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SUPERYACHT CHARTER DECREE 2010
(DECREE NO. 19 OF 2010)

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SUPERYACHT CHARTER DECREE 2010
(DECREE NO. 19 OF 2010)

GOVERNMENT OF FIJI

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority Decree 2009, I hereby make the following Decree—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Decree may be cited as the Superyacht Charter Decree 2010.
- (2) This Decree comes into force on the date it is published in the *Gazette*.

Interpretation

2. In this Decree, unless the context otherwise requires—
 - ‘Chief Executive Officer’ means the Chief Executive Officer appointed under section 27 of the Fiji Island Revenue and Customs Authority Act;
 - ‘Charter’ means the use of a Superyacht by a Charterer under a recognised charter contract by way of lease or hire for a period of time or a voyage;
 - ‘Charter Fee’ means the fee payable by a Charterer under a Recognised Charter Contract;
 - ‘Charterer’ means a person who charters or hires a Superyacht;
 - ‘Code of Conduct’ means the code of conduct determined and published by the FIHTA Sub-committee from time to time;
 - ‘Company’ means a company incorporated and registered under the Companies Act (Cap.247) as modified, amended or replaced from time to time;
 - ‘FIHTA Sub-committee’ means the Fiji Islands Hotel and Tourism Association Marine Operators Sub-committee;
 - ‘Fiji waters’ means all waters appertaining to Fiji and includes all internal waters, archipelagic waters, territorial seas and all waters within the exclusive economic zone;
 - ‘Master’ in relation to a Superyacht, means the person in charge or in command of the Superyacht, but does not include a person appointed for guiding of the Superyacht into or out of a port;
 - ‘MCA’ means the Maritime and Coastguard Agency being an executive arm of the Department of Transport in the United Kingdom;
 - ‘Minister’ means the Minister of Tourism for the Republic of Fiji or such other Minister who is designated with the responsibility imposed upon a Minister under this Decree;
 - ‘Official Registration Document’ means the official document provided by the country where the Superyacht is registered specifying that the Superyacht is registered in that country and identifying the Superyacht and the Vessel Owner;
 - ‘Recognised Charter Contract’ means any contract with the superyacht Owner setting out the terms and conditions of the Charter in a form approved by either the Mediterranean Yacht Brokers Association, American Yacht Charter Association, or other internationally recognised superyacht charter association;
 - ‘Recognised Superyacht Agent’ means a company which is registered under the Companies Act (Cap 247) and is duly registered with the Fiji Island Revenue and Customs Authority in accordance with Part 2 of this Decree;
 - ‘Superyacht’ means a foreign flagged or registered large commercial yacht to which the MCA Merchant Shipping Notice #1792 applies, being a motor or sailing vessel of 24 metres in load line length and over or, if built before 21 July 1968, which is of 150 tons gross tonnage and over and which, at the time, is in commercial use for sport or pleasure and carries no cargo and no more than 12 passengers and is less than 3000GT;
 - ‘Superyacht Charter Fee’ means 12.5 % of the Gross Charter Fee which is payable to the Government of Fiji in Fiji dollars as set out in the Schedule of this Decree.
 - ‘Superyacht Crew’ means every person employed or engaged in any capacity on board a Superyacht, including, without limitation, the Master, mate and engineer.

- ‘Vessel Permit’ means the Superyacht Vessel permit issued by the Chief Executive officer in accordance with section 7;
- ‘Superyacht Charter Permit’ means the Superyacht Charter permit issued by the Chief Executive Officer for each and every charter in accordance with section 8;
- ‘USD’ means the currency of the United States of America
- ‘FJD’ means the currency of the Republic of Fiji Islands.
- ‘Vessel Owner’ means for the purposes of this Decree, the owner of the Superyacht, the Master of the Superyacht or authorised representative of the owner or Master of the Superyacht.

Object and responsibility of this Decree

3.—(1) The Objective of this Decree is to establish a charter permit system to allow Superyachts to charter in Fiji waters.

(2) This Decree shall be administered by the Fiji Islands Revenue and Customs Authority.

PART 2—REGISTRATION AS A RECOGNISED SUPERYACHT AGENT

Registration

4.—(1) Any Company engaged in the leisure marine industry which operates under a code of conduct published by the FIHTA Sub-committee may apply to the Fiji Island Revenue and Customs Authority in an approved form and fee prescribed by the Chief Executive Officer for registration as a Recognised Superyacht Agent.

(2) The Chief Executive Officer may either approve or refuse an application under section 4 subsection (1).

(3) In making a decision under section 4 subsection (2), the Chief Executive Officer may consider:—

- (a) the applicant’s compliance with the Code of Conduct ;
- (b) the applicant’s relevant experience;
- (c) whether the applicant is a fit and proper person to be a Recognised Superyacht Agent; and
- (d) any other relevant matters.

(4) The Chief Executive Officer must notify the applicant of the Chief Executive Officer’s decision under section 4 subsection (2) within 28 days of an application being made under section 4 subsection (1).

(5) A Certificate of Registration as a Recognised Superyacht Agent may be issued by the Chief Executive Officer for a period of 1 year, subject to such conditions as the Chief Executive Officer may deem appropriate.

(6) A registration as a Recognised Superyacht Agent is renewable annually.

(7) In making a decision under sub-section (2) or in imposing conditions under sub-section (5), the Chief Executive Officer may consult any relevant person or body.

Termination and suspension of registration

5.—(1) The Chief Executive Officer may terminate or suspend the registration of a Recognised Superyacht Agent where the Recognised Superyacht Agent is either—

- (a) in breach of the Code of Conduct as amended from time to time; or
- (b) has become, in the view of the Chief Executive Officer, an unfit person to be registered as a Recognised Superyacht Agent under this Decree.

(2) Where the Chief Executive Officer decides to terminate or suspend the registration of a Recognised Superyacht Agent under section 5 subsection (1), the Chief Executive Officer must within 3 days—

- (a) give a written notice stating the reason or reasons of termination or suspension to the Recognised Superyacht Agent; and
- (b) revoke the validity of any Certificate issued under section 4 subsection (5).

(3) Where the Chief Executive Officer has suspended the registration of a Recognised Superyacht Agent, the Recognised Superyacht Agent may within 3 days from the time the decision was made to suspend, apply to the Chief Executive Officer for reinstatement.

(4) The Chief Executive Officer may reinstate the registration at any time provided that the reason for the termination or suspension no longer exists. If the Chief Executive Officer does reinstate the registration, a written notice of such reinstatement must be given within 3 days.

Role of a Recognised Superyacht Agent

6.—(1) In relation to each application for Vessel or Superyacht Charter Permit or renewal of a Vessel Permit, the Recognised Superyacht Agent shall—

- (a) apply for and be the Vessel or Superyacht Charter permit holder on behalf of the Vessel Owner;
- (b) collect all the documentation, fees and taxes required under this Decree and Fiji's tax laws in relation to the charter; and
- (c) ensure that to the best of the Recognised Superyacht Agent's knowledge the Vessel Owner has complied with the Decree.

PART 3—PERMITS

Vessel Permit

7.—(1) Where a Superyacht is intended by the Vessel Owner to be chartered in Fiji waters, the Recognised Superyacht Agent shall apply to the Chief Executive Officer for an issuance of a Vessel Permit.

- (2) Before applying for a Vessel Permit, the Recognised Superyacht Agent shall ensure that the Superyacht—
- (a) is subject to a Recognised Charter Contract;
 - (b) will carry no more than 12 passengers on any Charter;
 - (c) be subject to a minimum weekly Charter Charge of USD 55,000.00 specified under that Recognised Charter Contract or equivalent value in another currency;
 - (d) the Superyacht has a valid and recent MCA certification or equivalent internationally recognised commercial survey certification for the purpose of carrying passengers to the satisfaction of the Chief Executive Officer in consultation with the Chief Executive Officer of the Fiji Maritime & Safety Authority.

(3) A Recognised Superyacht Agent shall pay an application fee of FJD 3,000 and submit with each application to the Chief Executive Officer for a Vessel Permit in the prescribed form—

- (a) a certified copy of the Superyacht's Official Registration Document;
- (b) a list of the Superyacht's Crew and their certification;
- (c) a Recognised Charter Contract; and
- (d) a certified copy of the Superyacht's MCA certification or equivalent internationally recognised commercial survey certification for the purpose of carrying passengers.

Superyacht Charter Permit

8.—(1) For each and every charter in which the Superyacht is granted a Vessel permit as provided in section 7, there shall be a Superyacht Charter Permit issued by the Chief Executive Officer.

(2) The Recognised Superyacht Agent shall apply for a Superyacht Charter Permit in the prescribed form to the Chief Executive Officer.

(3) The Recognised Superyacht Agent shall submit to the Chief Executive Officer, at least 7 days before the charter commences—

- (a) a list of the Superyacht's Crew and their certification;
- (b) a certified copy of the Superyacht's Recognised Charter Contract;
- (c) the details of the Superyacht Charter Fee for that charter by completing the form contained in Schedule 1; and
- (d) any other documents reasonably requested by the Chief Executive Officer.

(4) Subject to subsection (3), if the Charterer or Vessel Owner intends to charter within the customary fishing rights boundaries of the coastal villages, the Recognised Superyacht Agent shall also submit to the Chief Executive Officer the necessary permit issued by the Provincial Services Unit within the Ministry of Indigenous Affairs.

Grant of Vessel and/or Superyacht Charter Permit

9.—(1) The Chief Executive Officer may either approve or refuse an application made by a Recognised Superyacht Agent under section 7 or 8.

(2) In making a decision under section 9 subsection (1), the Chief Executive Officer may consider any matter the Chief Executive Officer considers relevant.

(3) The Chief Executive Officer must notify the Recognised Superyacht Agent of the Chief Executive Officer's decision under section 9 subsection (1)—

- (a) within 14 days of an application for a Vessel Permit under section 7 being made;
- (b) within 3 days after the application for a Superyacht Charter Permit under section 8 being made.

(4) By approving an application under section 9 subsection (1), the Chief Executive Officer grants the Recognised Superyacht Agent a Vessel and/or Superyacht Charter Permit.

Conditions of Vessel and/or Superyacht Charter Permit

10. The Vessel or Superyacht Charter Permit is granted on the terms and conditions contained in this Decree and such other relevant and reasonable conditions as the Chief Executive Officer may impose.

Duration of Vessel and/or Superyacht Charter Permit

11.—(1) A Vessel Permit has a duration of 6 months (or part thereof) commencing on the date on which the Chief Executive Officer grants a Permit under section 9.

(2) For each and every Charter, the duration and validity of a Superyacht Charter Permit shall be stipulated in the Superyacht Charter Permit issued by the Chief Executive Officer.

Renewal of Vessel Permit

12.—(1) A Vessel Permit is renewable for two additional and continuous periods of six months from the date the Superyacht first enters Fiji waters.

(2) A Recognised Superyacht Agent may apply to the Chief Executive Officer for renewal of a Vessel Permit and pay the application fee no less than 28 days prior to expiration of the Vessel Permit.

(3) An application for renewal of a permit under section 12 may only be made if the Recognised Superyacht Agent would otherwise be eligible to apply for a Vessel Permit under section 7.

(4) A Recognised Superyacht Agent must provide all documentation requested by the Chief Executive Officer in respect of an application to renew a Vessel Permit, through a Recognised Superyacht Agent.

(5) The Chief Executive Officer may either approve or refuse an application for renewal by a Recognised Superyacht Agent under section 12 subsection (2).

(6) In making the decision under section 12 subsection (5), the Chief Executive Officer may consider or if the Chief Executive Officer considers it necessary to consult with other relevant bodies—

- (a) whether the Recognised Superyacht Agent is a fit and proper person to remain a Vessel Holder; and
- (b) any other relevant matters.

(7) The Chief Executive Officer must notify the Recognised Superyacht Agent of the Chief Executive Officer's decision under section 12(5) within 14 days.

Payment of Application Fee

13. The Recognised Superyacht Agent must, pay the prescribed application fee to the Fiji Island Revenue and Customs Authority in respect of each application made under section 7, 8 or section 12 at the time of lodgement of the application for a Permit.

Payment of Superyacht Charter Fee

14.—(1) The Recognised Superyacht Agent must, pay the Superyacht Charter Fee as mentioned in the Schedule to the Fiji Island Revenue and Customs Authority for each and every charter of the Superyacht.

Suspension and cancellation of Vessel and/or Superyacht Charter Permits

15.—(1) The Chief Executive Officer may suspend or cancel a Vessel or Superyacht Charter Permit for -

- (a) failure by the Recognised Superyacht Agent or the Superyacht Crew to comply with conditions of the Permit;
- (b) failure to pay any fee specified in this Decree or other amount payable to the Chief Executive Officer when due;
- (c) breach of this Decree by the Recognised Superyacht Agent or the Superyacht Crew;
- (d) breach of any other law of the Republic of Fiji by the Recognised Superyacht Agent, the Superyacht Crew or the Vessel Owner;

- (e) the Superyacht ceases to be registered;
- (f) the Superyacht's MCA certification or equivalent internationally recognised commercial survey certification for the purpose of carrying passengers is withdrawn; or
- (g) if the Chief Executive Officer considers that the relevant Recognised Superyacht Agent is no longer a fit and proper person to hold a Vessel or Superyacht Charter Permit;
- (h) failure to conform to the Customs laws that are related to this Decree.

(2) The Chief Executive Officer must notify Recognised Superyacht Agent of the Chief Executive Officer's decision to suspend or cancel a Vessel or Superyacht Charter Permit under section 15 within 3 days of that decision.

(3) Upon termination, completion, suspension or cancellation of a Vessel or Superyacht Charter Permit, the owner or master shall conform to the requirements of section 72 of the Customs Act.

Appeal to the Minister

16.—(1) Any decision of the Chief Executive Officer made under this Decree is appealable to the Minister.

(2) The appellant may appeal to the Minister against the decision within 72 hours of the making of the decision.

(3) On appeal under subsection (1), the Minister may within 72 hours—

- (a) confirm the decision of the Chief Executive Officer;
- (b) revoke the termination or suspension, as the case may be; or
- (c) vary the decision of the Chief Executive Officer.

PART 4—OFFENCES AND PENALTIES

Misleading and deceptive documents

17. A person must not knowingly submit a document to the Chief Executive Officer, either directly or through a Recognised Superyacht Agent, which is in any way misleading or deceptive.

Penalty: A fine not exceeding \$250,000.00 or imprisonment for 1 year.

Breach of Permit conditions

18. A Recognised Superyacht Agent or a Vessel Owner must not breach the conditions of a Permit. Penalty: A fine not exceeding \$250,000.00 or imprisonment for 1 year.

Operating without a permit

19. A Recognised Superyacht Agent must not operate on behalf of the Vessel Owner or assist in the operation of a Superyacht in Fiji waters, including undertaking a charter, without a Vessel and/or Superyacht Charter Permit. Penalty: A fine not exceeding \$250,000.00 or imprisonment for 1 year.

Operating in the Fiji domestic charter market

20. A Recognised Superyacht Agent must not advertise a Charter or engage in a Charter in Fiji waters where—

- (a) the Charter Fee to be paid in FJD is less than \$USD55,000.00;
- (b) the Contract is not a Recognised Charter Contract in a standard form recognised by the MYBA (The Yachting Association), American Yacht Charter Association;
- (c) the approval is not in accordance with this Decree.

Penalty: A fine not exceeding \$250,000.00 or imprisonment for 1 year for each offence.

Limitation of Liability

21.—(1) Any act or omission by the Chief Executive Officer or employee of the Fiji Island Revenue and Customs Authority done in good faith in the execution or intended execution of any function of the Chief Executive Officer or Fiji Island Revenue and Customs Authority under this Decree, is exempt from liability.

(2) The Government of Fiji or any statutory authority established under the laws of Fiji shall not be liable nor vicariously liable for any act or omission done by virtue of powers given under this Decree.

PART 5—APPLICATION OF ANCILLARY LEGISLATION

Amendment to the Customs Tariff Act – Insertion of Code 239

22. Part III to Schedule 2 of the *Customs Tariff Act* is amended by inserting a separate Code 239—
“239.—(1) The Comptroller shall set up a separate Code for Superyachts.

(2) The Vessel Owner or Charterer of the Superyacht shall have a valid Permit in accordance with the *Superyacht Charter Decree 2010* and fulfil the conditions set up by the Comptroller;

(3) The Superyacht is operating on a valid Vessel Permit and Superyacht Charter Permit;

(4) The Superyacht is solely for commercial contracted use of the Vessel Owner or Charterer;

(5) The Superyacht shall remain in Fiji for a period not exceeding the duration period as stated in section 11 or 12 (1) from its arrival provided the superyacht is operating on a valid Vessel Permit and Superyacht Charter Permit;

(6) The Vessel Owner, Superyacht Crew and Charterer shall retain his/her immigration status as a holder of a valid visitors permit whilst in Fiji; and

(7) The Vessel Owner, Superyacht Crew and Charterer are permitted to travel in and out of Fiji to, amongst other things, attend to essential services such as buying spares for the Superyacht and family commitments, whilst the Superyacht remains in Fiji for a maximum continuous period not exceeding 18 months with no extension beyond a maximum continuous period of 18 months.”

Amendment to the Immigration Act

23.—(1) Section 9 of the *Immigration Act* is amended by inserting the following provisions immediately following section 9 subsection 7—

“(8) Words and expressions used in sub-sections (8), (9), (10) and (11) have the meanings given to them in the *Superyacht Charter Decree 2010* unless the context otherwise requires.

(9) The Permanent Secretary may issue a visitor’s permit under section 9 subsection (1) to a Vessel Owner, Superyacht Crew and Charterer provided a valid Vessel Permit is held in relation to the Superyacht under the *Superyacht Charter Decree 2010*.

(10) The condition in section 9 subsection (2) paragraph (a) that a person granted a visitor’s permit will not, whilst in Fiji engage in any business, profession or employment, whether for reward or not except with the approval of the Permanent Secretary, does not prevent a Vessel Owner, Superyacht Crew and Charterer who are issued with a visitor’s permit from working onboard the Superyacht and fulfilling their obligations under a Recognised Charter Contract.

(11) If a Vessel Owner, Superyacht Crew or Charterer of a Superyacht for which a valid Vessel Permit is held under the *Superyacht Charter Decree 2010* remains in Fiji for more than 4 months or such other period as a visitor permit is issued under this section 9, the Permanent Secretary may issue a permit to reside in Fiji under section 9 to enable a Person to work onboard the Superyacht and fulfil their obligations under a Recognised Charter Contract.”

Application of the Marine Act, 1986

24. The *Marine Act, 1986* is amended by inserting the following as section 6A—
“6A. Superyachts are deemed to comply with the Act.

(1) Words and expressions used in this section 6A have the meanings given to them in the *Superyacht Charter Decree 2010* unless the context otherwise requires.

(2) A Superyacht for which a valid Vessel Permit is held with the relevant Vessel Owner is deemed to have complied with all requirements under this *Marine Act, 1986* including, but not limited to, any requirement for certification under this *Marine Act, 1986*.

(3) The Maritime Safety Authority of Fiji must allow all foreign registered Superyachts for which a Vessel Permit is held, to operate in accordance with the applicable Recognised Charter Contract and Permit.”

Amendment to the Customs Act 1986

25. The Customs Act 1986 is amended in section 2 by deleting the definition of “transit” and substituting—
“transit” includes in respect of an aircraft or ship, the interim passage in Fiji of such aircraft or ship arriving from a place outside Fiji and proceeding thereafter to another place outside of Fiji and where the duration of time in Fiji does not exceed 4 consecutive days, excluding the vessel which is used as the principal asset in a Superyacht Charter arrangement from the above definition of “transit” throughout its duration of Superyacht Charter in Fiji and such vessel must then immediately depart for definite foreign destination upon completion or termination or premature termination of the Charter in Fiji;”

GIVEN UNDER my hand this 2nd day of April 2010.

EPELI NAILATIKAU
President of the Republic of Fiji

SCHEDULE 1

**The Republic of the Fiji Islands
Superyacht Charter Fee Worksheet**

Recognised Superyacht Agent

Super Yacht Name

Super Yacht Registration # and registration body

Vessel Permit Fee Paid [Agent to initial] **Yes/No**

Fiji Government Revenue Receipt #

Captain's Name

Crew Manifest Attached [Yes/No] [YES/NO] _____

Charter Agreement enclosed [Yes/No] [YES/NO] _____

Super Yacht MCA Certification attached [YES/NO] _____

Fiji Charter Dates:

Depart Port date [DD/MM/YY] _____

Re-Enter Port date [DD/MM/YY] _____

Total Charter Days

Total Gross Charter Value - Currency Code

Total Gross Charter Value

Fiji Government Super Yacht Charter Fee @ 12.5%

Converted to Fiji Currency at Translation Rate FJD\$1.0000 =

Fiji Currency Super Yacht Charter Fee in FJD\$ (Vat Exclusive) **FJD\$**

Declarations:

Declared True & Correct by the Captain _____ **Super Yacht Stamp**

Declared True & Correct by the Agent _____ **Agent's Stamp**

Fiji Super Yacht Charter Fee paid date _____

Fiji Government Revenue Receipt # _____

DECLARATION

I, the undersigned, being duly authorised by the vessel owner, hereby declare that the information contained in this form is correct and complete, and I authorise the Chief Executive Officer to make all the necessary enquiries and to conduct all the necessary verifications in relation to this Schedule.

Name(s):

Recognised Superyacht Agent:

Signature:
