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LEGAL PRACTITIONERS DECREE 2009
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IN exercise of the powers vested in me as the President and Commander in Chief of the Republic of the Fiji Military Forces, I hereby make the following Decree:

PART 1—PRELIMINARY

Short title and Commencement

1. This Decree may be cited as the Legal Practitioners Decree 2009, and shall come into force on 22nd May 2009.

Interpretation

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

“Attorney-General” means the Attorney-General for the Republic of Fiji, appointed under the Executive Authority of Fiji Decree 2009 (as may be amended from time to time);

“Board” means the Board of Legal Education;

“Chairperson” means a person appointed as such under subsection (3) of Section 3 or subsection (1) of Section 75;

“Chief Justice” means a Chief Justice of the High Court of Fiji, appointed under the Administration of Justice Decree 2009;

“Commission” means the Independent Legal Services Commission, established under section 84;

“Commissioner” means the Commissioner of the Independent Legal Services Commission appointed under section 85;

“complaint” means a complaint made to the Registrar under section 99;

“Council” means the Council of the Society;

“Court” means the High Court of Fiji;

“disciplinary proceedings” means proceedings commenced against a legal practitioner, or law firm or an employee or agent of a legal practitioner or law firm by way of an application to the Commission under Part 9;

“law firm” means a legal practice carried out by a partnership of legal practitioners or by a sole practitioner, whether with or without any other legal practitioners as associates or employees;

“Minister” means the Attorney-General for the Republic of Fiji;

“practising certificate” means the certificate issued by the Registrar under Part 5;

“practitioner” or “legal practitioner” means a person admitted to practice as a legal practitioner under the provisions of this Decree and includes a person who before the commencement of this Decree was admitted as a legal practitioner in the Fiji Islands;

“prescribed” means prescribed by rules or regulations made under the provisions of this Decree;

“Registrar” means the Chief Registrar of the Court;

“repealed Act” means the Legal Practitioners Act 1997 repealed by section 148(1);

“Roll” means the Roll of the Court;

“Secretary” means secretary of the Society;

“Society” means the Fiji Law Society;

“special resolution” means a resolution passed by not less than two thirds of such members of the Society as may be present and vote thereon at a general meeting of the society duly convened with full notice of the intention to propose such resolution as a special resolution.

PART 2—LEGAL EDUCATION BOARD

Establishment

3.—(1) There is established by this Section the Board of Legal Education.

(2) Subject to subsection (4), the members of the Board appointed before the commencement of this Decree shall continue as members of the Board, as if appointed under this Decree.

(3) The Board shall be a body corporate with perpetual succession.

(4) The Board shall be constituted by—

- (a) the Solicitor-General for the Republic of Fiji;
- (b) the Dean of the school or faculty of law of the University of the South Pacific;
- (c) the Chief Justice of the High Court of Fiji;
- (d) the Registrar;
- (e) the Dean, appointed by the Attorney-General, of a school or faculty of law of a University in Great Britain, Australia or New Zealand. The appointment shall not exceed three years in duration, but may be renewed;
- (f) a person having legal qualifications, appointed by the Attorney-General, who shall be the Board's Chairperson. The appointment shall not exceed three years in duration, but may be renewed.

(5) Each of the persons who constitute the Board, save for the Chairperson, may delegate to some other person his or her office as a member of the Board. This delegation shall not exceed two years in duration but may be renewed.

(6) Appointments and delegations made pursuant to this Section may be terminated at any time by the person entitled to make the appointment or delegation, as the case may be.

Role of the Board of Legal Education

4.—(1) The Board shall ensure, so far as is practicable, that the educational qualifications, both academic and practical, of persons wishing to be admitted to practice as legal practitioners in the Fiji Islands are of a high quality, and sufficient to meet the needs of consumers of legal services in the Fiji Islands.

(2) The Board may approve such—

- (a) courses in the study of law at tertiary educational institutions (whether within or outside the Fiji Islands), and
- (b) programmes or courses of practical legal instruction and training, as it considers are appropriate educational qualifications for persons wishing to be admitted to practice as legal practitioners in the Fiji Islands.

(3) Any approval made by the Board may be reviewed by it at any time, and may be withdrawn by it.

(4) In determining whether or not to grant or withdraw any approval, the Board may take into consideration—

- (a) qualifications for entry into the course or programme;
- (b) the subjects to be successfully undertaken for graduation;
- (c) the language in which the course or programme is undertaken;
- (d) the course curriculum;
- (e) the means by which instruction and training is provided;
- (f) differences between the law of the Fiji Islands, and the law in which instruction takes place;
- (g) lecture and tutorial sizes;
- (h) nature and standard of assessment procedures;
- (i) teaching profiles, including number, qualifications, standing and teaching loads;
- (j) computer and library resources, and such other matters as it may think fit.

(5) The Board shall notify the Registrar of any approval or withdrawal of approval made pursuant to this Section. These notifications shall be available for inspection by the public and may be accepted by the Chief Justice as evidence of the matters set out therein.

(6) In case of a person who is desirous of being admitted to practice as a legal practitioner, but whose educational qualifications have not been approved in all necessary respects, the Board may if it considers appropriate advise the applicant of the further educational qualifications it considers necessary to qualify the applicant for admission.

(7) The application shall be accompanied by such fee as the Board from time to time considers appropriate. This fee shall be paid to the Board to defray in part the costs and expenses of the Board.

(8) In considering the application, the Board shall take into account in respect of an applicant—

- (a) all tertiary academic qualifications;
- (b) the nature and extent of professional legal training;
- (c) the nature and extent of professional experience;
- (d) proficiency in the English language, and
- (e) such other matters as the Board may in respect of a particular application, or generally, think fit.

(9) Should the Board decide to refuse the application, it may, if it considers appropriate, advise the applicant of the further educational qualifications it considers necessary to qualify the applicant for admission.

Fiji legal practice and procedure

5.—(1) The Board shall be responsible for the design and implementation of a course in legal practice and procedure for the Fiji Islands. The course shall be designed to acquaint recently admitted legal practitioners with an adequate knowledge of Fiji's statutes, jurisprudence, and practice and procedure.

(2) Any persons admitted to practice in the Fiji Islands after the Board has approved this course shall be required to satisfactorily complete this course within twelve months of that person's admission, or such longer period as the Registrar may permit. The Registrar may in particular circumstances dispense with this requirement, either absolutely, or subject to such conditions or undertakings as it may think fit.

(3) The Board may administer this course, or approve some other person or organisation to administer this course. This approval may be withdrawn by the Board on reasonable notice.

Practice Management Course

6.—(1) The Board shall be responsible for the design and implementation of a course of instruction in the management of a private legal practice. The Board may consult with the faculty of law of the University of the South Pacific, and any other person or body as it deems necessary, in relation to the design of this course.

(2) No person who has been admitted to practice in Fiji more than six months after the Board has approved this course shall be entitled to practice as a legal practitioner on his or her own account, unless that person has satisfactorily completed this course, subject to the exceptions contained in this Decree. Any changes made to the course by the Board after this approval shall not be taken to be a fresh approval.

(3) The Board may administer this course, or approve some other person or organisation to administer this course. This approval may be withdrawn by the Board on reasonable notice.

(4) The Board may, upon application accompanied by such fee as the Board from time to time considers appropriate, certify that the applicant's existing educational qualifications are of such nature and quality as to warrant exemption from all or part of the course, as the case may be. The applicant shall then be deemed to have satisfactorily completed those parts of the course to which the certificate relates. The fee shall be paid to the Board to defray in part the costs and expenses of the Board.

(5) The Board may, upon sufficient cause being shown to it, grant exemption from all or such part of the course as it may think fit, either absolutely, subject to such conditions as it may think fit, or upon an undertaking in such terms as it may require.

(6) In granting such exemption, the Board shall take into account in respect of an applicant—

- (a) that person's qualifications;
- (b) the extent and nature of that person's experience;
- (c) the nature of the legal practice that person proposes to undertake;
- (d) the intended duration of that person's practice on his or her own account;
- (e) the number of partners, and skills and resources of the legal partnership, if any, which that person proposes to enter into; and
- (f) such other matters as the Board may in respect of a particular person, or generally, think fit.

Mandatory continuing legal education

7.—(1) The Board shall be responsible for the design and implementation of a programme of continuing education in the substance and practice of law. The Board may consult with the faculty of law of the University of the South Pacific, and any other person or body as it deems necessary, in relation to the design and implementation of this programme.

(2) The programme shall indicate the activities which may be undertaken as part of the programme, and the credit to be accorded any activity towards the fulfilment of the requirements of the programme. Activities included in the programme may be specific, or may relate to a class of activities.

(3) The programme shall indicate the minimum amount of instruction required to satisfactorily complete the programme in relation to any particular year. Such involvement shall be no less than ten hours.

(4) The Board may from time to time add to or amend the programme as it sees fit.

(5) The programme may indicate the maximum credit to be allowed to be accorded any particular activity in any year.

(6) The Board shall promptly advise the Registrar of the programme upon its formulation, and of any additions or amendments to the programme from time to time. The Registrar shall advise legal practitioners of the requirements of the programme, and of the nature of any such additions or alterations.

(7) An applicant for a practising certificate who—

- (a) is applying for the renewal of a practising certificate; or
- (b) has held a practising certificate within the six month period prior to the making of the application,

shall not be issued with a practising certificate until the applicant produces evidence satisfactory to the Registrar that the applicant has complied with the annual requirements of the programme in the twelve months preceding the application. Such evidence may be by statutory declaration or in such other form as the Registrar may from time to time or in any particular case require.

(8) The Registrar may issue a practising certificate to an applicant notwithstanding such non-compliance, upon such undertakings or subject to such conditions as the Registrar may think fit.

(9) The Registrar may direct either generally, or in relation to a particular class of practitioner, that a minimum amount of instruction to be specified by the Registrar shall be required in a specified area of law or aspect of legal practice as part of compliance with the programme and this requirement shall be deemed to be in this respect part of the programme.

Remuneration

8. Members of the Board shall be paid such remuneration, if any, and reimbursed for such expenses as the Minister may from time to time approve. Remuneration paid to members need not be equal. The Board's expenses shall be funded by the responsible Ministry.

Meetings

9.—(1) The Chairperson of the Board may at any time convene a meeting of the Board.

(2) The Chairperson shall convene a meeting on receipt of a request in writing signed by three members of the Board.

(3) At a meeting of the Board three members shall constitute a quorum.

(4) The Board may regulate the conduct of its meetings as it thinks fit, and shall keep minutes of those meetings.

(5) If the Chairperson is not present at a meeting of the Board, the members of the Board present shall elect one of their number to chair that meeting.

(6) At any meeting the Chairperson or the person elected under subsection (5) to chair a meeting shall have a deliberative vote, and in the event of an equality of votes, also a casting vote.

(7) Questions arising at a meeting of the Board shall be determined by a majority of the members present and voting.

(8) Meetings may take place either wholly or partly by means of telephone or electronic communication, and members participating in such manner, although not physically present, shall be deemed to be present at the meeting, and entitled to vote accordingly.

(9) A notice or certificate which purports to express a decision of the Board, signed by a person as Chairperson, shall, in the absence of evidence to the contrary, be accepted as evidence of the matters set out therein.

Finality of decisions

10.—(1) Decisions of the Board shall be final, shall not be subject to appeal and no action shall lie against the Board in respect of any decisions made by it.

(2) The validity of any meeting or decision of the Board shall not be invalidated because any appointment required by this Part to be made has not been made, or because of any defect in any appointment or delegation purported to be made pursuant to this Part.

Liabilities of members

11. No member of the Board acting in good faith shall be liable for any act or omission of the Board.

PART 3—FIJI LAW SOCIETY

Establishment and continuation of Fiji Law Society

12. The Society established under Section 12 of the repealed Act shall, subject to the provisions of this Decree, continue as a Society under the name of the Fiji Law Society and, by that name, the Society shall have perpetual succession and a common seal. The Society shall have power to hold real and personal property and may sue and be sued in matters whether relating to contract or tort or otherwise in connection with the exercise of its powers or the carrying out of its functions under this Decree.

Objects of the society

13. The objects of the Society are—

- (a) to maintain and improve the standards of conduct of its members;
- (b) to promote the welfare and to preserve and maintain the integrity and status of its members;
- (c) to assist the Government in all matters affecting legislation and law reform;

- (d) to aid and give countenance to law reform and to represent the views, interests and wishes of its members;
- (e) to represent, protect and assist its members as regards conditions of practice and otherwise;
- (f) to protect and assist the public in all matters touching, ancillary or incidental to the practice of the law;
- (g) to aid in the preparation, circulation and publication of legal decisions given in or affecting the Fiji Islands;
- (h) to assist needy members and former members of the Society or their relatives and the relatives of deceased members;
- (i) to acquire, hold, develop or dispose of property of all kinds, whether real or personal, and to derive capital or income therefrom, for all or any of the foregoing objects;
- (j) to raise or borrow money for all or any of the foregoing objects in such manner and upon such security as may from time to time be determined by the Society;
- (k) to invest and deal with moneys of the Society not immediately required in such manner as may from time to time be determined by the Society;
- (l) to pay the whole or any part of the expenses incurred by members in attending meetings of the Council or meetings of any committee appointed by the Council;
- (m) to pay all costs, witnesses' expenses, and other payments incidental to or connected with the discharge of any function of the Society;
- (n) to do all such other things as are incidental or conducive to the attainment of the foregoing objects or any of them.

Membership

14.—(1) The membership of the Society shall consist of the following—

- (a) such legal practitioners who are the holders of a practicing certificate pursuant to this Decree and who apply for membership of the Society;
- (b) every person elected as an honorary member of the Society pursuant to the provisions of this Part; and
- (c) every person who, in the opinion of the Council is a fit and proper person to admit to membership, having regard to that person's involvement with the legal profession.

(2) For the avoidance of doubt, membership of the Society shall be voluntary for all legal practitioners; and any legal practitioner who opts not to become or continue to be a member of the Society shall not thereby be disqualified from practice as a legal practitioner or from holding a practising certificate.

(3) A person may resign from membership of the Society by notice in writing to the Society.

(4) Subject to the preceding provisions of this Section, the Council may create by resolution such classes of members as it may from time to time think fit.

Levies and subscriptions

15. – (1) Members of the Society shall pay to the Society such annual subscription as the Council may from time to time resolve, within the time or times limited by such resolution.

(2) The Council may by resolution impose upon members or classes of members a levy for payment into the funds of the Society, and such levy shall be payable by the time and in the manner fixed by resolution of the Council.

(3) No honorary member shall be liable to pay any subscription or levy referred to in this Section.

(4) The Council may by resolution waive all or any part of any annual subscription or levy payable by any member.

Failure to pay subscription or levy

16. A member who fails to pay any annual subscription or levy referred to in this Part after it has become due, shall not vote at any meeting of the Society or at any election of members of the Council.

Honorary membership

17. The Council may elect as honorary members of the Society such persons as it may think fit, either for life or for such period as the Council may in any case deem appropriate. An honorary member shall be entitled to attend but not to vote at any meetings of the Society, and shall not be eligible to hold any elected position in the Society.

Termination of membership

18.—(1) Any member of the Society, other than an honorary member, may be expelled therefrom in such manner, and upon such grounds as may from time to time be prescribed by regulation, after being given a reasonable opportunity to answer all allegations made against such member.

(2) Any member of the Society, other than an honorary member; who ceases to be qualified for membership shall thereupon automatically cease to be a member. Such cessation shall in no way affect any antecedent liabilities and obligations on the part of such member to the Society.

Constitution of the Council

19. For the proper management of the affairs of the Society, there shall be a Council consisting of a President, a Vice President and six other persons, all of whom shall be members of the Society and elected annually by the members of the Society.

Powers of the Council

20.—(1) Except as otherwise expressly provided, the Council shall have the management of the Society, and may exercise all the powers of the Society and do all things and acts as are directed or authorised to be done by the Society.

(2) The exercise of a power or the performance of a function of the Council shall not be affected by the fact that at the time of such exercise or performance a vacancy existed in the membership of the Council or that the election or appointment of any member of the Council was defective.

Committees and delegation

21. The Council may from time to time appoint committees consisting of one or more members of the Society, including committees for any particular area or district of the Fiji Islands, and may, except as otherwise expressly provided by this Decree or by any regulations made thereunder, delegate to any such committee any of the powers of the Council.

Other officers

22. There shall be such Secretary, treasurer and other officers of the Society (including deputy secretaries), paid or unpaid, as the Council may appoint from time to time. Any deputy secretary so appointed may exercise any of the powers conferred upon and exercise any of the functions granted to the Secretary pursuant to this Decree.

General Meetings

23. The Council shall during the month of September in every year and may at any other time or times at the discretion of the Council, convene a general meeting of the Society.

Requisition

24. Any fifteen members of the Society may at any time requisition a general meeting by written notice in that behalf signed by them specifying the object of the proposed meeting and deposited with the Secretary, (or in his or her absence, the President) and thereupon the Council shall convene a general meeting of the Society accordingly. If the Council fails for fourteen days after such deposit to convene a general meeting in accordance with the requisition, to be held within thirty days after such deposit, the requisitioning members may themselves convene that general meeting to be held at any time within two months after such deposit.

Voting

25.—(1) At every general meeting of the Society, every member present shall have a vote and the member who chairs that meeting shall also have a casting vote. Members may vote by proxy.

(2) The proxy shall be a member of the Society and appointed according to the form prescribed by the Council from time to time, or to the like effect, and every such appointment shall continue in force for the particular meeting for which it purports to be given and for every adjournment thereof, but no longer.

(3) Every proxy paper shall be delivered to the Secretary not less than forty eight hours before the time appointed for the holding of the meeting for which it is to be used.

Simple majority

26. Except for any purpose for which a special resolution is expressly required by this Decree or by any regulation made thereunder, all resolutions of the Society in a general meeting shall be by simple majority vote.

Alteration of resolution

27. No resolution of the Society in a general meeting shall be altered or rescinded within nine months after the passing thereof otherwise than by a special resolution of the Society.

Common seal

28. The common seal of the Society shall be kept in such custody and used in such manner as may be prescribed by regulation from time to time.

Minutes

29. The Council shall cause proper minutes of all general meetings of the Society and of all meetings of the Council and of committees appointed by the Council to be taken and recorded. Minutes of general meetings shall be available for inspection by any member of the Society at any reasonable time, on demand.

Accounts to be kept

30. The Council shall cause proper accounts of all funds, property and assets of the Society to be kept, and to be audited as on the 30th day of June in every year. The audited accounts shall be presented by the Council to the general meeting convened in accordance with the provisions of this Part during the month of September.

Reports and accounts

31. During the month of September, the Council shall present to the Society in general meeting, a full report of the activities of the Society in respect of the twelve months preceding that date.

Protection of Council

32. No officer or servant of the Society or any member of the Council, or any committee appointed by the Council shall be liable for any act or omission done or omitted to be done in good faith and pursuant to the provisions of this Decree.

Regulation

33.—(1) The Council may, subject to the provisions of this Decree, and subject to approval by special resolution and by the Attorney-General, make regulations binding on members of the Society prescribing all or any of the following matters—

- (a) manner of application for membership of the Society;
- (b) resignation of members;
- (c) manner of convening meetings of the Council and committees and the quorum and procedure thereat;
- (d) manner of convening general meetings of the Society and the quorum and procedure thereat;
- (e) manner of election, removal and replacement of the President, Vice President and other members of the Council, and of representatives of the Society on committees;
- (f) custody and use of the common seal;
- (g) such other matters as may be deemed by the Council to be necessary for the proper conduct and regulation of the affairs of the Society;
- (h) prescribing anything which is required or permitted to be prescribed by regulation by the Society or Council under this Decree.

(2) A copy of any regulation made under the provisions of subsection (1) shall be forwarded to each member of the Society within fourteen days of approval by special resolution, and shall not be published in the Gazette.

(3) The regulations of the Society in force immediately prior to the enactment of this Decree shall, to the extent that they are not inconsistent with this Decree, continue in force as if they were regulations made pursuant to this Decree.

PART 4—ADMISSION OF LEGAL PRACTITIONERS

Chief Justice to admit

34.—(1) The Chief Justice shall have power to admit to practice as a practitioner any person duly qualified in accordance with the provisions of this Decree. The Chief Justice may, upon cause being shown, refuse to admit any person as a practitioner notwithstanding that he or she may have these qualifications.

(2) Every person shall before admission as a practitioner, subscribe to the oath of allegiance in the form prescribed by law and also the oath following—

I A.B. do swear (or do solemnly sincerely and truly declare and affirm) that I will truly and honestly conduct myself in the practice as a legal practitioner according to the best of my knowledge and ability (and in the case of an oath) so help me God.

Qualifications of legal practitioners

35. A person shall be qualified for admission as a practitioner if that person is a fit and proper person to be admitted to practice as a practitioner in the Fiji Islands, and—

- (a) has satisfactorily completed a course in the study of law approved by the Board and a programme or course of practical legal instruction and training approved by the Board; or
- (b) that person has obtained from the Board a certificate that his or her educational qualifications are sufficient to qualify him or her for admission as a practitioner; and
- (c) in addition to the requirements specified under paragraph (a) or (b), before making his or her application for admission as a practitioner in the Fiji Islands that person has resided in the Fiji Islands for a period of at least three months immediately prior to making his or her application for admission unless the Chief Justice for good reasons shall dispense with such residential requirements.

Application for admission

36. Every application for admission shall be by petition to the Chief Justice in such form and manner as may be prescribed by rules made pursuant to this Part.

Objections

37.—(1) Any person, including the Registrar, shall be entitled to show cause why an application for admission should not be granted.

(2) The objection shall be filed in the Court and a copy delivered to the applicant. Any person objecting who has complied with this Section and the rules made pursuant to this Part shall be entitled to appear on the hearing of the petition.

Admission

38.—(1) Upon application for admission being made the Chief Justice, upon proof of the qualification and suitability of the applicant, and production of such testimonials as to character as he or she may require, shall, unless cause to the contrary is shown to his or her satisfaction, by writing under his or her hand admit the applicant to be a legal practitioner.

(2) The name of every person admitted to practice as a legal practitioner shall be enrolled in a book kept for the purpose in the office of the Registrar called the Roll of the Court. No person shall be entitled to practice as a practitioner in the Fiji Islands unless that person's name is enrolled in the Roll.

(3) The Registrar shall, on application, grant a certificate of enrolment under the Seal of the Court to any person whose name is at the time of application on the Roll.

(4) The Registrar may remove from the Roll the name of any practitioner who applies for such removal. Such removal shall not affect any antecedent rights or obligations on the part of that person.

Temporary admission

39.—(1) A person admitted to practice as a legal practitioner, barrister or solicitor in another jurisdiction may apply by petition supported by affidavit to the Chief Justice to be admitted to practice as a legal practitioner for the purpose of any specific cause or matter.

(2) Public notice of the application shall not be required nor shall the applicant be required to appear upon the consideration by the Chief Justice of the application.

(3) The Chief Justice, upon considering the application and any written submissions received may—

- (a) refuse the application;
- (b) grant the application subject to such conditions, if any, as he or she may think fit (which conditions may limit the duration of the admission);
- (c) adjourn the application to allow the applicant and objectors, if any, to be heard in person; or
- (d) require such further information as he or she may think fit before considering the application further.

(4) The Registrar shall forthwith communicate the decision of the Chief Justice to the applicant and the objectors, if any.

(5) Any applicant dissatisfied with the decision of the Chief Justice may require the Registrar to list the application for hearing and may appear in person in support of the application.

(6) Any person admitted pursuant to this Section shall only be entitled to appear or act—

- (a) in the cause or matter for the purpose of which that person is admitted; and
- (b) if instructed by, and if when appearing in any Court in the conduct of the cause or matter, appearing together with a practitioner admitted to practice in the Fiji Islands.

(7) Any person granted admission pursuant to this Section for a period of less than three months shall not—

- (a) be required to take out a practising certificate;
- (b) be required to take out professional indemnity insurance in the Fiji Islands pursuant to Part 10 of this Decree; or
- (c) be subject to educational requirements set out in Part 2 of this Decree; but shall otherwise be subject to the provisions of this Decree.

(8) Any person admitted pursuant to this Section shall be included in a special Roll for temporary admission.

Exemptions

40. The Chief Justice may, on sufficient grounds, and upon conditions, if any, exempt any person from complying with the formalities set out in this Part and may enlarge or abridge any period of time referred to in this Part or any rules made pursuant to it.

Power to make rules

41.—(1) The Chief Justice may make rules to give effect to this Part, and, without limiting the generality of this power, may make rules relating to all or any of the following matters—

- (a) the form and manner of application;
- (b) the time and manner for service and delivery of any documents, and provision of public notice;
- (c) fees to be paid on the filing or lodging of any application or other documents;
- (d) prescribing anything which is required or permitted to be prescribed by rules under this Part.

(2) The Legal Practitioners (Admission) Rules 2000 and the Legal Practitioners (Temporary Admission) Rules 2006 in force immediately prior to the commencement of this Decree shall, to the extent that they are not inconsistent with this Decree, continue in force as if they were rules made pursuant to subsection (1).

PART 5—PRACTISING CERTIFICATES

Application for and issue of practising certificates

42. —(1) Every person admitted to practice as a practitioner shall before commencing practice and thereafter, while continuing in practice, during the month of January in each and every year apply for and obtain from the Registrar a certificate (in this Decree known as a practising certificate) certifying that that person is entitled to practice as a legal practitioner according to the laws of the Fiji Islands. The certificate shall be issued by the Registrar. “Practice” includes employment as a legal practitioner, whether in private practice or otherwise.

(2) A law firm shall not be entitled to operate in the practice of law unless all partners or the sole practitioner of that law firm have been issued a practising certificate by the Registrar in accordance with this Part.

(3) A person shall not practice or act as a legal practitioner in partnership with another person who is not the holder of a practising certificate.

(4) A person shall not be employed in or engaged by any law firm as a consultant providing legal advice for a total of more than 2 weeks in a year, unless that person is the holder of a practising certificate.

(5) The application shall be in such form, accompanied by such fee, and set out such information and particulars as the Registrar may from time to time fix or require. The application shall be supported by a statutory declaration verifying all such information and particulars.

(6) Any holder of a practising certificate who changes his or her place of business or residence, enters into a partnership in relation to his or her practice, or dissolves any partnership relating to his or her practice or changes his or her employment shall forthwith give notice thereof in writing to the Registrar.

(7) Every practising certificate shall be in the form which the Registrar may fix from time to time, and where the certificate is subject to a condition required by this Decree, or which the Registrar may properly require, there shall be endorsed on the certificate the terms of such condition.

(8) Before issuing a practising certificate the Registrar may from time to time require such further and additional information and particulars in relation to any applicant or any firm of legal practitioners of which the applicant is a member as is necessary to ensure compliance with this Decree and any subsidiary legislation.

(9) The signature of the Registrar to a practising certificate may be fixed by autographical, mechanical or electronic means, and when so signed shall be validly signed by the Registrar provided it is also initialled by the Registrar.

(10) The Registrar may at any time cancel any practising certificate that has been obtained by fraud or misstatement, or that has been issued on the basis of information which is incorrect or untrue in some material particular.

Fees

43.—(1) The Registrar may in its discretion determine different fees for the issuing of a practising certificate in respect of—

- (a) practitioners who are engaged in practice either on their own account or in partnership with any other practitioner;
- (b) practitioners who are engaged in practice as employees of persons who are practising practitioners;
- (c) practitioners who are engaged in practice as employees of Government or any statutory authority; and
- (d) practitioners to whom none of the above paragraphs of this subsection apply.

(2) The Registrar may waive all or any part of the annual practising certificate fee payable by any practitioner.

(3) If any practitioner fails to pay such fee forthwith after it has become due, the Registrar may without notice sue for and recover such fee by action as for a civil debt due to the Registrar.

(4) The Registrar shall notify every practitioner liable to pay the fee before it becomes due and payable. Failure to give or receive any notice shall not be a defence to any action for recovery of the fee, nor be a sufficient reason for the failure to obtain a practising certificate and it shall not be necessary in any proceedings to prove the giving or delivery of any such notice.

Refusal or cancellation of certificate

44.—(1) The Registrar may refuse to issue a practising certificate, and the Registrar may cancel a practising certificate issued pursuant to this Part if the applicant for or the holder of such certificate as the case may be –

- (a) is an un-discharged bankrupt or has taken advantage of the law relating to bankruptcy;
- (b) has been convicted in the Fiji Islands or elsewhere of an offence which involves moral turpitude or fraud on his or her part;
- (c) has failed to comply with any laws relating to trust funds under his or her control, or the trust funds of any partnership of which he or she was a member;
- (d) has after being called upon by the Registrar so to do failed to give to the Registrar an explanation in writing which is in the opinion of the Registrar sufficient and satisfactory in the circumstances touching any matter relating to his or her conduct or practice as a practitioner or to give to the Registrar any document (or copy thereof), in his or her custody or possession and which he or she is entitled at law so to give required by the Registrar to enable the Registrar to satisfy itself concerning an explanation, and such failure still continues;
- (e) is in any way in default under the provisions of this Decree or any rules or regulations made under it;
- (f) is in default in the performance, fulfilment or satisfaction of any order made by the Commission;
- (g) has acted or practiced as a legal practitioner when not the holder of a current practising certificate or during any period of suspension of that person's practising certificate;
- (h) has failed to reimburse the Fidelity Fund established by the Trust Accounts Act, 1996 any sum paid out of the fund on that person's account;
- (i) is by reason of infirmity, injury or illness (mental or physical), unfit to carry on and conduct his or her practice and it is in the interests of clients or the public that the certificate should not be issued, or should be cancelled as the case may be;
- (j) has failed to pay the appropriate fee for the issue of a practising certificate.

(2) The Registrar shall promptly give notice in writing to any applicant whose application for a practising certificate is refused and to any person whose practising certificate is cancelled of such refusal or cancellation and, if so required by the applicant or holder the Registrar as the case may be shall within fourteen days after being so required state in writing the grounds for the refusal or cancellation.

(3) For the purposes of subsections (1) and (2) the Registrar may require an applicant for or the holder of a certificate to undergo such medical examination by such medical practitioner as may be specified by the Registrar and may hold such enquiry as the Registrar thinks fit.

(4) A refusal or failure to comply with the requirement of the Registrar made pursuant to this Section may be regarded as evidence that that person is, by reason of infirmity, injury or illness (whether mental or physical) unfit to carry on or conduct a practice.

Suspension of certificate

45.—(1) The Registrar may suspend the practising certificate held by any practitioner for any of the reasons for which it may cancel a practising certificate, and for any of the following reasons—

- (a) if the Registrar has resolved to prefer any charge against the practitioner to the Court or has commenced disciplinary proceedings against the practitioner or any employee or agent of the practitioner in the Commission;

- (b) if the Registrar has been advised by the Attorney-General of any irregularity or deficiency revealed by any audit of the practitioner's trust account;
- (c) if the Registrar has resolved to appoint a receiver to the practitioner's practice or to any trust funds held by the practitioner, or has appointed a person to take control of the practitioner's trust account;
- (d) if the practitioner fails to comply with any condition to which that practitioner's practising certificate is subject.

(2) Without limiting subsection (1) in any way, the Registrar may suspend the practising certificate of one or more partners of a law firm for the following reasons—

- (a) if the Registrar has commenced disciplinary proceedings in the Commission against the law firm or any employee or agent of the law firm;
- (b) if the Registrar has been advised by the Attorney-General of any irregularity or deficiency revealed by any audit of the law firm's trust account;
- (c) if the Registrar has resolved to appoint a receiver to the law firm's practice or to any trust funds held by the law firm, or has appointed a person to take control of the law firm's trust account.

(3) A reference in this Section to a practice, trust property, and trust account includes a reference to the practice, trust property, or trust account held by any partnership of which the practitioner is a member.

(4) Any suspension under this Section shall be notified in writing to the practitioner by the Registrar. The practitioner shall thereupon cease practising as a practitioner and shall not resume practice during the currency of the suspension, save pursuant to an order of a Court or Judge.

Appeal

46. Where the Registrar refuses or neglects to issue a certificate or the Registrar cancels or suspends a certificate, or grants a certificate subject to conditions, the applicant or the holder, as the case may be, may apply to the Court or a Judge thereof who may make such order in the matter, excluding any order for damages or costs against the Registrar or the State.

Practice of deceased practitioner

47.—(1) Notwithstanding any other provision of this Decree upon the death of a sole practitioner the executors or administrators of his or her estate may, with the permission of the Registrar, carry on in the name of the deceased practitioner the practice formerly carried on by him or her upon condition that some other solicitor entitled to practice and having a current practising certificate shall be in charge of the practice and shall ordinarily attend at the office where the practice is carried on each day on which that office is open and shall personally carry on and supervise the work of such practice.

(2) Any permission pursuant to subsection (1) shall be in the first instance limited to a period of twelve months after the practitioner's death, but may from time to time be extended by the Registrar for a further period or periods.

(3) Any permission pursuant to subsection (1) may be withdrawn by the Registrar at any time notwithstanding that the period for which it was granted has not expired.

(4) The decision of the Registrar to grant or refuse any permission for the purposes of this Section or to withdraw any such permission shall be final and shall not be subject to any appeal or application by any person aggrieved by such decision.

(5) The Registrar may appoint the practitioner in charge of the practice as a trustee of the trust account of the deceased practitioner.

(6) The executors or administrators of the estate of a deceased sole practitioner may maintain an action or suit for the recovery of any fee, reward or disbursement for or in respect of any business, matter or thing done by them

in carrying on the practice of the deceased practitioner in accordance with the provisions of this Section as if such executors or administrators were a practitioner holding a current practising certificate.

(7) The legal practitioner in charge of the practice of a deceased sole practitioner pursuant to this Section shall not be subject to the direction or control of the executors or administrators of the estate of the deceased practitioner in matters of professional conduct or otherwise in respect of that practitioner's actions in the carrying on of the practice.

(8) In this Section "sole practitioner" means a practitioner who is not in partnership with any other practitioner at the time of the practitioner's death in respect of the carrying on of his or her practice.

Duration of certificate

48.—(1) Every practising certificate shall be deemed to expire on the last day of February in each year.

(2) A practising certificate issued other than pursuant to an application for a renewal, shall take effect from the day the certificate is issued by the Registrar. A practising certificate issued pursuant to an application for renewal shall take effect from the first day of March in each year.

(3) Where a person makes application for a practising certificate after the last day in August of any year, one half only of the relevant fee shall be payable by the applicant.

(4) A practising certificate shall be automatically cancelled if the name of the holder thereof is removed from or struck off the Roll.

(5) The holder of a practising certificate that has been cancelled or suspended shall, upon being so notified immediately return the practising certificate to the Registrar.

(6) The Registrar may for any reason it considers sufficient direct that a practising certificate shall take effect from the first day of March in any year, notwithstanding that it may be issued at a later date.

(7) The Registrar shall, annually, forward to all Courts in all divisions a list of practitioners with current practising certificates.

Transitional

49.—(1) Any practising certificate issued by the Society pursuant to the repealed Act, and which is current at the time of the commencement of this Decree—

- (a) shall have effect as if it were a certificate issued pursuant to the provisions of this Decree; and
- (b) shall not continue beyond the last day of June 2009.

(2) Any legal practitioner wishing to continue in legal practice shall, on or before 15th June 2009, apply to the Registrar for a practising certificate for the period between the last day of June 2009 to the last day of February 2010. The application shall be in such form, accompanied by such fee, and set out such information and particulars as the Registrar may fix. The application shall be supported by a statutory declaration verifying all such information and particulars.

(3) Upon receiving an application under subsection (2) and subject to section 44, the Registrar shall issue a practising certificate for the period between the last day of June 2009 to the last day of February 2010, and the practising certificate shall be in the form which the Registrar may fix.

(4) The Registrar shall, on or before 15th July 2009, publish a list of all legal practitioners who have obtained practising certificates under this section, and who are entitled to engage in the practice of law as a legal practitioner.

(5) A practising certificate issued under this section shall expire on the last day of February 2010, and this Part shall apply to any further issuance of a practising certificate.

(6) No legal practitioner shall be entitled to practice as a legal practitioner from the last day of June 2009 unless the legal practitioner has been issued a practising certificate by the Registrar in accordance with this section.

(7) Any person who, in the period between the last day of June 2009 and the last day of February 2010, engages in the practice of law as a legal practitioner, without applying for and having been issued a practising certificate under this section, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

PART 6—RIGHTS AND LIABILITIES OF LEGAL PRACTITIONERS

Right of practice

50.—(1) Subject to the provisions of this Decree, any person who is the holder of a current practising certificate may practice as such in any of the Courts of the Fiji Islands, and may perform any of the functions which may be performed by a barrister and by a solicitor, in England.

(2) A practitioner shall not be entitled to argue any cause or matter before the Supreme Court, the Fiji Court of Appeal or the High Court (other than in chambers or before the Registrar except on an originating summons), unless with another practitioner of at least three year's standing in the Fiji Islands until he or she has practiced for a period of at least two years either as a practitioner in the Fiji Islands, or as a barrister or solicitor in the United Kingdom, the Republic of Ireland, Australia or New Zealand.

(3) No person shall commence practice as a practitioner on his or her own account other than in partnership with a practitioner of at least three years standing in the Fiji Islands, unless during the five years immediately preceding the date of commencement of practice he or she has had at least three years legal experience. Such legal experience may be—

- (a) as a practitioner in the office of a practitioner or barrister or solicitor or firm of practitioners or solicitors in active practice either in the Fiji Islands or in any of the jurisdictions referred to in the previous subsection, or in the legal branch of a government department, instrumentality, or statutory authority in the Fiji Islands;
- (b) or such other experience as the Council may consider adequate.

(4) The Registrar may in particular circumstances create exemption from the requirements of subsection (3), either absolutely, or subject to such conditions as it may think fit.

(5) The restrictions imposed by this Section shall not apply to any person entitled to practice on his or her own account in the Fiji Islands prior to the commencement of this Decree.

Officer of the court

51. Every person practising as a practitioner and being the holder of a current practising certificate shall be deemed to be an officer of the Court.

Practising without a certificate

52.—(1) A person shall not, unless that person is the holder of a current practising certificate—

- (a) practice or act as a legal practitioner of the Fiji Islands or as a Notary Public;
- (b) pretend to be entitled to practise as a legal practitioner of the Fiji Islands or as a Notary Public; or
- (c) draw or prepare any instrument relating to any real or personal estate or property or any legal proceeding or grant of probate or letters of administration, whether as agent for any person or otherwise, unless he or she proves that the act was not done for or in expectation of fee, gain or reward, either direct or indirect.

(2) A person who fails to comply with a provision of this Section shall be guilty of an offence and shall be liable to a fine not exceeding \$5000.00 and for a second or subsequent offence, to imprisonment for any period not exceeding one year in addition to or in substitution for such fine.

(3) This Section shall not apply to—

- (a) any public officer who draws or prepares instruments in the performance of such office or performs any powers, functions and duties which he or she is empowered to perform under the provisions of any Decree; or
- (b) any person who merely types or engrosses any instrument or process.

(4) No person who breaches any of the provisions of subsection (1) of this Section shall be entitled to recover any fee, reward or disbursement arising out of or relating to any act or proceeding in breach of that subsection.

Acting as agent for unqualified persons

53. Save with the consent of the Registrar, no practitioner shall knowingly act as agent for any person not the holder of a current practising certificate in the performance of any act which may only be lawfully performed by the holder of a current practising certificate, nor shall that practitioner allow his or her name to be made use of by any person other than the holder of a current practising certificate in respect of the performance of such an act. A practitioner who contravenes this Section shall be guilty of professional misconduct.

Employment of persons struck off or suspended

54. Save with the consent of the Registrar, no practitioner shall, in connection with his or her practice, knowingly employ or remunerate any person who is prevented as a result of disciplinary proceedings or suspension from practice, from practising as a legal practitioner, barrister or solicitor in the Fiji Islands or any other jurisdiction. Any practitioner who contravenes the provisions of this Section shall be guilty of professional misconduct.

Failure to disclose fact of having been struck off etc.

55. Any person who, while disqualified from practising as a practitioner by reason of the fact that he or she has been struck off the Roll other than at his or her own request or is suspended from practice as a legal practitioner or is prevented for disciplinary reasons from practising as a legal practitioner, barrister or solicitor in any jurisdiction outside the Fiji Islands, seeks or accepts employment by a practitioner in connection with that person's practice without previously informing that practitioner that he or she is so disqualified or prevented as aforesaid, shall be guilty of an offence and shall be liable to a fine not exceeding \$5,000.00.

Duty to render costs

56.—(1) A practitioner shall within a reasonable time after being so requested in writing by a client, render to the client an account covering all work for that client to which such request relates. The practitioner shall not be required to render an account for work in relation to which an account has already been rendered.

(2) If the practitioner fails or neglects to render such account within one month after receiving such request or within such further time as may be reasonable, the practitioner shall, if requested by the client, pay to the client all moneys and if so requested, deliver to the client all documents held by the practitioner on behalf of that client, notwithstanding any lien to which the practitioner might otherwise have been entitled.

PART 7—RECEIVERSHIPS

Appointment of receiver

57.—(1) In this Part, unless the context otherwise requires, the following terms shall have the meanings respectively assigned to them—

“Court”— includes a Judge;

“former practitioner”— a person in relation to whom a receiver is appointed under this Part, and (if the context permits) if that person is dead, his or her personal representatives;

“receiver”— a person who holds at any material time the appointment of a receiver under and for the purposes of this Part.

(2) The Registrar may appoint a receiver in relation to a person where—

- (a) that person has been refused a practising certificate, or the practising certificate held by that person has been cancelled or suspended and the refusal, cancellation or suspension, as the case may be, remains of force and effect; or

- (b) where that person, being a practitioner, has died; or
- (c) where the Registrar has resolved in respect of a person conducting a legal practice who is neither an applicant for nor the holder of a practising certificate, that the circumstances relating to that person are such that, if that person were an applicant for or the holder of a certificate, the application would be refused or the certificate cancelled as the case may be or, if that person were the holder of a practising certificate, the certificate would be suspended, and such resolution remains of force and effect.

(3) Any person may be appointed receiver.

- (4) (a) If the receiver is a practitioner with a current practising certificate, the Registrar may authorise the receiver to carry on the practice of the former practitioner or his or her legal personal representative.
- (b) If the receiver is not a practitioner with a current practising certificate, the Registrar may authorise a practitioner with a current practising certificate to carry on the practice of the former practitioner or his or her legal personal representative on behalf of the receiver.

(5) Authority by the Registrar for the carrying on of a practice pursuant to this Section shall continue for such period as is necessary to properly wind up the practice in the interests of its clients.

(6) Any appointment which may be made by the Registrar under this Part may be made by the Court on the application of any person likely to be adversely affected if such appointment is not made. The Court may direct that such notice of the application as it considers appropriate, if any be given to the person in respect of whom the application is made, and if that person is deceased, then his or her personal representatives.

Relevant property

58. A person appointed pursuant to this Part as receiver shall be receiver of all or any of the property of the former practitioner (or if dead, his or her personal representative) as is included in the following —

- (a) moneys in a trust account in any bank in the name or firm name of the former practitioner and, except in the case of a former practitioner who has died, any other property, whether moneys or not, including a chose in action, held in trust for another person;
- (b) money, including interest dividends or other income, received by the receiver during the receivership and arising from property held by the receiver;
- (c) ledgers, books of accounts, vouchers, records, deeds, wills, files and other documents and writings of any description.

Certificate of appointment

59.—(1) When a receiver is appointed pursuant to this Part, the Registrar may from time to time issue a certificate in writing of such appointment, which certificate may certify the nature of the receiver's authority in relation to any accounts or property. Any document which purports to be a certificate of appointment of a receiver purporting to be given under the hand of the Registrar shall be received as evidence of the matters certified to therein, and in the absence of evidence to the contrary shall be conclusive evidence of such matters, and the signature thereon shall be taken to be the signature it purports to be until the contrary be proved.

(2) A certificate of appointment of a receiver shall, if and as soon as such service is reasonably practicable, be served on the former practitioner, or if the practitioner be dead, on the practitioner's personal representative if any.

Bank accounts

60.—(1) The receiver may serve on the manager or other principal officer of the office or branch of a bank, a notice in writing, together with a certificate of appointment of receiver, forbidding any dealing, including the completion of any uncompleted dealing, except by the receiver, with any trust account in the name or firm name of the former practitioner.

(2) Upon service of such a notice and certificate, the receiver shall be for all purposes a trustee of any trust account to which the notice relates and may operate the account accordingly.

(3) The bank on whose manager or officer the notice is served shall not permit any dealing with any trust account to which the notice relates except by the receiver.

Notice

61.—(1) The receiver may by one or more advertisements in such form as the receiver considers sufficient require persons having any claims in respect of any moneys which have been held in any trust account as aforesaid or any other property to which the receiver has appointed to submit their claims to the receiver, and by such advertisement or otherwise a time may be specified, being not less than thirty days from the date of publication of the advertisement, within which such claims shall be submitted to the receiver.

(2) The receiver may in administering any such moneys and other property disregard any claim not submitted to the receiver within the time so specified.

Delivery of property and information to receiver

62.—(1) The receiver may acquire or take possession of any property to which the receiver has been appointed and may require the former practitioner to immediately deliver to the receiver all property of which he or she has been appointed receiver or to immediately give to the receiver all relevant information concerning the disposition of that property.

(2) All ledgers, books of account, vouchers, records, deeds, wills, files and other documents and writings (other than those relating to moneys or property held on trust for some other person, or to the former practice of the former practitioner), shall, as soon as practicable, be returned to the former practitioner.

(3) If the former practitioner, or any other person, upon being required by the receiver to deliver or transfer to the receiver, or to permit the receiver to take possession of, any such property in his or her possession or at his or her disposition or under his or her control, does not fully comply with the requirement, the receiver may apply to the Court for an order for the transfer or delivery to the receiver of such property, whereupon the Court may make such order as to the Court seems fit.

(4) If it appears to the receiver that an order thus made by the Court is not complied with, the Court may on application by the receiver authorise any member of the Police Force and that member's assistants, or the receiver or some other person and any other member of the Police Force and that member's assistants, to enter any premises or other place specified in the order and to search for any property of which the receiver is entitled under the provisions of this Section to take possession, and to seize such property and remove it to such place as the receiver thinks fit, and on such application, the Court may make such further order in the matter as to the Court seems fit.

(5) Any person who fails or refuses, without lawful justification or excuse, to immediately deliver all property or give all relevant information as required or otherwise hinders, obstructs or delays the receiver in the performance of the receiver's duties or in the exercise of the receiver's powers pursuant to this Part shall be guilty of an offence and liable upon conviction to a fine not exceeding \$2,000.00 or imprisonment for six months.

Recovery of property

63.—(1) Where property has been taken by or paid or transferred to a person improperly, unlawfully or in breach of trust, and that person knew or had reasonable grounds to believe at the time of the taking, payment or transfer that it was done improperly, unlawfully or in breach of trust, the receiver shall be entitled to recover from that person the sum equal to the difference between the value of the property and any consideration paid in respect of the taking, payment or transfer of the property. Upon recovery of that sum from that person, that person shall cease to be liable in relation to that property to any other person.

(2) Where money has been paid by the former practitioner improperly, unlawfully or in breach of trust to a person in respect of a cause of action which that person had or claimed to have against some third party and that person knew or had reasonable grounds to believe at the time of the payment that it was done improperly, or unlawfully or in breach of trust, the receiver shall be entitled to recover from that person the sum so paid.

(3) Where property has been used improperly, unlawfully or in breach of trust to discharge a debt or liability of a person, and that person knew or had reasonable grounds to believe at the time of the discharge, that it was discharged improperly, unlawfully or in breach of trust, the receiver may recover from that person a sum equal to the value of the property so used.

(4) In proceedings brought pursuant to this Section, a certificate given by an accountant, being the holder of a current Certificate of Public Practice issued by the Fiji Institute of Accountants shall be evidence, and in the absence of evidence to the contrary, conclusive evidence in respect of—

- (a) the taking, payment or transfer of the property;
- (b) the nature and value of the property taken, paid or transferred;
- (c) the date of taking, payment or transfer of the property;
- (d) the identity of the person by whom the property was taken or to whom it was transferred or paid;
- (e) the entries made in trust accounts, ledgers, books of account, vouchers and records of the former practitioner and of the truth or falsity of those entries;
- (f) moneys and securities held at any time by the former practitioner.

Removal of property

64. Any person who at any time, whether before or after a receiver has been appointed, with intent to defeat the purposes of this Part—

- (a) withdraws money from or makes any payment out of any trust account; or
- (b) destroys or conceals or removes from one place to another place or delivers into the possession or places under the control of any other person any property of which a receiver may be or has been appointed,

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000.00 or to imprisonment for a term of not more than two years, or both.

Powers of receiver

65.—(1) The receiver may deal with any trust moneys and other property which the receiver has acquired or taken possession of under the provisions of this Part in any manner in which the former practitioner might lawfully have dealt with the trust moneys and property.

(2) The receiver may, for the purpose of performing any of the functions in subsection (1)—

- (a) prove, grant, claim and draw a dividend in respect of any debt due to the former practitioner in connection with any property of which the receiver has been appointed receiver;
- (b) give receipts for any money received by the receiver, which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) employ a legal practitioner or other agent to give advice or take any proceedings or otherwise act for the receiver in relation to any property of which the receiver has been appointed receiver.

(3) The receiver, and the former practitioner, and any person who has submitted to the receiver a claim in respect to any trust account or other property, may each of them apply to the Court for directions to the receiver as to the manner in which any or all of the powers conferred or duties imposed on the receiver by this Part may be performed, either generally or in respect of any particular matter specified in the application; whereupon the Court may make such order as to the Court seems fit.

Claims by former practitioner

66.—(1) The receiver may give notice to the former practitioner to submit within a reasonable time (being not less than thirty days from the giving of the notice) to be specified in the notice, to the receiver full particulars of all moneys or other property, if any, claimed by the former practitioner and the grounds of the claims.

(2) If such notice has been given, the receiver may disregard any such claim made by the former practitioner otherwise than in accordance with the terms of the notice.

(3) The former practitioner shall not be entitled to any payment or otherwise in respect of any such claim and shall not be entitled to a lien upon any document or writing held by the receiver unless the proper claims of all other persons are fully satisfied.

(4) If the former practitioner claims a right to payment of costs from any person or persons entitled to moneys or other property held by the receiver pursuant to the provisions of this Part, the receiver may by notice in writing require the former practitioner to deliver to the receiver, within a reasonable time (being not less than thirty days from the giving of the notice) to be specified in the notice, a detailed bill of costs in respect of each of the former practitioner's dealings with each of such persons, and may also by the same or a subsequent notice in writing require the former practitioner to tax any such bill of costs within a reasonable time to be specified therein by the receiver.

(5) If the former practitioner fails to comply with any such requirement the receiver may, in distributing the moneys and other properties held by the receiver, disregard any such claim for costs.

(6) If the former practitioner claims a lien for costs on any document or writing held by the receiver, the receiver may by notice in writing require the former practitioner to give to the receiver within a reasonable time (being not less than thirty days from the giving of the notice) to be specified in the notice, particulars of all documents and writings on which the former practitioner claims a lien and to deliver to the receiver, within a reasonable time (being not less than thirty days from the giving of the notice) to be specified in the notice a detailed bill of costs in respect of which each lien is claimed and may also, by the same or a subsequent notice in writing require the former practitioner to tax any such bill of costs within a reasonable time to be specified therein by the receiver.

(7) If the former practitioner fails to comply with any such requirement in respect of any lien claimed, the receiver may in dealing with such document or writing disregard the lien.

(8) If the former practitioner so requests in writing, the receiver shall give to the former practitioner or other person on his or her behalf, access to all relevant books and documents as is reasonably necessary to enable the preparation of a bill of costs and the times specified in the notice for the provision of a detailed bill of costs as required by this Section shall not commence until the receiver gives such access.

Examination on oath

67.—(1) The receiver may apply to the Court for an order that the former practitioner do appear before the Court to be examined by the receiver as to any trust moneys or other property of which the receiver has been appointed receiver, whereupon the Court may make such order as to the examination of the former practitioner as to the Court seems fit.

(2) In such examination before the Court, the receiver may be represented by Counsel, and the Court may put or allow such questions to be put as it thinks fit.

(3) The former practitioner shall be examined upon oath and shall answer all questions as the Court puts or allows to be put.

(4) Unless the Court otherwise directs, the former practitioner shall not be excused from answering any question on the ground of any privilege claimed, or on the ground that the answer to it may expose the former practitioner to punishment.

Termination of appointment of receiver

68.—(1) The Registrar may at any time terminate the appointment of a receiver appointed by the Registrar and, if it thinks fit and subject to any order of the Court, may thereupon appoint another person to be receiver.

(2) The Registrar or the former practitioner may at any time apply to the Court for an order that the appointment of a receiver be terminated, whereupon the Court may make such order, including the appointment of another person or a direction to the Registrar to appoint another person, to be receiver, as to the Court seems fit.

(3) If the appointment of a receiver appointed by the Court terminates other than by order of the Court, the Registrar may apply to the Court for the appointment by the Court of another person to be the receiver, whereupon the Court may make such order as to the Court seems fit.

(4) If a receiver's appointment is terminated and another person is appointed to be the receiver, the former receiver shall, as soon as practicable, and subject to any directions given by the Court, transfer or deliver to the receiver appointed in his or her place, all trust moneys and other property as well as all documents and writings held by the former receiver by virtue of his or her appointment as receiver.

(5) Where the former practitioner has been suspended from practice and the period of suspension has terminated, the receiver may, and upon demand in writing by the former practitioner shall, as soon as practicable, and subject to any directions given by the Court, and subject unless the Court shall otherwise determine to the payment by the former practitioner of the receiver's remuneration, expenses and costs, transfer or deliver to the former practitioner all trust moneys and other property held by virtue of his or her appointment as receiver, and upon such transfer or delivery being completed, the appointment as receiver shall terminate.

(6) If within fourteen days of termination of a receiver's appointment, no other person has been appointed to be receiver in his or her place, he or she may, and upon demand in writing by the former practitioner shall, as soon as practicable, and subject to any directions given by the Court and subject unless the Court shall otherwise determine to the payment by the former practitioner of the receiver's remuneration expenses and costs, transfer or deliver to the former practitioner all trust moneys and other property held by virtue of his or her appointment as receiver.

Remuneration

69.—(1) The remuneration of the receiver shall be as agreed between the Registrar and the receiver. Failing agreement, the Court may, on the application of the Registrar or the receiver determine the amount of the remuneration expenses and costs of the receiver.

(2) The remuneration expenses and costs of the receiver shall be payable firstly out of any funds received by the receiver on behalf of the former practitioner (and the receiver is authorised to withhold such of these funds as may be necessary for this purpose), and in the event of any insufficiency, from the Fidelity Fund established under the Trust Accounts Act, 1996. The funds trustee of that Fidelity Fund is authorised to pay such amount for remuneration expenses and costs of the receiver pursuant to this Section as may be set out in a certificate from the Registrar. Any amount paid from the Fidelity Fund shall be recoverable from the former practitioner as a debt due and owing. Proceedings for recovery of these moneys may be brought either by the Registrar or the funds trustee.

(3) If any claim or charge is made by any person against the receiver for any act or omission by the receiver or any s or agents of the receiver done or made in good faith and in the execution or purported execution of the powers conferred or duties imposed under this Part, the Registrar may by notice in writing direct the funds trustee to reimburse the receiver from the Fidelity Fund for all or any costs, charges, expenses or damages which the receiver may have incurred in relation to such claim or charge.

Insufficiency of funds

70. If the trust moneys held by the receiver under the provisions of this Section are insufficient to satisfy all proper claims in respect of them, the trust moneys so held by the receiver shall be distributed amongst the claimants making such claims in such manner that the deficiency shall be borne by them in proportion to the amounts of their respective proper claims in respect of such trust moneys.

Property not to be taken in execution

71. Trust moneys and other property held by the receiver under the provisions of this Part shall not be levied upon or taken or attached under any judgment.

Report by receiver

72. Subject to such directions as the Court may see fit to make, every receiver shall at such times as the Court or the Registrar appointing the receiver may determine furnish to the said Court or Registrar, as the case may be,

a report of the receivership containing such information as the said Court or Registrar may require, and upon the conclusion of the receivership shall forthwith lodge with the said Court or Registrar in addition to the receiver's final report, all documents and writings in his or her possession or under his or her control relating to the receivership and, subject to any order of the Court for their destruction or otherwise, such documents and writings shall be kept in the custody of the Court or Registrar, as the case may be.

Proceedings and offences

73.—(1) In any proceedings in the Court under the provisions of this Part, the Court may make such order as to the payment of costs of the proceedings and costs incurred in the execution of any order made by the Court as to the Court seems fit.

(2) An order may be made pursuant to any application to the Court under this Part notwithstanding that such application has not been served upon the former practitioner or upon any other person.

(3) Without derogating from the powers of the Court, any person who contravenes or fails to comply with any provision of this Part shall be guilty of an offence against this Decree, and shall be liable, if no specific penalty is provided for that offence, to a penalty not exceeding \$5000.00 or to imprisonment for a term of not more than two years, or both.

Appointment of co-signatory

74.—(1) If the Registrar is of the opinion that any practitioner—

- (a) is an un-discharged bankrupt or has taken advantage of the law relating to bankruptcy; or
- (b) has stolen or fraudulently misapplied any trust money; or
- (c) has a general deficiency in his or her trust account; or
- (d) has contravened or failed to comply with any provision of the Trust Accounts Act, 1996 or any other law relating to trust moneys or trust accounts,

the Registrar may, by written notice, appoint any person to be the account signatory for the purposes of this Section in respect of any or all trust accounts of which that practitioner is, whether solely or jointly with any other person or persons, a trustee.

(2) As soon as practicable, a copy of the written notice thereof shall be served on—

- (a) the practitioner concerned; and
- (b) any other person authorised to operate on any trust account in respect of which the account signatory is appointed; and
- (c) the manager or other principal officer of the office or branch of the bank (as the case may be) with which any trust account in respect of which the account signatory is appointed is kept.

(3) After a copy of the written notice has been served on the manager or other principal officer, no payment shall be made by the bank on any cheque or other instrument drawn on any trust account in respect of which the account signatory has been appointed, unless it bears the signature of the account signatory as well as the signature of any person authorised to operate on that trust account.

(4) No person on whom a copy of the written notice has been served (for so long as such notice remains effective) shall sign any cheque or other instrument drawn on any trust account in respect of which the account signatory has been appointed unless such cheque or other instrument has first been signed by the account signatory.

(5) The notice issued by the Registrar under subsection (1) shall cease to be effective—

- (a) if the Registrar rescinds the notice; or
- (b) a receiver is duly appointed to the trust account or trust accounts in relation to which an account signatory has been appointed; or
- (c) the Court orders that such notice shall cease to be effective.

(6) Where the notice ceases to be effective, the Registrar shall, by written notice, inform all persons who have been served with a copy the written notice, that the written notice issued under subsection (1) has ceased to be effective. Until the written notice pursuant to this subsection has been served on a person, that person (and if the manager or principal officer of a bank or branch thereof, that bank) shall be entitled to deal with such trust account or trust accounts and any cheques or other instruments drawn thereon, as if the original written notice remained effective, and shall not incur any liability for acting as authorised by this subsection.

PART 8—COSTS

Establishment of Costs Review Committee

75.—(1) There shall be established a Costs Review Committee. This Committee shall be constituted by—

- (a) the Solicitor-General of Fiji or his or her nominee, who shall be the Chairperson;
- (b) two legal practitioners, with not less than 10 years' post-admission practice, appointed by the Minister; and
- (c) a person, not being a legal practitioner or a public , appointed by the Minister after consultation with members of the insurance industry.

(2) Any appointment or nomination made pursuant to this Section shall not exceed two years in duration but may be renewed, and may be terminated at any time by the person entitled to make the appointment or nomination.

Role of the Committee

76.—(1) The Committee shall as soon as reasonably practicable after its formation, and thereafter biennially, review—

- (a) the schedules of fees by which are calculated the amount of costs payable by one party to another pursuant to an order for costs made by a Court or Judge in any proceedings; and
- (b) the schedules of fees which in the absence of any agreement to the contrary, are properly payable by a client to a practitioner, in relation to both the form and content of those schedules with a view to establishing a fair and reasonable level of fees, simplifying the schedules so far as is practicable, amending the schedules to ensure that, so far as is possible, the fees properly payable might be calculated without the need for a taxing officer's discretion to be exercised, and shall make recommendations to the Minister accordingly. The Committee shall provide written reasons for those recommendations, and shall include the views of any dissenting members of the Committee.

(2) The recommendations made by the Committee to the Minister will be available to members of the public upon payment of such fee fixed by the Minister as is in the Minister's opinion reasonably necessary to meet the costs of making the recommendations available.

(3) The Committee shall inform itself and conduct its proceedings as it sees fit.

(4) The Minister is empowered to make regulations concerning the matters set out in paragraphs (a) and (b) of subsection (1). Subject to any express provisions of this Decree to the contrary, those provisions relating to the matters set out in paragraphs (a) and (b) of subsection (1) which are in force immediately prior to the commencement of this Decree shall continue in force until amended as if they were regulations made by the Minister pursuant to this Section.

Agreement to costs

77.—(1) A practitioner may make a written agreement with that practitioner's client in relation to the amount and manner of payment for the whole or any part or parts of any past or future services fees, charges or disbursements in respect of business done or to be done by such practitioner, either by a gross sum or otherwise howsoever.

(2) A client may apply to the Court or a Judge thereof for a review of any such agreement and, if in the opinion of the Court or Judge such agreement is unreasonable, the amount payable thereunder may be reduced or the agreement cancelled and such costs shall be payable or shall be determined in such manner as to the Court or Judge may seem fit. The Court or Judge may also make such order as to the costs of such review as to the Court or Judge may seem fit.

(3) If, before the full performance of any such agreement, any of the parties thereto shall die or become incapable of performing that party's obligations under the agreement then, subject to any provisions of the agreement to the contrary, such agreement shall cease, and the practitioner shall be entitled to charge such client such fees, charges, and disbursements as would have been properly payable had such agreement not been entered into.

(4) Nothing in this Decree shall prevent a legal practitioner from taking such security from the practitioner's client or any other person for future services fees, charges or disbursements as may be agreed.

(5) In considering the reasonableness of such an agreement, the Court or Judge may take into account—

- (a) the complexity of the matter and the difficulty or novelty of the issues involved;
- (b) the experience and standing of the practitioner;
- (c) whether the practitioner is to carry the costs of any disbursements;
- (d) whether the practitioner is entitled to charge professional costs only in the event of success in any proceeding;
- (e) the duration of the matter to which the agreement relates;
- (f) the urgency and circumstances in which the business is transacted;
- (g) the value or amount of any property or money involved;
- (h) any other matters or circumstances which the Court or Judge considers appropriate.

Contingency fees

78. Nothing in this Decree shall be construed to give validity to any purchase by a practitioner of the interest or any part of the interest of the practitioner's client in any suit action or other contentious proceeding to be brought or maintained. A practitioner may however agree to seek payment only in the event of success in any suit action or other contentious proceeding.

Practitioner may sue for and recover costs

79.—(1) Every practitioner shall be entitled to sue for and recover the practitioner's costs pursuant to any agreement made in accordance with the provisions of this Part, or in the absence of such agreement in accordance with the schedules of fees established by regulation pursuant to this Part, together with any proper disbursements, in respect of services rendered whether as a legal practitioner.

(2) It shall not be necessary for a practitioner to have such costs taxed prior to instituting proceedings for recovery of those costs. In the absence of taxation no claim may be made by the practitioner for any costs which are, pursuant to such agreement or the appropriate schedule of fees, as the case may be, left to the discretion of the taxing officer.

Right to particulars

80.—(1) Where an account for professional services has been delivered to a client by a legal practitioner, whether calculated pursuant to an agreement made under the provisions of this Part or any schedule of fees determined by regulation, the client may request of the practitioner particulars of the calculation of those charges.

(2) Where a client has requested such particulars of a practitioner, the practitioner shall not be able to institute proceedings, or if already instituted continue proceedings, for the recovery of those charges until those particulars have been provided and five days thereafter has elapsed.

PART 9—PROFESSIONAL STANDARDS

Division 1—Definitions

Unsatisfactory Professional Conduct

81. For the purposes of this Decree, 'unsatisfactory professional conduct' includes conduct of a legal practitioner or a law firm or an employee or agent of a legal practitioner or a law firm, occurring in connection with the practice of law that falls short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner or law firm.

Professional Misconduct

82.—(1) For the purposes of this Decree, ‘professional misconduct’ includes –

- (a) unsatisfactory professional conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; or
- (b) conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law, that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice, or that the law firm is not fit and proper to operate as a law firm.

(2) For the purpose of finding that a legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the matters that would be considered if the practitioner were an application for admission or for the grant or renewal of practising certificate, including those matters contained in section 44 (a) to (j) of this Decree.

Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

83.—(1) Without limiting sections 81 and 82, the following conduct is capable of being ‘unsatisfactory professional conduct’ or ‘professional misconduct’ for the purposes of this Decree:

- (a) conduct consisting of a contravention of this Decree, the regulations and rules made under this Decree, or the Rules of Professional Conduct;
- (b) charging of excessive legal costs or fees in connection with the practice of law;
- (c) charging legal costs or fees for work not carried out by the legal practitioner or legal practice or for incomplete work.
- (d) conduct in respect of which there is a finding of guilt or conviction for:
 - (i) a criminal offence (excluding traffic offences); or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty; or
 - (iv) contempt of court;
- (e) conduct of a legal practitioner or law firm as or in becoming an insolvent under administration or receivership, or bankrupt;
- (f) conduct of a legal practitioner in becoming disqualified from managing or being involved in the management of a company;
- (g) conduct of a legal practitioner or law firm in failing to comply with any orders or directions of the Registrar or the Commission under this Decree;
- (h) conduct of a legal practitioner or law firm consisting of a contravention of the provisions of the Trust Accounts Act 1996 (as amended from time to time);

(2) ‘Professional misconduct’ includes malpractice, and ‘unsatisfactory professional conduct’ includes unprofessional practice or conduct.

*Division 2—Independent Legal Services Commission**Independent Legal Services Commission established*

84.—(1) This section establishes the Independent Legal Services Commission, which shall have such powers, functions and duties as prescribed in this Decree or any other written law

(2) The Commission shall consist of a Commissioner, appointed pursuant to this Decree.

(3) The powers, functions and duties of the Commission, as prescribed in this Decree, shall be performed by the Commissioner.

Appointment of Commissioner

85.—(1) The Commissioner shall be appointed by the President, on the advice of the Attorney-General.

(2) The Commissioner must be a person who is qualified to be a judge under section 15 of the Administration of Justice Decree 2009.

(3) In advising the President as to the person to be appointed as Commissioner pursuant to subsection (1), the Attorney-General must be satisfied that the person—

- (a) is familiar with the nature of the legal system and legal practice in Fiji; and
- (b) possesses appropriate qualities of independence, integrity and fairness.

(4) The President may appoint a person who is not a citizen of Fiji as the Commissioner.

(5) The Commissioner may be appointed either on a part-time or full-time basis.

Functions and powers of Commission

86.—(1) The Commission has the functions conferred by this Decree or any other written law.

(2) The Commission has all the powers necessary to perform its functions, including the powers conferred on the Commission under this Decree of any other written law.

(3) In the performance of its functions or the exercise of his or her powers, the Commission is not subject to the direction or control of any other person or authority, except a court of law or as otherwise provided by this Decree.

(4) The Minister may give general policy, administrative and financial guidelines to the Commission, and the Commission must act in accordance with any guidelines given by the Minister.

Term of office

87. The Commissioner holds office for a term of any period up to 5 years, and is eligible for re-appointment.

Remuneration and allowances

88. The Commissioner, whether appointed as part-time or full-time, is entitled to such remuneration and allowance as fixed by the President, upon the advice of the Attorney-General.

Removal from office

89. The Commissioner may be removed by the President for inability to perform the functions of the office (whether arising from infirmity of body or mind, absence, or any other cause) or for misbehaviour, or may otherwise be removed by giving one month's notice or one month's remuneration in lieu of notice.

Acting Appointment

90.—(1) The President may appoint a person to act as Commissioner—

- (a) during a vacancy in the office; or
- (b) during any period when the Commissioner is absent from duty, or from Fiji, or is for any other reason, unable to perform the duties of the office.

(2) The person appointed to act as Commissioner must be eligible for appointment as Commissioner.

(3) Any appointment to act as Commissioner shall be for such term as specified in the instrument of appointment, and a person appointed to act as Commissioner is eligible for re-appointment.

(4) The acting Commissioner shall perform all the functions of the Commissioner during the term of appointment, and is entitled to such remuneration and allowances which the Commissioner would have been entitled to for performing these functions.

(5) The President may remove the acting Commissioner from office at any time.

Validity of acts and decisions

91. An act or decision of the Commissioner or acting Commissioner is not invalid only because –

- (a) of a defect or irregularity in, or in connection with, their appointment; or
- (b) in the case of the acting Commissioner, that the occasion for so acting had not risen or had ceased.

Funding

92.—(1) The funds for the Commission consist of—

- (a) any moneys appropriated for the purposes of the Commission;
- (b) all other moneys lawfully received by the Commission for its purposes (including such funds paid from the Contribution Fund established under the Trust Accounts Act 1996); and
- (c) all accumulations of income derived from any such money.

(2) The accounts of the Commission must be audited by the Auditor General.

Adequacy of funding

93. The Minister must use his or her best endeavours to ensure that moneys appropriated for the Commission are adequate—

- (a) for the performance of the functions of the Commission; and
- (b) to maintain the Commission's independence and impartiality.

Appointment of Secretary and other Employees

94.—(1) The Commissioner may, with the approval of the Attorney-General, appoint a Secretary of the Commission and such other employees, casual and contract employees, needed for the efficient performance of the functions of the Commission.

(2) The employees of the Commission hold office on terms and conditions determined by the Commissioner after consultation with the Attorney-General.

(3) A public officer may be seconded to the Commission, on such terms and conditions agreed with the Attorney-General.

(4) The Commissioner may, with the approval of the Attorney-General, engage consultants, including accountants, auditors and other professionals, which the Commissioner considers necessary to properly perform the Commission's functions.

(5) Notwithstanding anything contained in this Decree, the initial appointment of the Secretary and other employees of the Commission, upon the commencement of this Decree and pending the appointment of the Commissioner, shall be made by the Attorney-General on such terms and conditions as may be prescribed in their contracts of employment.

Guidelines and directions

95. The Commissioner may from time to time issues guidelines and directions for the performance of the Commission's functions and for the handling of complaints.

Annual report

96. Without limiting the right of the Commissioner to report at any other time, the Commissioner must, as soon as practicable after the end of each financial year, furnish to the President and the Attorney-General an annual report on the exercise of the Commission's functions under this Decree during the year.

Protection from suit

97. Neither the Commissioner nor an employee or a consultant appointed by the Commissioner is liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise or purported exercise of a function, power or authority conferred by this Decree.

Commissioner and employees to maintain confidentiality

98.—(1) The Commissioner or any employee or consultant must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any legal practitioner or law firm acquired in the performance of functions under this Decree, unless—

- (a) it is necessary to do so for the purpose of, or in connection with, the performance of a function under this Decree;
- (b) it is necessary to do so for the purposes of producing a document or giving evidence to a court or tribunal in the course of civil or criminal proceedings or proceedings under this Decree; or
- (c) it is necessary to do so for reporting a suspected offence to the police or Fiji Independent Commission Against Corruption or the Financial Intelligence Unit, or assisting them in their investigations.

(2) Subsection (1) does not prevent the Commissioner or any employee from disclosing information or making a statement to the public or a section of the public with respect to the performance of the functions of the Commissioner.

*Division 3—Complaints and Investigations**Complaints to the Registrar*

99.—(1) Any person or entity may make a complaint to the Registrar regarding any alleged professional misconduct or unsatisfactory professional conduct by any practitioner or law firm, or any employee or agent of any practitioner or any law firm.

(2) A complaint under subsection (1) may be made orally or in writing.

(3) A complaint under subsection (1) may be made against a legal practitioner or a law firm or both.

(4) A complaint under subsection (1) may be made against a legal practitioner or a law firm for any alleged professional misconduct or unsatisfactory professional conduct by any employee or agent of any practitioner or any law firm.

(5) A complaint under subsection (1) may be made against legal practitioners who have ceased to practice, or law firms that have ceased to operate.

Registrar may investigate without a complaint

100.—(1) The Registrar may investigate the conduct of a legal practitioner or a law firm or any employee or agent of any practitioner or any law firm, if the Registrar has reason to believe that the conduct may amount to professional misconduct or unsatisfactory professional conduct, even though no complaint has been made about the conduct or a complaint made under section 99 by any person or entity has been withdrawn.

(2) The Registrar shall investigate the conduct of a legal practitioner or a law firm or any employee or agent of any practitioner or any law firm, if the conduct has been referred to the Registrar by a judicial officer for any alleged professional misconduct or unsatisfactory professional conduct.

Application to legal practitioners and law firms

101.—(1) A complaint under section 99 may be made, or an investigation under section 100 may be carried out, against the conduct of any legal practitioner or law firm or any employee or agent of any practitioner or any law firm, whether or not—

- (a) the legal practitioner is a local legal practitioner;
- (b) the legal practitioner holds a practising certificate;
- (c) the legal practitioner has ceased practising as a legal practitioner;
- (d) the practitioner resides or operates a law firm, or is employed by a law firm in Fiji;
- (e) the employee or agent continues to be employed by the legal practitioner or law firm; or
- (f) the person making the complaint resides or works in Fiji.

(2) A complaint under section 99 may be made, or an investigation under section 100 may be carried out, in relation to any alleged professional misconduct or unsatisfactory professional conduct occurring before the commencement of this Decree.

(3) No complaint under section 100 may be made or accepted, or an investigation under section 101 may be carried out, against a person who holds a judicial office, regardless of whether the alleged conduct which is the subject of the complaint allegedly occurred before or after the person's appointment to the judicial office.

Role of Attorney-General and Society

102. Upon receipt of any complaint regarding any alleged professional misconduct or unsatisfactory professional conduct by any practitioner or law firm, or any employee or agent of any practitioner or any law firm, the Attorney-General or the Society shall refer the complaint to the Registrar for action in accordance with the provisions of this Decree.

Further Information and Verification

103.—(1) Upon receipt of a complaint under section 99, the Registrar must notify the complainant in writing of receipt of the complaint.

(2) Upon receipt of a complaint, the Registrar may—

- (a) require that the complaint be made in writing;
- (b) require the complainant to provide further information or details about the complaint, including—
 - (i) name and address of the complainant
 - (ii) name of the legal practitioner or law firm, which is the subject of the complaint
 - (iii) details of the conduct complained
 - (iv) reliefs, including compensation, being sought by the complainant; or
- (c) require that the complaint or any matters referred to therein be verified by statutory declaration.

Practitioner or law firm to be informed

104. Upon receipt of a complaint under section 99 or commencement of an investigation under section 100, the Registrar shall refer the substance of the complaint or the investigation—

- (a) in the case of complaint or investigation against a legal practitioner—to the legal practitioner;
- (b) in the case of complaint or investigation against a law firm—to all the partners of the law firm; or
- (c) in the case of complaint or investigation against any employee or agent of a legal practitioner or law firm—to the legal practitioner or the one or more partners of the law firm.

Registrar may require explanation

105.—(1) Upon receipt of a complaint under section 99 or commencement of an investigation under section 100, the Registrar may require that the legal practitioner or the law firm by written notice to furnish to the Registrar within the time specified in that notice a sufficient and satisfactory explanation in writing of the matters referred to in the complaint.

(2) The Registrar may by notice in writing require a legal practitioner or law firm to provide to the Registrar a sufficient and satisfactory explanation of any matter relating to that practitioner's or that law firm's conduct or practice. Such explanation shall be provided in writing to the Registrar within the time specified in the notice.

Registrar may require production of documents etc

106. The Registrar may require by notice in writing to a legal practitioner or a law firm, the production by the legal practitioner or the law firm to the Registrar, at a time specified in that notice, of books, papers, files, securities, other documents or any other record of any type whatsoever, or copies thereof which are in the custody, possession or control of the legal practitioner or law firm and which may be relevant to or relate to the complaint under section 99 or the investigation under section 100.

Waiver of privilege or duty of confidentiality

107.—(1) If a client of a legal practitioner or a law firm makes a complaint about the legal practitioner or the law firm, the complainant is taken to have waived legal professional privilege or the benefit of any duty of confidentiality, to enable the legal practitioner or the law firm to disclose to the Registrar or the Commission any information necessary for dealing with or investigating the complaint.

(2) Without limiting subsection (1), any information so disclosed may be used in or in connection with any procedures or proceedings relating to the complaint.

Failure to provide explanation or production of documents etc

108.—(1) Where any legal practitioner or law firm fails to comply with any notice issued under section 105 or section 106, the Registrar may notify the legal practitioner or law firm in writing that if such failure continues for a period of fourteen days from the date of receipt of such notice, the legal practitioner or law firm will be liable to be dealt with for professional misconduct.

(2) If such failure referred to in subsection (1) continues for a period of fourteen days from the date of such notification to the practitioner, such failure shall be deemed to be professional misconduct, unless the legal practitioner or law firm furnishes a reasonable explanation for such failure. In any proceedings before the Commission, the tendering of a communication or requirement from the Registrar with which the legal practitioner or law firm has failed to comply, together with proof of service of such communication or requirement, shall be prima facie evidence of the truth of the matters contained in such communication and any enclosures or annexures accompanying such communication.

Role of the Registrar

109.—(1) Upon receipt of such complaint under section 99, or upon conducting investigation under section 100, or upon receiving information concerning the conduct of a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm, the Registrar may after undertaking such investigations as it sees fit—

- (a) summarily dismiss the complaint under section 110 of this Decree;
- (b) make such efforts as it sees fit to facilitate the resolution of the matter in question, including mediation; or
- (c) commence disciplinary proceedings before the Commission for determination by the Commission, in accordance with the provisions of this Decree.

(2) The Registrar, with the consent of the complainant, may refer any complaint made under section 99, or an investigation under section 100, in relation to—

- (a) charging of excessive legal costs or fees in connection with the practice of law; or
- (b) charging legal costs or fees for work not carried out by the legal practitioner or legal practice or for incomplete work

to a Master of the High Court or to a Judge of the High Court for taxation or assessment of costs or fees.

Summary dismissal of complaints

110.—(1) The Registrar may summarily dismiss a complaint if—

- (a) further information and details are not provided by the complainant, or if further information and details are not verified by the complainant, as required by the Registrar under section 103(1) of this Decree;
- (b) the complaint is vexatious, misconceived, frivolous, or lacking in substance;
- (c) the conduct complained of has been the subject of a previous complaint that has been dismissed or dealt with, either under this Decree or under the repealed Act;
- (d) the conduct complained about is the subject of another complaint;
- (e) the conduct complained of is not one that the Registrar or the Commission is empowered to deal with under this Decree.

(2) If the Registrar summarily dismisses a complaint, then the Registrar must give a written notice of the dismissal including the reasons for the dismissal.

(3) If a complaint has been summarily dismissed by the Registrar for reasons mentioned in subsection (1), the dismissal does not prevent the complainant from making a fresh complaint under this Decree against the legal practitioner or the law firm or any employee or agent of any practitioner or any law firm.

(4) If a complaint has been summarily dismissed by the Registrar, then the complainant may commence disciplinary proceedings directly before the Commission for determination by the Commission in accordance with the provisions of this Decree.

Division 4—Disciplinary Proceedings before the Commission

Commencement of disciplinary proceedings

111.—(1) The Registrar may commence disciplinary proceedings against a legal practitioner or a law firm or any employee or agent of a legal practitioner or law firm by making an application to the Commission in accordance with this Decree and containing one or more allegations of professional misconduct or unsatisfactory professional conduct.

(2) Any complainant whose complaint has been summarily dismissed by the Registrar under section 110(1), may commence proceedings against a legal practitioner or a law firm or any employee or agent of a legal practitioner or law firm by making an application directly to the Commission in accordance with this Decree and containing one or more allegations of professional misconduct or unsatisfactory professional conduct.

(3) Disciplinary proceedings may be commenced by the Registrar under subsection (1) or by a complainant under subsection (2) before the Commission, against—

- (a) in the case of allegations of professional misconduct or unsatisfactory professional conduct against a legal practitioner—the legal practitioner;
- (b) in the case of allegations of professional misconduct or unsatisfactory professional conduct against a law firm—all the partners of the law firm; or
- (c) in the case of allegations of professional misconduct or unsatisfactory professional conduct against any employee or agent of a legal practitioner or law firm—the legal practitioner or the one or more partners of the law firm.

(4) An application to the Commission under subsections (1) and (2) shall relate to the subject matter of the complaint under section 99 or an investigation carried out by the Registrar under section 100, but need not be an allegation made in the original complaint or investigation carried out by the Registrar.

(5) The Registrar shall provide a copy of the application—

- (a) in the case of disciplinary proceedings against a legal practitioner – to the legal practitioner;
- (b) in the case of disciplinary proceedings against a law firm – to all the partners of the law firm; or
- (c) in the case of disciplinary proceedings against any employee or agent of a legal practitioner or law firm – to the legal practitioner or the partners of the law firm.

Hearing of the application

112.—(1) Upon receipt of the application to commence disciplinary proceedings under section 111, the Commission shall conduct a hearing into each allegation particularised in the application.

(2) The Commission shall give or cause to be given to every legal practitioner or partner of the law firm against whom an application under section 111 for disciplinary proceedings is made, a reasonable notice of the time when and the place where the Commission is to conduct its inquiry, and such legal practitioner or partner of the law firm may appear and be heard in person or by counsel on those disciplinary proceedings.

(3) The Registrar and any complainant shall be entitled to appear at the hearing either in person or by an employee or by counsel, and shall assist the Commission in its hearing.

(4) If the legal practitioner or partner of the law firm against whom an application under section 111 for disciplinary proceedings is made and to whom notice has been given pursuant to this section, does not attend at the time and place mentioned in the notice, the Commission may determine the reference in the absence the legal practitioner or partner of the law firm, as the case may be.

Proceedings to be public

113.—(1) Proceedings before the Commission shall be open to the public unless the Commissioner orders otherwise.

(2) If the Commissioner orders the members of the public be excluded from any proceeding, the Commissioner may nevertheless direct that specified persons shall be entitled to attend and observe the proceeding.

Commission not bound by formal rules of evidence

114. The Commission is not bound by formal rules of evidence, other than those in this Decree relating to witnesses, but must give the legal practitioner or partner or partners of the law firm in respect of whom or whose law firm an application for disciplinary proceedings is made, an opportunity to make written submissions and to be heard, and the Commission must act fairly in relation to the proceeding.

Joinder

115. The Commission may, subject to its rules and rules of procedural fairness, order the joinder of more than one application against the same or different legal practitioners or law firm.

Witness to attend

116.—(1) The Commission may by notice in writing signed by the Commissioner or any authorised employee of the Commission require to appear before it any person (including any complainant and the legal practitioner or partner of a law firm in respect of whose conduct any matter has been referred to it) who may, in its opinion, be able to give evidence or produce documents touching the matter in question, or whom any party to the reference may desire to call as a witness.

(2) The Commission may require evidence to be given on oath, either orally or by affidavit, and for that purpose the Commissioner may administer oaths and affirmations. The Commissioner shall have the same power and authority with respect to the discovery and production of documents and in the conduct of the reference as a judge of the Court has for the purpose of a trial of issues in a civil action.

(3) Any person who without lawful justification fails to comply with a requirement by the Commission or the Commissioner lawfully made pursuant to this section, or to answer truly and fully any question put to that person, commits an offence against this section and shall be liable on conviction to a fine not exceeding \$5,000.00.

Immunity of witness and counsel

117.—(1) Witnesses and counsel appearing before the Commission shall have the same privileges and immunities in relation to hearings before the Commission under the provisions of this Decree as if they were proceedings in a court of law.

(2) The hearings of the Commission shall for the purpose of Chapter 12 of the Penal Code be deemed to be a judicial proceeding.

Protection of the Commission

118. The Commissioner shall in the exercise of his functions of the Commission under this Decree, have the same privileges and immunities as a Judge of the High Court.

Witnesses expenses

119.—(1) Every witness giving evidence or attending to give evidence at the hearing of the Commission under this Decree shall be entitled at the discretion of the Commission to such sum for expenses and loss of time as the Commission may determine.

(2) Nothing in subsection (1) prevents the Commission from ordering, at the end of the hearing, that the costs and expenditure be paid by the legal practitioner or partner of the law firm against whom an application under section 111 for disciplinary proceedings is made.

Witness required to answer

120. Where a witness at a hearing of the Commission objects to answering any questions put or to discovery or production of any document or other thing by reason that such answer or the discovery or production of that document or thing may tend to incriminate that witness, that witness shall not be excused from answering or from discovery or production of that document or thing, but no such answer given after such objection shall be admissible in proceedings for an offence other than the offence of perjury.

Powers of the Commission on hearing

121.—(1) If, after completing the hearing of an application for disciplinary proceedings against a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm pursuant to this Decree, the Commission is satisfied that the legal practitioner or law firm or any employee or agent of a legal practitioner or law firm has engaged in professional misconduct or unsatisfactory professional conduct, the Commission may make one or more of the following orders—

- (a) an order that the name of the legal practitioner or the partner or partners of the law firm be struck from the roll;
- (b) an order directing that the law firm cease to operate as or engage in legal practice;
- (c) an order that the practising certificates of the legal practitioner or the partner or partners of the law firm be cancelled or suspended for such period as the Commission deems fit;
- (d) an order that the practising certificate of the legal practitioner or the partner or partners of the law firm not be issued for such period as the Commission deems fit;
- (e) an order that the legal practitioner or the partner or partners of the law firm must not apply for a practising certificate for such period as the Commission deems fit;
- (f) an order that imposes conditions on the issued or to be issued practising certificates of the legal practitioner or the partner or partners of the law firm;
- (g) an order reprimanding the legal practitioner or the partner or partners of the law firm;
- (h) an order that the legal practitioner or the partner or partners of the law firm be removed from the roll of Notaries public;
- (i) an order that the legal practitioner or the partner or partners of the law firm pay a fine or penalty to either the Commission or Registrar, of such sum not exceeding \$500,000.00;
- (j) an order requiring the legal practitioner or the partner or partners of the law firm to pay compensation to any complainant of such sum as directed by the Commission;
- (k) an order directing the legal practitioner or the partner or partners of the law firm to make ledgers, books of accounts records, deeds, files and other documents relating to the practitioner's practice available for inspection at such times and by such persons as are specified in the order;
- (l) an order directing the legal practitioner or the partner or partners of the law firm to make reports on their legal practice in such manner and at such times and to such persons as are specified in the order;
- (m) an order directing the legal practitioner or the partner or partners of the law firm to comply with conditions, including attendance at continuing legal education programmes and other educational programmes and seminars relating to legal education, practice management and other related topics in respect of the conduct of legal practice;
- (n) an order that the legal practitioner or the partner or partners of the law firm engage in legal practice under supervision, upon such terms and such periods as stated in the order;
- (o) an order that the legal practitioner or the partner or partners of the law firm do or refrain from doing something in connection with their legal practice;
- (p) an order that the legal practitioner or the partner or partners of the law firm stop accepting instructions as a notary public for such period as the Commission deems fit;
- (q) an order directing that any fees or costs paid to the legal practitioner or law firm by any person in relation to the subject matter of the disciplinary proceedings be reimbursed by the legal practitioner or law firm to such person;
- (r) such other orders as may be provided for in the rules of procedure made pursuant to this Decree.

(2) Without limiting any order that may be made under subsection (1) against a legal practitioner or the partner or partners of a law firm for conduct of any employee or agent of a legal practitioner or law firm, the Commission may order that on and from the date specified in the order no person shall employ that employee or agent in any capacity in a legal practice, except on such conditions as may be specified in the order.

(3) The Commission may make any interlocutory or interim orders as it thinks fit before making its final decision in an application for disciplinary proceedings against a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm.

(4) The Commission may make ancillary orders in addition to the orders contained in subsection (1), to give full effect to the orders made under subsection (1).

(5) The Commission may, with the consent of the Registrar and the legal practitioner or the partner or partners of a law firm, make any orders by consent, either before or after the hearing in the Commission. Any order by consent shall have the same effect and force as an order of the Commission under this Decree.

(6) Where the Commission by its order directs that something be done, it may also direct the period of time within which the order is to be complied with.

(7) Where a person against whom an order is made is not present at the time the order is made, the Commission shall as soon as practicable cause a copy of the order to be served on that person.

Orders of the Commission

122. —(1) The Commission must give a written copy of any orders made by the Commission in an application for disciplinary proceeding to:

- (a) the legal practitioner, or the partner or partners of the law firm, against whom the application for disciplinary proceedings was made;
- (b) the Registrar; and
- (c) the Attorney-General.

(2) The Commission must, within 14 days of an order being made, file the order in the High Court.

(3) Once an order made by the Commission is filed in the High Court under subsection (2), the order becomes an order of the High Court, and may be enforced accordingly in accordance with the Rules of the High Court.

Orders for striking off

123. Where the Commission orders that the name of any legal practitioner or partner or partners of a law firm be struck off or restored to the Roll, the order shall be filed in the Court, and the Roll noted accordingly.

Costs

124.—(1) After hearing any application for disciplinary proceedings under this Decree, the Commission may make such orders as to the payment of costs and expenses as it thinks fit against any legal practitioner or partner or partners of a law firm.

(2) The Commission shall not make any order for payment of costs and expenses against the Registrar or the Attorney-General

(3) Without limiting subsection (1) the Commissioner may,

- (a) without making any finding adverse to a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm, and
- (b) if the Commission considers that the application for disciplinary proceedings was justified and that it is just to do so,

order that legal practitioner or partner or partners of the law firm as the case may be to pay to the Commission and the Registrar such sums as the Commission may think fit in respect of costs and expenses of and incidental to the proceedings, including costs and expenses of any investigation carried out by the Registrar.

Recovery of penalties and costs

125. Any sum ordered by the Commission to be paid by way of a penalty or costs or expenses under this Decree shall become an order of the High Court, and the person or entity to whom it is ordered to be paid may enforce the order in the High Court against the person or entity ordered to pay it.

Publication of Orders

126.—(1) The Commission shall publicise and make public any order made against a legal practitioner or law firm or any employee or agent of a legal practitioner or law firm in an application for disciplinary proceeding, in any way the Commission considers appropriate; provided that the Commission may withhold the publication of any order if the Commission is of the view that there are exceptional circumstances which warrant against any publication.

(2) The Commission must keep a Discipline Register of all orders made against legal practitioners or law firms or any employee or agent of a legal practitioner or law firm. The Register must contain—

- (a) the full name of the legal practitioner, or the law firm and the partner or partners of the law firm against which orders in an application for disciplinary proceedings were made;
- (b) the address of the legal practitioner, or the law firm and the partner or partners of the law firm against which orders in an application for disciplinary proceedings were made;
- (c) the particulars of the application for disciplinary proceedings;
- (d) the actual orders made against the legal practitioner, or the law firm and the partner or partners of the law firm; and
- (e) such other particulars as prescribed by rules or regulation.

(3) The Discipline Register may be kept in a form decided by the Commission, and must be available for public inspection.

(4) The Commission may cause any error in or omission from the Discipline Register to be corrected.

(5) The Discipline Register shall not contain any records in relation to applications for disciplinary proceedings in which the Commission has not found the legal practitioner or law firm or any employee or agent of a legal practitioner or law firm to have engaged in professional misconduct or unsatisfactory professional conduct.

(6) The requirement to keep the Discipline Register applies only in relation to disciplinary proceedings taken under this Decree; provided however that details relating to disciplinary proceedings and orders against legal practitioners before the commencement of this Decree may be included in the register, as determined by the Commission.

Rules of procedure

127.—(1) The Commission may from time to time make rules in respect of the making, hearing and determination of applications of disciplinary proceedings under this Decree.

(2) The Commission may make such other rules for the effective performance of its functions under this Decree.

Appeals

128.—(1) An appeal shall lie to the Court of Appeal from any order of Commission at the instance of either the Registrar or any other party to the proceeding.

(2) Such appeal shall be made within such time and in such form and shall be heard in such manner as shall be prescribed by the rules of procedure made under section 127.

Rules of professional conduct

129.—(1) The Registrar may, with the approval of the Minister, make rules of professional conduct and practice with which practitioners shall be expected to comply.

(2) Upon approval by the Minister, these rules shall be published in the Gazette.

(3) Failure by a practitioner to comply with any of the provisions of these rules may amount to professional misconduct on the part of that practitioner, subject to the provisions of the rule in question and the circumstances of the matter.

(4) A rule may provide that its breach shall, in the absence of lawful excuse, be deemed to be professional misconduct on the part of the person so breaching the rule.

(5) These rules shall not be exhaustive as to the matters or circumstances which might amount to professional misconduct or unprofessional conduct.

(6) The power to make rules pursuant to this Section includes the power to repeal and amend rules.

(7) Nothing in this Section shall prevent the Registrar from recommending and publishing standards of professional courtesy, behaviour, performance and practice.

(8) The rules of professional conduct and practice set out in the Schedule to this Decree shall be deemed to have been duly made pursuant to this Section, and shall be effective upon the commencement of this Decree.

Jurisdiction of court not affected

130. Nothing in this Part shall affect the jurisdiction exercisable by any Court or Judge thereof, over practitioners.

*Division 5—Transitional Provisions**Transitional Provisions*

131.—(1) The Registrar shall, immediately upon the commencement of this Decree, obtain from the Society or the Secretary, any complaint made to the Society under Part 9 of the repealed Act and not finally disposed of at the commencement of this Decree (“unresolved complaint”).

(2) The Registrar shall, immediately upon the commencement of this Decree, obtain from the Society or the Secretary any information or documents, including any explanation provided by the legal practitioner in relation to such unresolved complaint, in the possession of or obtained by the Society in relation to any investigation of any such unresolved complaint made to the Society prior to the commencement of this Decree.

(3) The Registrar shall, immediately upon the commencement of this Decree, obtain from the Society, the Secretary or the chairperson of any disciplinary committee appointed under the repealed Act, any information or documents in the possession of such disciplinary committee, the Society or the Secretary, in relation to a complaint or charge or question referred to any such disciplinary committee under the repealed Act and not finally disposed of prior to the commencement of this Decree.

(4) In order to obtain the complaints, information or documents mentioned in subsection (1), (2) and (3), the Registrar or any person authorised by the Registrar may enter any premises to locate and obtain any such complaints, information or documents, and may take such other steps as are reasonably necessary to obtain such complaints, information or documents.

(5) Any disciplinary committee appointed under the repealed Act shall be dissolved and shall not hear or continue to hear any complaint, charge or question referred to it.

(6) Nothing in this Decree affects the validity of:

(a) any final determination made by a disciplinary committee under section 93 of the repealed Act; and

- (b) any order made by a disciplinary committee under the repealed Act that the name of any legal practitioner be struck off or restored to the Roll.

(7) Any appeal to the Court of Appeal from any order of a disciplinary committee which is pending before the Court of Appeal shall continue to exist and shall be dealt with by the Court of Appeal, as if this Decree had not been made.

(8) Upon receipt of the matters referred in subsections (1), (2) and (3), the Registrar shall deal with these complaints in accordance with the provisions of this Decree.

PART 10—PROFESSIONAL INDEMNITY INSURANCE

Power of minister to make rules

132.—(1) The Minister may make rules relating to insurance and indemnity against loss arising from claims in respect of civil liability incurred by a practising practitioner or former practising practitioner in connection with a practitioner's practice or in connection with any trust of which the practitioner is or was formerly a trustee.

- (2) These rules shall be known as the professional indemnity rules.
- (3) Without limiting the generality of subsection (1), the professional indemnity rules may—
- (a) require practitioners in private practice or any class thereof to take out and maintain insurance with insurers;
 - (b) specify the insurer or insurers with whom insurance is to be taken out and maintained;
 - (c) determine the level of insurance to be maintained and may specify the level of and terms and conditions on which indemnity is to be available;
 - (d) specify the circumstances in which the right to indemnity is to be excluded or modified;
 - (e) prescribe the terms and conditions with which an insurance policy required by the rules must comply;
 - (f) specify the circumstances in which an insurer may take proceedings against a practitioner or former practitioner in respect of sums paid by way of indemnity relating to a matter in relation to which that person has failed to comply with a policy or the professional indemnity rules;
 - (g) specify the circumstances in which practitioners shall be exempt from the professional indemnity rules;
 - (h) require practitioners or any class of practitioners to provide information to the Registrar or an insurer relating to their practices.

Non-compliance to be misconduct

133. Failure by a practitioner to comply with professional indemnity rules shall, in the absence of lawful excuse, be deemed to be professional misconduct on the part of that practitioner.

Rules to take effect at a time specified

134. The Minister may, in respect of any rule made pursuant to this Part, specify the date from which such rules shall take effect.

Limitation of liability

135. If a practitioner has in place a policy of insurance pursuant to professional indemnity rules made under this Part which rules require a minimum level of insurance to be maintained, then the practitioner may enter into an agreement with a client excluding the practitioner from any claims made by the client against the practitioner arising out of the negligence of the practitioner, or any partners or employees of the practitioner, in relation to such part of those claims as exceeds the minimum level of insurance required by the professional indemnity rules, but not otherwise.

PART 11—NOTARIES PUBLIC

Chief Justice may appoint Notaries Public

136. The Chief Justice, from time to time, may appoint any legal practitioner with not less than 10 years' post-admission practice, whom he or she shall consider a fit and proper person to be a Notary Public for the Fiji Islands to

discharge the duties assigned to such office by the laws of the United Kingdom and or the Fiji Islands or by the practice of commerce, and every person so appointed shall, on his or her appointment, pay as stamp duty to the Commissioner of Stamp Duties the sum of \$1,000.00, provided that any legal practitioner employed by the State shall be exempt from the payment of such stamp duty.

Notaries to be sworn

137. Every person so appointed shall before entering upon the duties of his or her office be sworn before the Chief Justice well and faithfully to discharge the duties of his or her office.

Roll of Notaries Public

138.—(1) Every person appointed to the office of a Notary Public shall cause his or her name to be enrolled in a book to be kept for that purpose in the office of the Registrar and to be called the Roll of Notaries Public, and shall be entitled to a certificate of enrolment under the seal of the Court and no person whose name has not been enrolled as aforesaid shall be entitled to perform the duties of a Notary Public within the Fiji Islands.

(2) The Chief Justice may, in his discretion, strike off the roll of Notaries Public a person who in the Chief Justice's opinion is no longer a fit and proper person to be a Notary Public.

Notaries to be officers of the court

139. Every person discharging the duties of a Notary Public shall be deemed to be an officer of the Court and upon any Notary Public being guilty of misconduct in the execution of the duties of his or her office such Notary Public shall forthwith be discharged by the Chief Justice from the duties of his or her said office.

In suspicious cases Notary to refuse to act

140. In any case where the circumstances shall appear to a Notary Public suspicious and not warranting the protest or other notarial act demanded, he or she shall refuse to act: Provided always that any person who considers himself or herself aggrieved by the refusal of a Notary Public to note the protest or to do any other notarial act demanded may apply to the High Court for an order calling upon such Notary Public to act in the execution of his or her office, and before applying for such order, written notice of the application shall be given to the Notary Public refusing to act, and to such persons (if any) in the Fiji Islands as having any interest in the subject matter of the protest or other notarial act.

Notary to mark refusal on document

141. When a Notary Public refuses to note or to do any protest or other notarial act the Notary Public so refusing shall mark in or on the log book, bill of exchange or other document, his or her refusal with his or her signature and the date of refusal subscribed thereon.

Penalty for false certificates, etc.

142. Any Notary Public or other person who wilfully certifies or propounds any false statement or document or who fraudulently with intent to deceive conceals, withholds or perverts any fact or document pertinent to the subject of the protest or other notarial act shall be guilty of a misdemeanour and shall be liable to imprisonment for a term not exceeding two years.

Fees

143. The fees chargeable by a Notary Public for discharging his or her duties under the provisions of this Decree shall be as prescribed by the Cost Review Committee.

PART 12—COMMISSIONERS FOR OATHS

Appointment of Commissioners for Oaths

144.—(1) The Chief Justice may appoint, under his or her signature and the seal of the High Court from time to time, such and so many legal practitioners and other persons as may be requisite to be Commissioners for taking affidavits and declarations and receiving production of documents or for taking the examination of witnesses on interrogatories or otherwise which may be necessary to be taken in respect of any proceedings in any court, and any order of a court for the attendance and examination of witnesses or production of documents before any such Commissioner within the jurisdiction of the Court shall be enforced in the same manner as an order to attend or be examined or produce documents before the Court.

(2) No action shall be brought against any Commissioner in respect of any act or order performed or made by him or her in good faith in the execution or supposed execution of the powers or jurisdiction vested in him or her, but every such act or order, if in excess of such powers and jurisdiction, shall be liable to be revised, altered, amended or set aside upon application to the Court.

(3) A practitioner, not being the holder of an appointment under subsection (1), who is the holder of a practising certificate that is in force shall, notwithstanding the absence of such an appointment, be deemed, for the purposes of this Decree and any other written law, to be a Commissioner appointed under subsection (1).

(4) The signature of a person, when placed on a document in the exercise by that person of the powers of a Commissioner under this Section, shall be followed by the description "Commissioner for Oaths".

PART 13—MISCELLANEOUS

Service

145. Any notice or other document whatsoever required under this Decree to be given or served on a practitioner or former practitioner may, unless otherwise provided, be given or served by delivering such notice or document personally to that person, or posting such notice or document by pre-paid post to that person at his or her usual or last known place of business or abode or the place of business or abode last notified by that person to the Society.

Evidentiary

146.—(1) In any proceedings against any person a certificate under the hand of the Registrar that any such person—

- (a) is or was a practitioner or person practising as a practitioner in the Fiji Islands;
- (b) is not or was not a practitioner at any date nor for any period stated;
- (c) acts or has acted as a practitioner on any date or for any period stated or has wilfully and falsely pretended to be a practitioner on any date or for any period stated;
- (d) practices or has practiced as a practitioner on any date or for any period stated;
- (e) has failed to pay any moneys due under this Decree on or before any date specified; or
- (f) has not obtained or has failed to obtain a practising certificate for any period stated,

may be tendered to and shall be accepted by the Commission and all Courts and persons acting judicially within the Fiji Islands as prima facie evidence of the matters set out therein without proof of the signature or office of the person appearing to have signed the certificate as Registrar.

(2) In any prosecution and in any proceedings before the Commission the averment in the complaint or the application for disciplinary proceedings, or the oral averment of counsel appearing in such proceedings that any letter or other writing purports to have been written by the practitioner or other person charged (as the case may be) shall, on production of the letter or other writing before any Court or before the Commission, be prima facie evidence that the letter or other writing was written by the practitioner or other person so charged.

(3) Any letter purporting to have been written by the Secretary shall be deemed to have been duly authorised by the Council.

Offences

147.—(1) Any person who contravenes or fails to comply with any provision of this Decree or any rules or regulations made pursuant to it shall be guilty of an offence against this Decree and shall be liable, if no specific penalty is provided for that offence, to a penalty not exceeding \$10,000 or to a term of imprisonment not exceeding 5 years or both.

(2) The power to make any rules or regulations pursuant to this Decree shall include the power to make rules providing for penalties for the breach of any such rule or regulation, provided that the penalty for such breach does not exceed \$10,000 or to a term of imprisonment not exceeding 5 years or both.

Repeal etc.

148.—(1) The Legal Practitioners Act 1997 is repealed.

(2) A person who was a legal practitioner at the commencement of this Decree is deemed to have been admitted as a practitioner under this Decree.

(3) Any reference to a legal practitioner in any written law is to be construed as a reference to a person who is admitted as a practitioner under this Decree.

SCHEDULE

(SECTION 129(8))

RULES OF PROFESSIONAL CONDUCT AND PRACTICE

Interpretation—Definitions

In these rules:

- (i) “the Decree” means the Legal Practitioners Decree 2009.
- (ii) “practitioner” means
 - (a) any person admitted as a legal practitioner in the Fiji Islands; and
 - (b) unless the context otherwise requires in the case of a practitioner practising on his or her own account or employed by a practitioner so practising, includes any partner, employee or employer of a practitioner.
- (iii) “the Registrar” means the Chief Registrar of the court.

CHAPTER 1—RELATIONS WITH CLIENTS

- 1.1 A practitioner shall not abuse the relationship of confidence and trust with a client.
- 1.2 A party shall not act for more than one party in the same matter without the prior consent of all parties.
- 1.3 On becoming aware of a conflict of interest between clients a practitioner shall forthwith
 - (a) advise all clients involved in the matter of the situation;
 - (b) continue acting for all clients only with the consent of all clients and only if no actual conflict has occurred;
 - (c) decline to act further for any party where so acting would disadvantage any one or more of the clients.
- 1.4 Information received by a practitioner from or on behalf of a client is confidential and shall not be communicated to others save with the client’s consent or where so required by law.
- 1.5 Where a practitioner has received information from or on behalf of a client, a practitioner shall not thereafter act for another client in circumstances where the practitioner’s receipt of such information may result in detriment to the first mentioned client.
- 1.6 A practitioner shall not borrow from nor provide security to a client, nor be in any way involved in the borrowing from or provision of security to a client by any spouse, parent, child or sibling of the practitioner, or any company or other entity in which the practitioner or any such family member has any beneficial interest. For the purposes of this rule, “client” shall mean any person (save any person

advised by another practitioner independently instructed in respect of that transaction) between whom and a practitioner (or any partner or employer of a practitioner) any relationship of solicitor and client exists. This rule does not apply where the client is:—

- (a) a member of the family of the practitioner;
 - (b) any corporation or other entity in which all the beneficial interest is vested in one or more members of the family of the practitioner;
 - (c) a corporation carrying on the business of banking;
 - (d) a corporation carrying on the business of insurance;
 - (e) a building society or other corporation conducting a business of lending money to the general public;
 - (f) a Government instrumentality;
 - (g) a company listed on any stock exchange, or any subsidiary thereof;
 - (h) such other client or class of clients as the Registrar may from time to time direct.
- 1.7 A practitioner shall not advise a client to engage in conduct which the practitioner believes may be illegal except in good faith to test the validity or scope of the law and provided the client is fully informed of the consequences.
- 1.8 A practitioner shall not knowingly assist a client in providing incorrect information to a Court, revenue authority, or a third party.
- 1.9 Where a practitioner becomes aware that a client may have a potential claim against the practitioner for negligence, the practitioner must advise the client to seek independent advice.
- 1.10 A practitioner shall honour an undertaking, written or oral, given in the course of legal practice, whether the undertaking is given by the practitioner personally, or by a partner or employee in the course of the practice.
- 1.11 No practitioner shall be permitted to secure the payment of his fees through a mortgage or such other securities over the family home of any of his clients.

CHAPTER 2—ADVERTISING

- 2.1—(1) No stationery or any advertising undertaking by a practitioner shall contain any statement which:—
- (a) is false, misleading or deceptive or likely to mislead or deceive;
 - (b) claims or implies the superiority of the practitioner over any or all other practitioners;
 - (c) contains or implies any testimonial or endorsement concerning the practitioner.
- (2) If a practitioner makes any statement, either orally or in writing, claiming expertise or specialty, the practitioner shall, if so required by the Registrar, justify that claim to the satisfaction of the Registrar. If the Registrar is not so satisfied, the claim shall be deemed to be misleading and deceptive.
- (3) All statements contained in any stationery or advertising used by or published on behalf of a practitioner shall be deemed to have been made by that practitioner, unless the practitioner proves that the statement in issue was made without the practitioner's authority.
- (4) A practitioner shall not receive a fee or commission arising in any way from a transaction on behalf of a client, from any other party, save with the prior knowledge and consent of the client.
- (5) A practitioner who has a personal interest in any matter shall not act for any party concerned therein without first disclosing the practitioner's interest to that party and advising of that party's right to seek independent advice.
- 2.2 A practitioner shall not advertise on television or radio without the consent of the Registrar, which consent may be of specific or general application. Nothing in this rule shall prevent a practitioner from appearing on radio or television to answer questions of a legal nature or provide public information on legal issues, in circumstances where no payment or inducement has been provided by the practitioner to obtain this publicity.

- 2.3 A practitioner shall, in seeking instructions for professional business from members of the public other than existing clients, ensure that approaches to such persons are made in a manner which does not bring the profession in to disrepute. Such approaches shall be made in professional manner, and shall not be misleading, deceptive, intrusive, offensive, harassing, intimidating, or otherwise inappropriate.
- 2.4 The firm name used by a practitioner must not be misleading as to the nature or structure of the firm or tend to bring the profession into disrepute. In particular,
- (i) a sole practitioner shall not use the words “& Co.” or any words suggestive of partnership after the practitioner’s name unless the words were used by a former practice (and are identified with that practice) the goodwill of which has been obtained by the practitioner, or the Registrar in a particular case approves;
 - (ii) where a firm name includes the name of a practitioner appointed to judicial office, that practitioner’s name shall be removed from the firm name, and shall not be used by the remaining members of that firm, unless the Registrar otherwise approves;
 - (iii) the name of a practitioner struck off the Roll for professional misconduct or unprofessional conduct shall not be retained in the name of the firm of which the practitioner was previously a member.

CHAPTER 3—RELATIONSHIP WITH THE COURT

- 3.1 A practitioner shall not knowingly deceive or mislead the Court.
- 3.2 A practitioner shall at all times:—
- (i) act with due courtesy to the Court;
 - (ii) take all reasonable steps to avoid unnecessary expense or waste of the Court’s time.
- 3.3 A practitioner shall inform the Court of any relevant decision or legislative provision of which the practitioner is aware relating to the matter in issue, whether or not these support the practitioner’s contention.
- 3.4 A practitioner shall not, save in exceptional circumstances, continue to act for a client in a matter in which the practitioner is likely to be a witness unless:—
- (i) the practitioner’s evidence relates solely to an uncontested matter;
 - (ii) the practitioner’s evidence relates solely to formal matters;
 - (iii) the practitioner’s evidence will relate solely to the nature and value of legal services rendered;
 - (iv) refusal to act or withdrawal from the matter will jeopardise the client’s interest.
- 3.5 A practitioner shall not on behalf of a client attack a person’s reputation without good cause.
- 3.6 A practitioner shall not maintain any issue, compromise any matter, or consent to any order, save on the client’s instructions.
- 3.7 Subject to the foregoing and the overriding obligation of a practitioner to the Court, a practitioner shall conduct each case in such manner as the practitioner considers will be most advantageous to his client.

CHAPTER 4—ADVOCATE FOR PROSECUTION

- 4.1 A prosecutor prosecuting a criminal matter shall do so dispassionately and with fairness.
- 4.2 A practitioner acting as a prosecutor shall, save in exceptional circumstances, advise the defence of any matters of which the practitioner is aware, which might tend to indicate the innocence of the accused, or mitigate the seriousness of the offence.

- 4.3 A practitioner acting as a prosecutor shall comply with all lawful directions of the Director of Public Prosecutions relating to the manner of conducting prosecutions.

CHAPTER 5—ADVOCATE FOR DEFENCE

- 5.1 A practitioner acting for an accused who has pleaded not guilty to a charge has a duty to ensure that the prosecution discharges the appropriate onus to prove guilt of the accused, and to put before the Court any proper defence in accordance with the client's instructions.
- 5.2 A practitioner shall not without good cause attribute to another person the offence with which the client is charged. However if inferences drawn from the evidence raise a reasonable suspicion that the offence may have been committed by another person, such a line of defence may be proper.
- 5.3 Where a clear confession of guilt has been made to a practitioner by his or her client, the practitioner may, if the confession is made before proceedings have commenced or shall, if the confession is made before proceedings continue to act notwithstanding that the client may wish to maintain a plea of "not guilty", but shall not assert any case or make any allegation inconsistent with the confession.
- 5.4 A practitioner must not disclose a client's previous convictions without the client's authority.
- 5.5 A practitioner shall not make any statement to the Court or put any proposition to a witness that is not supported by reasonable instructions or information available to the practitioner.
- 5.6 Subject to the foregoing, a practitioner's duty to defend a person on criminal charge shall not be affected by the practitioner's opinion regarding the guilt or innocence of the client.
- 5.7 A practitioner shall ensure that the client's decision on a plea, or as to whether or not to give evidence, is properly informed.

CHAPTER 6—RELATIONS BETWEEN PRACTITIONERS

- 6.1 A practitioner shall treat other practitioners with courtesy and fairness.
- 6.2 Save in exceptional circumstances, a practitioner shall not communicate with a client of another practitioner in relation to a matter in which the practitioner is, or has previously been dealing with the other practitioner.
- 6.3 A practitioner who suspects that another practitioner is in breach of that practitioner's obligations under any legislation relating to trust accounts shall make the Registrar aware of those concerns.
- 6.4 Save in exceptional circumstances, a practitioner shall not stop a trust account cheque or bank cheque drawn on a practitioner's trust account to the order of another practitioner, after it has been forwarded to the other practitioner.

CHAPTER 7—CONDUCT OF PRACTICE

- 7.1 Every practitioner shall keep proper books of account in respect of all moneys received by the practitioner in the course of practice whether such moneys be trust moneys or not.
- 7.2 A practitioner shall comply with the provisions of the Decree, and any legislation dealing with the regulation of trust accounts.
- 7.3 A practitioner shall not charge a client a fee greater than is reasonable in the circumstances.
- 7.4 A practitioner practising on his or her own account shall not share with any unqualified person the receipts of the practice save as authorised by the Decree, pursuant to any approval given by the Registrar, or in payment of an annuity or other sum out of profits to a retired partner or predecessor of the practice or the personal representative of a deceased partner or predecessor.

- 7.5 A practitioner shall ensure that all persons employed by that practitioner in a legal practice are properly supervised.
- 7.6—(1) A practitioner in private practice shall ensure that he or she, or another practitioner with a current practising certificate is at all times in charge of any office including any branch office, at which the practitioner's practice is conducted and gives reasonable attendance upon each day during the hours on which such office is open except in case of temporary absences of short duration: Provided that in the case of a branch office, the practitioner in charge of that office must have at least three years experience as a practitioner.
- (2) A practitioner in private practice shall not share, occupy or use jointly and contemporaneously any offices with any company or persons not being practitioners unless the Registrar otherwise approves.
- (3) A visited office may occupy a room or office in a building in which some other activity is normally conducted, providing that adequate safeguards have been taken to ensure the confidentiality of all client records, that the office is only open for the business of the legal practice when a practitioner with a current practising certificate is in attendance, and that during the hours when the practitioner is visiting, such room or office is in the sole occupation of the practitioner and his or her staff.
- 7.7 A practitioner in private practice may carry on another profession or business unless the profession or business is of such a nature or is conducted in such a manner as to inhibit the practitioner's independence as a legal practitioner or adversely affect the proper performance of the practitioner's professional obligations and duties to his or her clients or any of them.
- 7.8 Before a practitioner, whether in partnership or practice solely, sells, winds up or closes down his or her practice, it shall be his or her duty before so doing, to advise the Registrar in writing of future arrangement for the management of the affairs of existing clients and also his or her address for service as appropriate.
- 7.9 Where practitioners referred to in Rule 7.8 intend to practice in a foreign jurisdiction, the Registrar shall:
- (i) not be obliged to provide any assistance unless such practitioners have duly complied with the obligations imposed under Rule 7.8; and
 - (ii) advise the relevant foreign legal professional body of such non-compliance.
- 7.10 Practitioners appointing other practitioners as city agents shall notify the Registrar in writing immediately after making such appointment, the name and address of service of such agents.

CHAPTER 8—CLIENT CARE

- 8.1—(1) Subject to paragraph (2) of this rule, every principal in private practice shall:
- (a) have in place a procedure whereby at the outset of a matter a client is given the information set out below:
- (i) The name and status within the firm of the person responsible for the day to day conduct of the matter and, if appropriate, the partner responsible for its overall supervision.
 - (ii) The basis upon which costs will be charged and if reasonably possible an estimate of costs.
 - (iii) The procedure adopted within the firm for handling complaints where the client has been unable to resolve any problem with a person or persons referred to in subparagraph (i) above, and that the client may refer unresolved problems to the Society.

- (b) Both at the outset and during the course of the matter cause the client to be informed, where appropriate, as to the issues raised by the matter, the steps which are likely to be required, how long it is likely to be before it is concluded, and progress from time to time.
 - (c) During the course of the matter, if unreasonable delay occurs, provide the client with an explanation of such delay including whether or not it is within the control of the person responsible for the matter to resolve such delay.
 - (d) At the earliest reasonable opportunity provide the client with written confirmation of the matters set out in paragraphs (a) and (b) above.
- (2) (a) It shall not be necessary for a practitioner to comply with sub-paragraphs (i) and (iii) of paragraph (1)(a) above, nor with (1)(d) above when performing work of a repetitive nature for a client.
- (b) It shall not be necessary for a practitioner to comply with paragraph (1) if:—
- (i) the client is a longstanding client of the firm; or
 - (ii) the practitioner reasonably considers it unnecessary, in view of the knowledge and experience of the client in instructing and dealing with practitioners;
 - (iii) the matter is one which the practitioner reasonably anticipates will be concluded in 21 days;
 - (iv) the matter is one in which the practitioner reasonably anticipates that costs, excluding outlays, will be less than \$250.00 or such sum as the Registrar resolves from time to time.
- (3) A practitioner shall not be prosecuted for an isolated breach of this rule unless
- (i) the practitioner wilfully refuses or consistently neglects to comply with this rule; or
 - (ii) the failure to comply with this rule is associated with some other matter or circumstance which might give rise to a charge of professional misconduct or unprofessional conduct.

CHAPTER 9—CORPORATE PRACTICE

- 9.1 A practitioner employed as such who is not employed and remunerated by another practitioner is subject to the same ethical and practising rules as a practitioner in private practice and shall comply with those rules notwithstanding any conflict with his or her duty as an employee.
- 9.2 It is proper for a practitioner to be the employee of a person or corporation and to act as practitioner for his or her employer.
- 9.3 An employed practitioner who is not employed and remunerated by another practitioner shall not permit his or her name together with words indicating he or she is a practitioner to be printed upon the letterhead in general use by his or her employer.

DATED this 22nd day of May 2009.

JOSEFA ILOILOVATU ULUIVUDA
President and Commander in Chief
of the Republic of the Fiji Military Forces