

BILL NO. 29 OF 2016

A BILL

FOR AN ACT TO AMEND THE PREVENTION OF BRIBERY PROMULGATION 2007

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.**—(1) This Act may be cited as the Prevention of Bribery (Amendment) Act 2016.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.
- (3) In this Act, the Prevention of Bribery Promulgation 2007 is referred to as the “Promulgation”.

Section 2 amended

- 2.** Section 2 of the Promulgation is amended by—
- (a) in the definition of “advantage” —
- (i) deleting “an election donation within the meaning of the Electoral Act” and substituting “any donation permitted by the Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013 and Electoral Decree 2014”; and
 - (ii) deleting “that Act” and substituting “the Decrees”;

(b) inserting the following new definitions—

““appointing authority” means a person responsible for appointing or advising on the appointment of a prescribed officer, or a person with the authority to take disciplinary action against, or remove from office, a prescribed officer;

“Commission” means the Fiji Independent Commission Against Corruption established under section 3 of the Fiji Independent Commission Against Corruption Promulgation 2007;” and

(c) deleting the definition of “public servant” and substituting the following—

““public servant” means—

(a) any prescribed officer;

(b) any employee of a public body; or

(c) any public official as defined under section 4 of the Crimes Decree 2009.”

Section 3 amended

3. The Promulgation is amended by deleting section 3 and substituting the following—

“Soliciting or accepting an advantage

3. Any prescribed officer who, without the prior written permission of his or her appointing authority, solicits or accepts any advantage commits an offence.”

Section 13 amended

4. Section 13(3) of the Promulgation is amended by deleting “section 4 of the Income Tax Act” and substituting “section 52 of the Fiji Revenue and Customs Authority Act 1998”.

Section 13A amended

5. Section 13A of the Promulgation is amended by—

(a) in subsection (2)(c)(iv), deleting “Income Tax Act” and substituting “Fiji Revenue and Customs Authority Act 1998;” and

(b) in subsections (4) and (5), deleting “section 4 of the Income Tax Act” and substituting “section 52 of the Fiji Revenue and Customs Authority Act 1998”.

Section 13B amended

6. Section 13B of the Promulgation is amended by deleting “Income Tax Act” and substituting “Fiji Revenue and Customs Authority Act 1998”.

Section 13C amended

7. Section 13C of the Promulgation is amended in subsections (1)(a) and (6)(c) by deleting “Income Tax Act” and substituting “Fiji Revenue and Customs Authority Act 1998”.

Section 14 amended

8. Section 14(4) of the Promulgation is amended by deleting “section 4 of the Income Tax Act” and substituting “section 52 of the Fiji Revenue and Customs Authority Act 1998”.

Section 24 amended

9. Section 24 of the Promulgation is amended in the heading by deleting “Buren” and substituting “Burden”.

New section 30B inserted

10. The Promulgation is amended by inserting the following new section after section 30A—

“Failure to report an offence

30B. Any person, in respect of an offence under sections 3 to 9—

- (a) to whom an advantage is offered;
- (b) from whom an advantage is solicited or accepted; or
- (c) who knows or has reasonable cause to believe that such offering, soliciting or accepting of an advantage has taken place,

without lawful authority or reasonable excuse, fails to report such act to the Commission or to the Fiji Police Force as soon as reasonably practicable, shall be guilty of an offence and shall be liable on conviction to a fine of \$20,000 and to imprisonment for 5 years.”

Schedule amended

11. The Schedule to the Promulgation is amended by—

- (a) in item 1, deleting “The”;
- (b) in item 2, deleting “The Fiji Human Rights Commission” and substituting “Human Rights and Anti-Discrimination Commission”;
- (c) deleting item 3;
- (d) in item 15, deleting “Vodafone” and substituting “Vodafone Fiji Limited”;
- (e) deleting item 21; and
- (f) in item 27, deleting “Fiji Islands Visitors Bureau” and substituting “Tourism Fiji”.

PREVENTION OF BRIBERY (AMENDMENT) BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Prevention of Bribery Promulgation 2007 (**‘Promulgation’**) came into force on 4 April 2007. The main objective of the Promulgation is to make provision for the prevention of bribery, corruption, electoral fraud and misconduct in public office.
- 1.2 The Promulgation has proven to be stalwart in combating corruption, withstanding the test of time in its nearly 10 years of existence. However, there are prevailing issues within the Promulgation that need to be improved by virtue of the amendments laid out in the Prevention of Bribery (Amendment) Bill 2016 (**‘Bill’**).
- 1.3 The Bill seeks to address the issues within the outlined provisions, whilst also making the overall law more comprehensive and on par with the current legal structure in Fiji.

2.0 FEATURES OF THE BILL

- 2.1 Clause 1 of the Bill provides for the short title and commencement provisions.
- 2.2 Clause 2 of the Bill amends the definition of “advantage” by deleting the reference made to the “Electoral Act” and substituting “Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013 and Electoral Decree 2014”. The amendment provides for the relevant analogous laws since the Electoral Act (Cap. 4) has been repealed.
- 2.3 Clause 2 also inserts the definition of “appointing authority” and “Commission”. It also substitutes the definition of “public servant” with a new definition to include public officials as defined under section 4 of the Crimes Decree 2009.

- 2.4 Clause 3 of the Bill deletes section 3 of the Promulgation and substitutes it with a new section that deals with the offence of soliciting or accepting an advantage. The amendment removes the criteria to obtain a “general or special permission from the President” as an exception to the offence of soliciting or accepting an advantage because these types of permissions are not defined and therefore impracticable in Fiji. With the amendment, a prescribed officer may solicit or accept an advantage following the written permission of his or her appointing authority.
- 2.5 Clause 4 of the Bill amends section 13 of the Promulgation by deleting the reference made to “section 4 of the Income Tax Act” and substituting it with “section 52 of the Fiji Revenue and Customs Authority Act 1998”. The amendment seeks to provide the relevant analogous provision.
- 2.6 Clause 5 of the Bill amends section 13A of the Promulgation by deleting the reference made to the repealed Income Tax Act (Cap. 201). The amendment seeks to provide the relevant analogous legislation since the Income Tax Act (Cap. 201) has been repealed.
- 2.7 Clauses 6 and 7 of the Bill amend sections 13B and 13C of the Promulgation by deleting references made to the repealed Income Tax Act (Cap. 201) and substituting them with “Fiji Revenue and Customs Authority Act 1998”. The amendments provide for the relevant analogous legislation since the Income Tax Act (Cap. 201) has been repealed.
- 2.8 Clause 8 of the Bill amends section 14 of the Promulgation by deleting the reference made to “section 4 of the Income Tax Act” and substituting it with “section 52 of the Fiji Revenue and Customs Authority Act 1998”. The amendment seeks to provide the relevant analogous provision.
- 2.9 Clause 9 of the Bill amends section 24 of the Promulgation for the purpose of clarity.
- 2.10 Clause 10 of the Bill amends the Promulgation by inserting a new section 30B after section 30A to provide for mandatory reporting of bribery offences and any other offences captured under the Promulgation.
- 2.11 Clause 11 of the Bill amends the Schedule to the Promulgation by deleting “The Fiji Human Rights Commission”, “Vodafone” and “Fiji Islands Visitors Bureau” and substituting them with “Human Rights and Anti-Discrimination Commission”, “Vodafone Fiji Limited” and “Tourism Fiji” respectively. It also deletes “The Ombudsman’s Office” and “Capitals Markets Development Authority” because these public bodies no longer exist.

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3.0 MINISTERIAL RESPONSIBILITY

3.1 The Promulgation comes under the responsibility of the Minister responsible for anti-corruption.

A. SAYED-KHAIYUM
Attorney-General