Business Address.....Town/City.....

3. Mailing Address.....

4. Business Type (Please tick all that apply)

Manufacturer and importer Importer Distributor Suki vendor

5. Bus Tax Registration Number..... 6. Bus Registration number.....

7. Business contact

Authorised person:

Phone:.....

Fax:.....

Email:

8. Parent Corporation..... Address & contact.....

Section 2: Fees due & Payable—(Section 25 (1) as per schedule 3)

1. Manufacturer and Importer of tobacco products	<input type="checkbox"/>	\$250,000.00
2. Importer of tobacco products	<input type="checkbox"/>	\$150,000.00
3. Suki Vendors	<input type="checkbox"/>	\$200.00
3. Total Amount due and payable		\$.....

Section 3: Renewal Only

Manufacturer and importer Importer Distributor Suki vendor

Amount Due as payable \$.....

Section 4: Requirements to submit and update schedule of tobacco products brand

Please complete and submit with your application the schedule of tobacco products, family names.

(Not applicable to suki vendor)

Full Product Name	Local	Import	Quantity Sold (last calendar year)

Section 5: Certification for Manufacturer, Importer and Distributor & suki vendor Licence

I hereby declare that the particulars furnished in this application are correct and have been examined by me and to the best of my knowledge and belief are true and correct.

Name:.....

Position:.....

Signed
(Applicants Signature)

Date:
(dd/mm/yy)

Company Stamp.....

It is an offence to knowingly or recklessly provide false or misleading information.

SCHEDULE 5

Application Form for Registration of Wholesaler and Retailer of Tobacco Products and Suki vendors

(Section 23 (3))

Section 1: Application Detail

Reg. No:.....

Business Type (Please tick)

Wholesaler Retailer Suki Vendor

Title Mr..... Mrs..... Ms..... Other.....
Applicant name

..... Date of Birth.....

Trading as:.....

Business contact & Address

Business Address:

Phone:.....

Fax:.....

Email:

Company Registration number..... T.I.N Number..... Business Licence:.....
Mailing Address Division: Town/City
.....
.....
.....

How are cigarettes sold? Over the counter Display Rack No. of Display Rack

If purchasing or leasing an existing business

Name of Business purchased.....

Address.....

Registration Number of previous owner.....

Date of purchase.....

Section 2: Premises Detail (Tick appropriate box)

Nature of Business

Convenience store..... Hotel..... Duty free shop..... Registered club.....

Dairy Shop..... Motel..... Restaurant..... Services station.....

Supermarket..... Nightclub..... Ship.....

Other (Specify):.....

Section 3: Supplier Details (Enter details of each of your tobacco suppliers)

Supplier Name	Business Address	Local (L)	Import (I) List country

Section 4: Declaration

I hereby declare that the particulars furnished in this form are correct and request that the above details be entered in the register.

Name

.....

Signed

.....
(Applicants Signature)

Date

.....
(dd/mm/yy)

It is an offence to knowingly or recklessly provide false or misleading information.

SCHEDULE 6

COMPLIANCE NOTICE

(Section 32)

Notice number:

To:

.....
.....

Business address & contact:

.....
.....

This NOTICE is issued to inform you of non compliance: [state provision of the Decree or Regulations that have allegedly been breached]

.....
.....
.....
.....

You are required within days of the date of this notice to remedy the non compliance and take the following action:

- 1.].....
- 2.].....
- 3.].....

Failure to comply with this NOTICE within the specified time frame may result in court proceedings.

Signed.....
(Authorised Officer)

Date:.....

SCHEDULE 7**FIXED PENALTY**

SECTION	OFFENCES	FIXED PENALTY
4 (2)	Distributing of free sample of tobacco product, offer, give or distribute a free sample of a tobacco product	5 penalty points
13 (4)	Selling or supplying tobacco products to person under the age of 18 years; OR Purchasing a tobacco product for the use of a person under the age of 18 years Failure to place a clear and prominent notice inside the retail outlet, notifying on the prohibition of the sale of tobacco products to any person under the age of 18 years; OR Failure to request for a documents of identification prior to selling a tobacco product to any person suspected to be under the age of 18 years	10 penalty points 10 penalty points 10 penalty points 10 penalty points
15 (2)	Selling cigarettes in a package containing less than 10 cigarettes; OR Selling cigarettes portion of the product	10 penalty points 10 penalty points
16 (2)	Selling or causing or permitting to be sold loose cigarettes sticks or cigarette roll; OR Selling or causing or permitting to be sold loose tobacco in a package that contains less than 20 grams of tobacco	10 penalty points 10 penalty points
17 (2)	Selling any confectionery or other food that resembles a tobacco product, contains brand name, trademark of a tobacco product or is packaged to resemble a tobacco product; OR Selling any toy, amusement or other product that resembles a tobacco product, contains brand name, trademark of a tobacco product or is packaged to resemble a tobacco product	10 penalty points 10 penalty points
18 (2)	Selling or distributing, or cause or permit to be sold or distributed or authorise the sale of any product containing chewing tobacco or labelled as containing tobacco which is marked as suitable for chewing or for any other oral use	5 penalty points
19 (2)	Smoking in a public place in either of the places mentioned in section (19) (1)	2 penalty points

19 (4)	<p>Failure by the owner of the place and the person in charge in ensuring that no person smokes in a public place as is mentioned in section 19 (1) of the Decree; OR</p> <p>Failure by the owner of the place or the person in charge from ensuring that a 'no smoking' sign is clearly and conspicuously displayed in the place</p>	<p>10 penalty points'</p> <p>10 penalty points</p>
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