

# BILL NO. 40 OF 2020

## A BILL

FOR AN ACT TO AMEND THE OZONE DEPLETING SUBSTANCES ACT 1998

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the Ozone Depleting Substances (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 Ozone Depleting Substances Act 1998 is referred to as the “Principal Act”.

*Long title amended*

**2.** The Principal Act is amended in the long title after “DEPLETING SUBSTANCES” by inserting “AND SUBSTANCES WITH HIGH GLOBAL WARMING POTENTIAL”.

*Section 5 amended*

**3.** Section 5 of the Principal Act is amended by—

- (a) in the definition of “controlled substance”, deleting “listed in the Schedule” and substituting “and any substance with high global warming potential listed in Schedule 1”; and

(b) inserting the following new definition—

““HCFC chiller” means any equipment containing a controlled substance listed in Part 2 of Schedule 1 that removes heat from a liquid by way of vapour compression, the absorption refrigeration cycle, air or processed water so that the liquid can be circulated through a heat exchanger to cool confined spaces;”.

*Section 12 amended*

4. Section 12(2)(b) of the Principal Act is amended by deleting “Vienna Convention for the protection of the Ozone Layer and Montreal Protocol on substances not deplete the Ozone layer” and substituting “Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances that Deplete the Ozone Layer”.

*Section 14 amended*

5. Section 14 of the Principal Act is amended by—

(a) deleting “the Schedule” wherever it appears and substituting “Schedule 1”;

(b) deleting subsection (2) and substituting the following—

“(2) No person shall import, export or manufacture any controlled substance in bulk listed in Part 2 of Schedule 1 with effect from 1 January 2030.”; and

(c) after subsection 7, inserting the following new subsections—

“(7A) No person shall import, export or manufacture any HCFC chiller with effect from 1 January 2021.

(7B) No person shall manufacture any controlled substance listed in Part 3 of Schedule 1 with effect from 1 January 2021.

(7C) No person shall import any controlled substance listed in Part 3 of Schedule 1 from a State that is not a party to the Montreal Protocol on Substances that Deplete the Ozone Layer with effect from 1 January 2033.

(7D) No person shall export any controlled substance listed in Part 3 of Schedule 1 to a State that is not a party to the Montreal Protocol on Substances that Deplete the Ozone Layer with effect from 1 January 2033.

(7E) No person shall import, export, manufacture, sell, store, process, purchase for resale or dispose of, as the case may be, any of the substances listed in Schedule 2.”.

*Section 14A inserted*

6. The Principal Act is amended after section 14 by inserting the following new section—

*“Exemptions by the Director*

14A.—(1) Notwithstanding section 14, the Director may exempt any person from the requirement to comply with any limitation or prohibition under section 14.

(2) The exemption under subsection (1) must be determined in accordance with the exemptions provided for under the Montreal Protocol on Substances that Deplete the Ozone Layer.”.

*Sections 22A and 22B inserted*

7. The Principal Act is amended after section 22 by inserting the following new sections—

*“Fixed penalty notice*

22A.—(1) Subject to this section, where the Director has reason to believe that a person has committed an offence under this Act, the Director may institute proceedings in respect of the alleged commission of the offence by issuing that person with a fixed penalty notice.

(2) A fixed penalty notice issued under subsection (1) must—

- (a) name the person to whom the fixed penalty notice is issued;
- (b) specify the particulars of the offence;
- (c) specify the fixed penalty that the person named on the fixed penalty notice is required to pay; and
- (d) specify any other information prescribed by regulations.

(3) Nothing in this section is taken to prevent the institution of proceedings under any provision of this Act.

*Regulations for the issuance of fixed penalty notices*

22B. The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of fixed penalty notices under section 22A, including—

- (a) the offences for which fixed penalty notices may be issued;
- (b) the fixed penalties for prescribed offences;
- (c) the manner, form and timeframes for which fixed penalty notices are to be issued;
- (d) the actions a person may undertake on receipt of a fixed penalty notice; and
- (e) the penalties that a person to whom a fixed penalty notice has been issued may be liable to.”.

*Section 25 amended*

8. Section 25(1) of the Principal Act is amended after paragraph (e) by inserting the following new paragraph—

“(ea) prescribe penalties not exceeding a fine of \$500,000 or imprisonment for a term not exceeding 10 years or both;”.

*Schedule amended*

## 9. The Schedule to the Principal Act is amended by—

- (a) deleting “SCHEDULE” and substituting “SCHEDULE 1”;
- (b) in Part 1, deleting Group I and substituting the following—

“Group I – any of the following Chlorofluorocarbons whether virgin, recycled or in a mixture—

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential</i>	<i>100-Year Global Warming Potential</i>
$\text{CFCl}_3$	CFC-11	1.0	4,750
$\text{CF}_2\text{Cl}_2$	CFC-12	1.0	10,900
$\text{C}_2\text{F}_3\text{Cl}_3$	CFC-113	0.8	6,130
$\text{C}_2\text{F}_4\text{Cl}_2$	CFC-114	1.0	10,000
$\text{C}_2\text{F}_5\text{Cl}$	CFC-115	0.6	7,370
$\text{CF}_3\text{Cl}$	CFC-13	1.0	
$\text{C}_2\text{FCl}_5$	CFC-111	1.0	
$\text{C}_2\text{F}_2\text{Cl}_4$	CFC-112	1.0	
$\text{C}_3\text{FCl}_7$	CFC-211	1.0	
$\text{C}_3\text{F}_2\text{Cl}_6$	CFC-212	1.0	
$\text{C}_3\text{F}_3\text{Cl}_5$	CFC-213	1.0	
$\text{C}_3\text{F}_4\text{Cl}_4$	CFC-214	1.0	
$\text{C}_3\text{F}_5\text{Cl}_3$	CFC-215	1.0	
$\text{C}_3\text{F}_6\text{Cl}_2$	CFC-216	1.0	
$\text{C}_3\text{F}_7\text{Cl}$	CFC-217	1.0	

”;

- (c) in Part 2, deleting Group I and substituting the following—

“Group I – HCFCs – any of the following Hydrochlorofluorocarbons whether virgin, recycled or in a mixture—

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone Depleting Potential*</i>	<i>100-Year Global Warming Potential***</i>
$\text{CHFC}_2$	HCFC-21**	1	0.04	151
$\text{CHF}_2\text{Cl}$	HCFC-22**	1	0.055	1,810
$\text{CH}_2\text{FCl}$	HCFC-31	1	0.02	
$\text{C}_2\text{HFC}_4$	HCFC-121	2	0.01-0.04	
$\text{C}_2\text{HF}_2\text{Cl}_3$	HCFC-122	3	0.02-0.08	
$\text{C}_2\text{HF}_3\text{Cl}_2$	HCFC-123	3	0.02-0.06	77
$\text{CHCl}_2\text{CF}_3$	HCFC-123**	-	0.02	
$\text{C}_2\text{HF}_4\text{Cl}$	HCFC-124	2	0.02-0.04	609

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone Depleting Potential*</i>	<i>100-Year Global Warming Potential***</i>
CHFClCF <sub>3</sub>	HCFC-124**	-	0.022	
C <sub>2</sub> H <sub>2</sub> FCI <sub>3</sub>	HCFC-131	3	0.007-0.05	
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>2</sub>	HCFC-132	4	0.008-0.05	
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Cl	HCFC-133	3	0.02-0.06	
C <sub>2</sub> H <sub>3</sub> FCI <sub>2</sub>	HCFC-141	3	0.005-0.07	
CH <sub>3</sub> CFCl <sub>2</sub>	HCFC-141b**	-	0.11	725
C <sub>2</sub> H <sub>4</sub> FCI	HCFC-151	2	0.003-0.005	
C <sub>3</sub> HFCI <sub>6</sub>	HCFC-221	5	0.015-0.07	
C <sub>3</sub> HF <sub>2</sub> Cl <sub>5</sub>	HCFC-222	9	0.01-0.09	
C <sub>3</sub> HF <sub>3</sub> Cl <sub>4</sub>	HCFC-223	12	0.01-0.08	
C <sub>3</sub> HF <sub>4</sub> Cl <sub>3</sub>	HCFC-224	12	0.01-0.09	
C <sub>3</sub> HF <sub>5</sub> Cl <sub>2</sub>	HCFC-225	9	0.02-0.07	
CF <sub>3</sub> CF <sub>2</sub> CHCl <sub>2</sub>	HCFC-225ca**	-	0.025	122
CF <sub>2</sub> ClCF <sub>2</sub> CHClF	HCFC-225cb**	-	0.033	595
C <sub>3</sub> HF <sub>6</sub> Cl	HCFC-226	5	0.02-0.10	
C <sub>3</sub> H <sub>2</sub> FCI <sub>5</sub>	HCFC-231	9	0.05-0.09	
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	HCFC-232	16	0.008-0.10	
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	HCFC-233	18	0.007-0.23	
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	HCFC-234	16	0.01-0.28	
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Cl	HCFC-235	9	0.03-0.52	
C <sub>3</sub> H <sub>3</sub> FCI <sub>4</sub>	HCFC-241	12	0.004-0.09	
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Cl <sub>3</sub>	HCFC-242	18	0.005-0.13	
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Cl <sub>2</sub>	HCFC-243	18	0.007-0.12	
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Cl	HCFC-244	12	0.009-0.14	
C <sub>3</sub> H <sub>4</sub> FCI <sub>3</sub>	HCFC-251	12	0.001-0.01	
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Cl <sub>2</sub>	HCFC-252	16	0.005-0.04	
C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Cl	HCFC-253	12	0.003-0.03	
C <sub>3</sub> H <sub>5</sub> FCI <sub>2</sub>	HCFC-261	9	0.002-0.02	
C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Cl	HCFC-262	9	0.002-0.02	
C <sub>3</sub> H <sub>6</sub> FCI	HCFC-271	5	0.001-0.03	

\*Where a range of Ozone Depleting Potentials is indicated, the highest value in that range shall be used for the purposes of the Montreal Protocol on Substances that Deplete the Ozone Layer. The Ozone Depleting Potentials listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the Ozone Depleting Potential of the isomer with the highest Ozone Depleting Potential, and the lower value is

the estimate of the Ozone Depleting Potential of the isomer with the lowest Ozone Depleting Potential.

\*\* Identifies the most commercially viable substances with Ozone Depleting Potential values listed against them to be used for the purposes of the Montreal Protocol on Substances that Deplete the Ozone Layer.

\*\*\* For substances for which no Global Warming Potential is indicated, the default value 0 applies until a Global Warming Potential value is included.”; and

(d) after Part 2, inserting the following new Part—

“PART 3

Group I — HFCs — any of the following Hydrofluorocarbons whether virgin, recycled or in a mixture—

<i>Chemical Formula</i>	<i>Substance</i>	<i>100-Year Global Warming Potential</i>
$\text{CHF}_2\text{CHF}_2$	HFC-134	1,100
$\text{CH}_2\text{FCF}_3$	HFC-134a	1,430
$\text{CH}_2\text{FCHF}_2$	HFC-143	353
$\text{CHF}_2\text{CH}_2\text{CF}_3$	HFC-245fa	1,030
$\text{CF}_3\text{CH}_2\text{CF}_2\text{CH}_3$	HFC-365mfc	794
$\text{CF}_3\text{CHF}_2\text{CF}_3$	HFC-227ea	3,220
$\text{CH}_2\text{FCF}_2\text{CF}_3$	HFC-236cb	1,340
$\text{CHF}_2\text{CHF}_2\text{CF}_3$	HFC-236ea	1,370
$\text{CF}_3\text{CH}_2\text{CF}_3$	HFC-236fa	9,810
$\text{CH}_2\text{FCF}_2\text{CHF}_2$	HFC-245ca	693
$\text{CF}_3\text{CHFCH}_2\text{CF}_2\text{CF}_3$	HFC-43-10mee	1,640
$\text{CH}_2\text{F}_2$	HFC-32	675
$\text{CHF}_2\text{CF}_3$	HFC-125	3,500
$\text{CH}_3\text{CF}_3$	HFC-143a	4,470
$\text{CH}_3\text{F}$	HFC-41	92
$\text{CH}_2\text{FCH}_2\text{F}$	HFC-152	53
$\text{CH}_3\text{CHF}_2$	HFC-152a	124

Group II — Trifluoromethane

<i>Chemical Formula</i>	<i>Substance</i>	<i>100-Year Global Warming Potential</i>
$\text{CHF}_3$	HFC-23	14,800

”.

*Schedule 2 inserted*

**10.** The Principal Act is amended after Schedule 1 by inserting the following new Schedule—

“SCHEDULE 2  
*(Section 14(7E))*

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PROHIBITED SUBSTANCES

1. No person shall import, export or manufacture HCFC-142 with effect from 1 January 2021.”.

## **OZONE DEPLETING SUBSTANCES (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 Ozone Depleting Substances Act 1998 (**‘Act’**) regulates the importation, exportation, sale, storage and use of ozone depleting substances. The Act also gives effect to Fiji’s obligations under the Vienna Convention for the Protection of the Ozone Layer (**‘Vienna Convention’**) and the Montreal Protocol on Substances that Deplete the Ozone Layer (**‘Montreal Protocol’**).
- 1.2 Fiji acceded to the Vienna Convention and the Montreal Protocol in 1989. Through the Montreal Protocol, Fiji has successfully reduced the use of ozone depleting substances (**‘ODS’**) over the years. The Montreal Protocol has not only contributed to the reduction of greenhouse gas emissions of around 135 billion tonnes of carbon dioxide (CO<sub>2</sub>) but it has also been a key contributor to the global fight against climate change.
- 1.3 Since entering into force, the Montreal Protocol has been amended 5 times to reflect the latest findings and science in relation to the ozone layer. The most recent amendment is the Kigali Amendment to the Montreal Protocol (**‘Kigali Amendment’**), which was agreed upon on 15 January 2016 and entered into force on 1 January 2019 with the exception of the changes to article 4 of the Montreal Protocol which enter into force on 1 January 2033.
- 1.4 The Kigali Amendment is designed to phase-down and reduce the production and consumption of hydrofluorocarbons (**‘HFCs’**), which are frequently used in refrigeration and air conditioning systems as substitutes for ODS. Although HFCs are not ODS, they are powerful greenhouse gases that have high or very high global warming potential.
- 1.5 On 16 June 2020, Fiji acceded to the Kigali Amendment and as such, Fiji is obligated to implement legislative control of the list of HFCs outlined in Annex F to the Montreal Protocol by 1 January 2021.



- 1.6 The Ozone Depleting Substances (Amendment) Bill 2020 (**‘Bill’**) amends the Act to, *inter alia*, give effect to part of Fiji’s legislative obligations under the Kigali Amendment. Essentially, the Bill extends the definition of controlled substance under the Act to include HFCs and amends the renamed Schedule 1 to the Act by inserting the list of HFCs outlined in Annex F to the Montreal Protocol as controlled substances under the Act.
- 1.7 Fiji’s other legislative obligations under the Kigali Amendment will be effected by way of an amendment to the Ozone Depleting Substances Regulations 2010. This includes the extension of the current licensing system for the importation and exportation of ODS to HFCs.
- 1.8 The Bill also amends the Act by inserting a new Schedule 2 which lists out prohibited substances under the Act and empowers the Minister responsible for environment, who is the Minister responsible for the administration of the Act (**‘Minister’**), to make regulations for the issuance of fixed penalties and to prescribe penalties not exceeding a fine of \$500,000 or imprisonment for a term not exceeding 10 years or both.

## **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 by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends the long title of the Act to provide that the Act also regulates the importation, exportation, sale, storage and use of substances with high global warming potential.
- 2.3 Clause 3 of the Bill amends section 5 of the Act to extend the definition of “controlled substance” to include any substance with high global warming potential and inserts a new definition for the term “HCFC chiller”.
- 2.4 Clause 4 of the Bill amends section 12 of the Act to rectify a clerical error.
- 2.5 Clause 5 of the Bill amends section 14 of the Act to change all references to the Schedule to the Act to Schedule 1 given that a new Schedule 2 is being inserted through the Bill. Clause 5 of the Bill also clarifies that the import, export and manufacture of any controlled substance in bulk listed in Part 2 of Schedule 1 is prohibited with effect from 1 January 2030 and provides that the following are prohibited, with effect from 1 January 2021:
- (a) the importation, exportation or manufacture of any HCFC chiller; and
  - (b) the manufacture of any HFCs listed in the new Part 3 of Schedule 1 to the Act.

- 2.6 Clause 5 of the Bill also provides that the importation of any controlled substance listed in Part 3 of Schedule 1 to the Act from a State that is not a party to the Montreal Protocol is prohibited, with effect from 1 January 2033. Furthermore, the exportation of any controlled substance listed in Part 3 of Schedule 1 to the Act to a State that is not a party to the Montreal Protocol is prohibited, with effect from 1 January 2033.
- 2.7 Clause 5 of the Bill further amends section 14 of the Act to provide for the prohibition of the import, export, manufacture, sale, storage, processing, purchase for resale or disposal, as the case may be, of any of the substances listed in the new Schedule 2.
- 2.8 Clause 6 of the Bill amends the Act by inserting a new section 14A to empower the Director of Environment (**‘Director’**) to exempt any person from the requirement to comply with a limitation or prohibition under section 14 of the Act. Clause 6 of the Bill also provides that an exemption by the Director must be determined in accordance with the exemptions provided for under the Montreal Protocol.
- 2.9 Clause 7 of the Bill amends the Act by inserting new sections 22A and 22B to empower the Minister to make regulations for the issuance of fixed penalties.
- 2.10 Clause 8 of the Bill amends section 25 of the Act to empower the Minister to prescribe penalties not exceeding a fine of \$500,000 or imprisonment for a term not exceeding 10 years or both.
- 2.11 Clause 9 of the Bill renames the Schedule to the Act as Schedule 1 and amends the renamed Schedule 1 to insert the list of HFCs under Annex F to the Montreal Protocol as controlled substances under the Act. Clause 9 of the Bill also substitutes the Group I controlled substances outlined in Parts 1 and 2 of Schedule 1 with the new lists provided under the Kigali Amendment. These new lists under the Kigali Amendment also provide the Global Warming Potential of some of these substances.
- 2.12 Clause 10 of the Bill amends the Act to insert a new Schedule 2 which outlines the list of prohibited substances under the Act.

### **3.0 MINISTERIAL RESPONSIBILITY**

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

A. SAYED-KHAIYUM  
Attorney-General