

# BILL NO. 2 OF 2023

## A BILL

FOR AN ACT TO AMEND THE ITAUKEI LAND TRUST ACT 1940

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the iTaukei Land Trust (Amendment) Act 2023.

(2) This Act comes into force on a date appointed by the Minister by notice in the Gazette.

(3) In this Act, the iTaukei Land Trust Act 1940 is referred to as the “Principal Act”.

*Section 12 amended*

**2.** Section 12 of the Principal Act is amended by deleting subsections (1A) and (3).

*Section 12A inserted*

**3.** The Principal Act is amended after section 12 by inserting the following new section—

*“Transitional for section 12*

12A. For the avoidance of doubt—

- (a) any mortgage registered under section 12 on or after 1 August 2021 and before the commencement of the iTaukei Land Trust (Amendment) Act 2023 is deemed to have acquired the required consent in accordance with section 12;

- (b) any application received for any mortgage under section 12 on or after 1 August 2021 and before the commencement of the iTaukei Land Trust (Amendment) Act 2023 and is yet to be processed, must acquire the required consent in accordance with section 12;
- (c) any charge, pledge, caveat or lease to be dealt with by any court of law or under the process of any court of law under section 12 on or after 1 August 2021 and before the commencement of the iTaukei Land Trust (Amendment) Act 2023 is exempted from the required consent in accordance with section 12; and
- (d) any application received for any charge, pledge, caveat or lease to be dealt with by any court of law under section 12 on or after 1 August 2021 and before the commencement of the iTaukei Land Trust (Amendment) Act 2023 and is yet to be processed, is exempted from the required consent in accordance with section 12.”.

April 2023

## **ITAUKEI LAND TRUST (AMENDMENT) BILL 2023**

### **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 iTaukei Land Trust Act 1940 (**‘Act’**) provides for the administration of iTaukei land.
- 1.2 In 2021, section 12 of the Act was amended by the iTaukei Land Trust (Budget Amendment) Act 2021 (**‘Amendment Act’**) to remove the requirement of obtaining consent from the iTaukei Land Trust Board (**‘iTLTB’**) for any mortgage, charge, pledge, caveat or for any such lease to be dealt with by any court of law or under the process of any court of law. The Amendment Act also amended section 12 of the Act to provide that consent of iTLTB can only be refused where there is a breach of any lease condition or where such application to deal with the land is not in accordance with any law. The Amendment Act came into force on 1 August 2021.
- 1.3 Essentially, the Amendment Act allowed lessees of iTaukei land to go directly to banks without obtaining consent from iTLTB to use a lease as security for borrowing.
- 1.4 Consent is still required from iTLTB, however, for dealings such as sale, transfer, subleasing, assignment, subletting, building, rezoning, etc. because these have a direct impact on land owning units of iTaukei land.
- 1.5 Therefore, the iTaukei Land Trust (Amendment) Bill 2023 (**‘Bill’**) seeks to amend the Act to remove the amendments made by the Amendment Act and to restore iTLTB’s previous role before the Amendment Act came into force.

#### **2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the Act will come into force on a date appointed by the Minister by notice in the Gazette.

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2.2 Clause 2 of the Bill amends section 12 of the Act to remove the amendments made by the Amendment Act.

2.3 Clause 3 of the Bill amends the Act by inserting a new section 12A to provide for the transitional provision and give clarity to any application for any mortgage, charge, pledge, caveat or for any such lease to be dealt with by any court of law that was made under section 12 of the Act on or after 1 August 2021 and before the commencement of the iTaukei Land Trust (Amendment) Act 2023.

### **3.0 MINISTERIAL RESPONSIBILITY**

3.1 The Act comes under the responsibility of the Minister responsible for iTaukei affairs.

S. D. TURAGA  
Attorney-General