

# BILL NO. 39 OF 2020

## A BILL

FOR AN ACT TO AMEND THE FIJI REVENUE AND CUSTOMS SERVICE ACT  
1998

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the Fiji Revenue and Customs Service (Amendment) Act 2020.

(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 Fiji Revenue and Customs Service Act 1998 is referred to as the “Principal Act”.

*Section 2 amended*

**2.** Section 2 of the Principal Act is amended by—

(a) before the definition of “chairperson”, inserting the following new definition—

““amount due” means an amount due for repayment by the recipient or guarantor of a recipient in relation to loans or funds disbursed by the Service on behalf of the State;” and

(b) after the definition of “member”, inserting the following new definition—

““recipient” includes a person or the guarantor of a person, who is the recipient of a loan or fund disbursed by the Service on behalf of the State;”.

*Section 22 amended*

3. Section 22 of the Principal Act is amended after paragraph (a) by inserting the following new paragraph—

“(aa) to disburse loans or funds on behalf of the State and to exercise all functions and perform all duties necessary for the collection and recovery of those loans or funds where necessary;”.

*New sections inserted*

4. The Principal Act is amended after section 32 by inserting the following new sections—

*“Loan and fund agreements*

32A.—(1) A person who is the recipient of loans or funds disbursed by the Service is required to enter into an agreement with the Service.

(2) An agreement entered into pursuant to subsection (1) is *prima facie* evidence of a recipient’s obligation to make repayments, where applicable, on the loans or funds received or fulfill terms and conditions, which is deemed to be an obligation in law.

(3) A recipient who has entered into an agreement pursuant to subsection (1) is required to provide a guarantor or guarantors in the event he or she intends to leave the country for any purpose during the term of his or her loan conditions or bond period.

*Recovery of loans or funds disbursed by the Service*

32B.—(1) In accordance with section 22(aa), the Service must take action on any recipient, who—

- (a) obtains such loans or funds from the Service or the State by fraudulent means or by providing false information;
- (b) fails to use the loans or funds for the purpose for which it was intended;
- (c) fails to make loan repayments or partial payments thereof; or
- (d) breaches or fails to fulfil any terms or conditions required by an agreement made under section 32A.

(2) Pursuant to subsection (1), any action taken by the Service includes—

- (a) any action provided for in section 32C, 32D, 32E, 32F, 32G or 32H to recover such loans or funds;

- (b) acquisition of property used as security on the loan;
- (c) taking court action;
- (d) reporting to local and international credit bureaus or agencies; or
- (e) such other action as the Service deems necessary.

*Garnishee order*

32C.—(1) In this section, “payer” means a person who—

- (a) owes money to a recipient;
- (b) holds money, for or on account of a recipient;
- (c) holds money on account of some other person for payment to recipient;
- (d) has authority from some other person to pay money to a recipient;
- (e) holds money that is deposited to the credit of a recipient, including money held in a joint bank account in the name of the recipient and one or more persons, provided that the source of income is determined to be the income of the recipient;
- (f) holds money that is deposited by the recipient but credited to the bank account of another person, provided the source of income is determined to be the income of the recipient; or
- (g) administers money in the recipient’s bank overdraft facility account, provided that the defaulting recipient’s available bank balance is below the bank overdraft limit allowed to the recipient by the payer.

(2) This section applies if a recipient is liable to pay an amount due and—

- (a) the amount due has not been paid by the recipient by the due date for payment; or
- (b) the Chief Executive Officer has reasonable grounds to believe that the recipient will not pay the assessed amount due by the due date for payment.

(3) The Chief Executive Officer may, in writing issue a garnishee order to a payer requiring the payer to pay the amount specified in the garnishee order to the Chief Executive Officer in relation to the recipient.

(4) The amount specified in a garnishee order issued under subsection (3) must be an amount that does not exceed the amount that has not been paid or the amount that the Chief Executive Officer believes will not be paid by the due date.

(5) A payer must pay the amount specified in a garnishee order by the date specified in that order, being a date that is not before the date that the amount owed to the recipient becomes due to the recipient or held on the recipient’s behalf.

(6) If a garnishee order requires a payer to deduct amounts from a pension, salary, wages or other remuneration payable at fixed intervals to the recipient, the amount required to be deducted by the payer from each payment must not exceed 20% of the amount of each payment of pension, salary, wages or other remuneration.

(7) If a payer served with a garnishee order is unable to comply with the order, the person must notify the Chief Executive Officer, in writing within 14 days after receipt of the garnishee order, setting out the reasons for the person's inability to comply.

(8) If a notice is served on the Chief Executive Officer under subsection (7), the Chief Executive Officer may, by notice in writing—

(a) accept the notification and cancel or amend the garnishee order issued under subsection (3); or

(b) reject the notification.

(9) A payer or the payer's representative is precluded from appealing the decision of the Chief Executive Officer under subsection (8).

(10) The Chief Executive Officer must, by notice in writing to the payer, revoke or amend a garnishee order if the recipient has paid the whole or part of the amount due or has made an arrangement satisfactory to the Chief Executive Officer for payment of the amount due.

(11) A copy of a garnishee order or any notice served on a payer under this section must be served on the recipient.

(12) A payer making a payment under this section is treated as acting under the authority of the recipient and of all other persons concerned and is hereby indemnified in respect of the payment.

(13) A payer who, without reasonable cause, fails to comply with a garnishee order under this section is personally liable for the amount specified in the garnishee order.

*Charge on property*

32D.—(1) Loans or funds payable by a recipient is a lien and charge upon the property, real or personal, of the recipient.

(2) Subject to subsection (3), the Chief Executive Officer may lodge for registration any charge or place a caveat on the property subject to the charge by depositing with the relevant registry a certificate under the hand of the Chief Executive Officer setting forth the description of the property charged and the amount due and the relevant registry must, without fee, register the certificate as if it were a registrable instrument under law.

(3) If applicable, the Chief Executive Officer may file a notice of a charge created by this section in the registry established under the Personal Property Securities Act 2017 to establish the priority date and time of such charge, and the registry must, without fee, register the notice as if it were a registrable instrument under law.

(4) Subject to the provisions of the Personal Property Securities Act 2017, a charge created under this section must—

- (a) be subject to any mortgage, charge or encumbrance registered on the property prior to the registration of the charge;
- (b) have priority over any mortgage, charge or encumbrance created after the registration of the charge;
- (c) rank equally with any charge created under another Act or any other law.

(5) Registration of a certificate under subsection (4) is treated as actual notice to all persons of the existence and amount of the charge and, subject to subsection (2), the charge has operation and priority accordingly in relation to the property.

(6) A charge created by this section that is registered operates to secure all amounts owing by the recipient under any prior unregistered charge created by this section as of the date of registration of the charge.

(7) If a registered charge has been satisfied, the Chief Executive Officer must deposit with the Registrar of Titles a release of the charge, and the Registrar must, without payment of any fee, register the release as if it were a registrable instrument under law.

(8) With regard to personal property, if a notice of a charge under this section has been registered and the charge has been satisfied, the Chief Executive Officer must file with the registry established under the Personal Property Securities Act 2017 a termination of the charge, and the relevant Registrar must, without payment of any fee, register the termination as if it were a registrable instrument under law.

(9) If an unpaid amount due is, by virtue of subsection (1), a charge on the real property of the recipient, the Chief Executive Officer may apply by petition to the High Court for the enforcement of the charge and the High Court may order—

- (a) the sale of the property or any part of the property; or
- (b) the appointment of a receiver of the rents, profits or income from the property,

and, subject to subsections (2) and (4), that the proceeds of sale or the rents, profits or income must be used to pay the amount due and any costs of the Chief Executive Officer in enforcing the charge.

(10) If any property has been sold under petition referred to in subsection (9), the High Court may, on application of the purchaser, make an order vesting the property in the purchaser.

(11) A vesting order under subsection (10) has the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers and assignments of the property for such estate or interest as is specified in the order, and the order is subject to stamp duty accordingly.

(12) If an unpaid amount due is, by virtue of subsection (1), a charge on the personal property of the recipient, the Chief Executive Officer may, subject to subsections (2) and (4), sell or concur with another person in the selling of the property, or part thereof, whether by public auction or private contract.

(13) The proceeds of disposal under subsection (9)(a) or (12), or the rents, profits or income referred to in subsection (9)(b) must be applied by the Chief Executive Officer as follows—

- (a) first towards the costs of selling or renting the property;
- (b) then towards payment of any amount due by the recipient; and
- (c) the remainder of the proceeds, if any, must be paid to the recipient.

(14) If the proceeds of disposal are less than the sum of the costs of the sale and the amount due, the Chief Executive Officer may proceed under any of the options set out in section 32B(2) to recover the shortfall.

*Collection by distress and sale*

32E.—(1) The Chief Executive Officer, or a revenue officer authorised in writing by the Chief Executive Officer for the purposes of this section, may issue an order, in writing, for the recovery of an amount due that has not been paid by the due date by distress and sale of the personal property of the recipient.

(2) An order under subsection (1) must specify—

- (a) the recipient against whose property the proceedings are authorised;
- (b) the property against which the proceedings are to be executed and the location of that property; and
- (c) the liability to which the proceedings relate.

(3) The Chief Executive Officer or authorised revenue officer may, at any time, enter any premises described in an order issued under subsection (1) for the purposes of executing distress and may require a police officer to be present while distress is being executed.

(4) Any property distrained under this section must be—

- (a) identified by the attaching of a notice stating “PROPERTY IMPOUNDED FOR NOT COMPLYING WITH REPAYMENT OBLIGATIONS BY ORDER OF THE CHIEF EXECUTIVE OFFICER OF THE FIJI REVENUE AND CUSTOMS SERVICE UNDER SECTION 32E OF THE FIJI REVENUE AND CUSTOMS SERVICE ACT 1998”; and
- (b) kept at the premises where the distress is executed or at any other place that the Chief Executive Officer or authorised revenue officer may consider appropriate, at the cost of the recipient.

(5) If the recipient does not pay the amount due described in the order, together with the costs of the distress—

- (a) in the case of perishable goods, within a period that the Chief Executive Officer or authorised revenue officer considers reasonable having regard to the condition of the goods; or
- (b) in any other case, within 10 consecutive days after the distress is executed,

the property distrained may be sold by public auction or in such other manner as the Chief Executive Officer or authorised revenue officer may direct.

(6) The proceeds of disposal under subsection (5) must be applied by the Chief Executive Officer or authorised revenue officer as follows—

- (a) first towards the cost of taking, keeping and selling the property distrained;
- (b) then towards payment of any amount due by the recipient; and
- (c) the remainder of the proceeds, if any, must be paid to the recipient.

(7) If the proceeds of disposal are less than the sum of the costs of the distress and the amount due, the Chief Executive Officer or authorised revenue officer may proceed under this Act to recover the shortfall.

(8) A person subject to an order under subsection (1) may enter into an agreement referred to as a “possession agreement” with the Chief Executive Officer or authorised revenue officer under which, in consideration of the property distrained upon being allowed to remain in the custody of the recipient and delaying of the sale of the property, the recipient—

- (a) acknowledges that the property specified in the agreement is under distraint and held in possession for payment of the amount specified in the agreement; and

(b) undertakes that, except with the consent of the Chief Executive Officer or an authorised revenue officer, in writing, for the purposes of this section and subject to such conditions as the Chief Executive Officer or authorised revenue officer may impose, the recipient will not remove or allow the removal of the property specified in the agreement from the premises specified in the agreement.

(9) If a recipient has entered into a possession agreement under subsection (8), subsections (4) to (7) do not apply unless the recipient is in breach of the agreement.

*Seizure of goods*

32F.—(1) The Chief Executive Officer or a revenue officer authorised by the Chief Executive Officer in writing may seize any goods in respect of which the Chief Executive Officer or authorised revenue officer has reasonable grounds to believe have been acquired through loans or funds disbursed by the Service in accordance with section 22(aa).

(2) Any goods seized under this section must be stored in a place approved by the Chief Executive Officer or authorised revenue officer for the storage of seized goods.

(3) If goods have been seized under subsection (1), the Chief Executive Officer or authorised revenue officer must, as soon as is practicable after the seizure, serve on the owner of the goods or the person who had custody or control of the goods immediately before the seizure, a notice in writing—

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for seizure; and
- (c) setting out the terms of subsections (6), (7) and (8).

(4) The Chief Executive Officer or authorised revenue officer is not required to serve a notice under subsection (3) if, after making reasonable enquiries, the Chief Executive Officer or authorised revenue officer does not have sufficient information to identify the person on whom the notice should be served.

(5) If subsection (4) applies, the Chief Executive Officer or authorised revenue officer may serve a notice under subsection (3) on any person claiming the goods, provided the person has given the Chief Executive Officer or authorised revenue officer sufficient information to enable the notice to be served.

(6) The Chief Executive Officer or authorised revenue officer may authorise any goods seized under subsection (1) to be delivered to the person on whom a notice under subsection (3) has been served if that person has paid, or makes an arrangement satisfactory to the Chief Executive Officer or authorised revenue officer for payment of the amount due by the recipient.



(7) Except if subsection (6) applies, the Chief Executive Officer or authorised revenue officer must detain the goods seized under subsection (1)—

- (a) in the case of perishable goods, for such period as the Chief Executive Officer or authorised revenue officer considers reasonable having regard to the condition of the goods; or
- (b) in any other case, for the greater of—
  - (i) 10 consecutive days after seizure of the goods; or
  - (ii) 10 consecutive days after the date for payment of the amount due.

(8) If the detention period in subsection (7) has expired, the Chief Executive Officer or authorised revenue officer may sell the goods by public auction or, in the case of perishable goods, may sell the goods in such manner as the Chief Executive Officer or authorised revenue officer determines, and applies the proceeds of sale as follows—

- (a) first towards the amount due by the recipient;
- (b) then towards the cost of taking, keeping and selling the goods seized; then towards payment of any fees or charges that is payable in respect of the seizure of the goods; then towards payment of any other amount due by the person whose goods have been seized; and
- (c) then the remainder of the proceeds, if any, must be paid to the person whose goods have been seized.

(9) If the proceeds of disposal are less than the sum of the cost of taking, keeping and selling the goods seized and the amount due, the Chief Executive Officer or authorised revenue officer may proceed under any other options set out in section 32B(2) to recover the shortfall.

*Departure prohibition order*

32G.—(1) Where a person is subject to an amount due and the Chief Executive Officer believes on reasonable grounds that it is desirable to do so for the purposes of ensuring that the person does not depart from Fiji for a foreign country without—

- (a) wholly discharging the amount due; or
- (b) making arrangement satisfactory to the Chief Executive Officer for the liability to be wholly discharged,

the Chief Executive Officer may, by order in accordance with the prescribed form co-signed by a board member of the Service, prohibit the recipient departing from Fiji for a foreign country.

(2) The Chief Executive Officer must state the following on the departure prohibition order—

- (a) the name and address of the recipient; and
- (b) the amount due that is or will become payable.

(3) A departure prohibition order has effect throughout Fiji, including aboard any vessel or aircraft within Fiji.

(4) A copy of a departure prohibition order issued in respect of a recipient must, as soon as practicable, be served on the recipient, and upon the Commissioner of Police and the Director of Immigration.

(5) If a departure prohibition order is issued in respect of a recipient, the Commissioner of Police and the Director of Immigration must exercise the powers that they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the recipient from departing Fiji, including the removal and retention of the recipient's passport, identity card, visa or other travel document authorising the recipient to leave Fiji.

(6) A recipient the subject of a departure prohibition order must be refused customs or immigration clearance.

(7) A departure prohibition order remains in force until revoked by the Chief Executive Officer or upon the expiration of 3 years from the date of the order being issued, whichever is the earlier.

(8) The Chief Executive Officer must revoke a departure prohibition order co-signed by a board member of the Service if—

- (a) the recipient makes payment in full of the amount due or that will become payable by the recipient; or
- (b) the recipient makes an arrangement satisfactory to the Chief Executive Officer for payment of the amount due that is or will become payable by the recipient.

(9) As soon as practicable after making a decision to revoke a departure prohibition order, the Chief Executive Officer must serve notice of revocation on the recipient and on any person on whom a copy of the departure prohibition order was served.

(10) No proceedings, criminal or civil, may be instituted or maintained against the State, the Chief Executive Officer, a revenue officer authorised to act under this section, or a customs, immigration, police or other officer for anything lawfully done under this section.

*Temporary closure of business*

32H.—(1) Where a recipient fails to make repayments in relation to an amount due, provided, no satisfactory arrangements are made, the Chief Executive Officer or a revenue officer authorised by the Chief Executive Officer in writing for the purposes of this section may notify the recipient in writing of the intention to close down the whole or part of the recipient’s business unless the recipient delivers the return or pays the amount due, as the case may be, within a period of 7 consecutive days of the date of the notice.

(2) If a recipient fails to comply with a notice issued under subsection (1), the Chief Executive Officer or authorised revenue officer may issue an order to close down the whole or part of the recipient’s business for a period not exceeding 14 consecutive days.

(3) The Chief Executive Officer or authorised revenue officer may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

(4) The Chief Executive Officer or authorised revenue officer must seal the premises of the business or the part of the business closed under an order issued under subsection (2) and must affix to the premises, in a conspicuous place, a notice in the following words “CLOSED TEMPORARILY FOR NOT COMPLYING WITH REPAYMENT OBLIGATIONS BY ORDER OF THE CHIEF EXECUTIVE OFFICER OF THE FIJI REVENUE AND CUSTOMS SERVICE UNDER SECTION 32H OF THE FIJI REVENUE AND CUSTOMS SERVICE ACT 1998”.

(5) If—

- (a) the return is delivered; or
- (b) the amount due is paid or an arrangement satisfactory to the Chief Executive Officer for payment is made,

within the period of closure, the Chief Executive Officer or authorised revenue officer must, as soon as practicable, cancel the order referred to in subsection (2), and arrange for removal of the seal and the notice referred to in subsection (4).

*Limitation Act 1971*

32I. The Limitation Act 1971 does not apply to the provisions of this Act, for the recovery of loans or funds disbursed by the Service to a recipient pursuant to an agreement under section 32A.”.

## **FIJI REVENUE AND CUSTOMS SERVICE (AMENDMENT) BILL 2020**

### **EXPLANATORY NOTE**

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

#### **1.0 BACKGROUND**

- 1.1 The Fiji Revenue and Customs Service (Amendment) Bill 2020 (**‘Bill’**) seeks to amend the Fiji Revenue and Customs Service Act 1998 (**‘Act’**).
- 1.2 The purpose of the Bill is to specifically prescribe in the Act the function of the Fiji Revenue and Customs Service (**‘FRCS’**) to disburse loans and funds on behalf of the State and to enable FRCS to undertake collection and recovery action against recipients that default in loan repayments or utilise loans or funds for a purpose other than what it was intended for.
- 1.3 The amendments proposed in this Bill are not novel in relation to the ability to collect and recover an amount due to the State. In fact the proposed provisions in the Bill are a replica of the collection and recovery provisions in sections 27 to 32 of the Tax Administration Act 2009 (for the collection of tax due to the State), sections 95, 95A, 95A1, 95B, 95C, 95D and 143C of the Customs Act 1986 (for the collection of duty due to the State) and sections 16 to 19 of the Tertiary Scholarships and Loans Act 2014 for the collection and recovery of loans or scholarships awarded to students in the course of their studies.

#### **2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister in the Gazette.
- 2.2 Clause 2 of the Bill amends section 2 of the Act to insert the definition of the terms “recipient” and “amount due”. The recipient, for the purposes of the Bill, is the person or guarantor of a person to whom loans or funds have been disbursed to by FRCS on behalf of the State and the “amount due” is the amount payable to the State by the recipient.
- 2.3 Clause 3 of the Bill amends section 22 of the Act to provide for the specific function of FRCS to disburse loans or funds on behalf of the State and to exercise

all functions and perform all duties necessary for the collection and recovery of those loans or funds where necessary.

- 2.4 Clause 4 of the Bill, firstly, introduces a new clause 32A which will require any person who is the recipient of loans or funds disbursed by FRCS to enter into an agreement with FRCS. The repayment obligations for the loans and funds will be captured in the agreement and will become an obligation in law for the purposes of allowing collection and recovery efforts under the Act by FRCS.
- 2.5 Secondly, clause 4 of the Bill inserts a new section 32B to give FRCS the power to collect and recover loans and funds where—
- (a) the loan or funds have been obtained by fraudulent means or by providing false information;
  - (b) the person receiving such loans or funds, or his or her guarantor, fails to make loan repayments or partial payments thereof;
  - (c) the person receiving such loans or funds fails to use the loans or funds for the purpose for which it was intended; or
  - (d) the person receiving such loans or funds breaches or fails to fulfil any terms or conditions of the agreement signed between FRCS and the recipient for such loans or funds.
- 2.6 Thirdly, clause 4 of the Bill also inserts new sections 32C, 32D, 32E, 32F, 32G and 32H to enable FRCS to exercise the following broader range of powers in relation to the collection and recovery of loans and funds disbursed by FRCS—
- (a) section 32C – Garnishee orders;
  - (b) section 32D – Charge on property;
  - (c) section 32E – Collection by distress and sale;
  - (d) section 32F – Seizure of goods;
  - (e) section 32G – Departure prohibition orders; and
  - (f) section 32H – Temporary closure of business.
- 2.7 Conclusively, clause 4 of the Bill also introduces a new clause 32I to ensure that the collection and recovery efforts of FRCS under this Act, in relation to any loans and funds disbursed by FRCS, continues to be enforceable despite the 6 year limitation under the Limitations Act 1971.

### **3.0 MINISTERIAL RESPONSIBILITY**

- 3.1 The Act comes under the responsibility of the Minister responsible for finance.

A. SAYED-KHAIYUM  
Attorney-General