

GOVERNMENT OF FIJI

NATADOLA BAY DEVELOPMENT DECREE 2010
(DECREE NO. 24 OF 2010)

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NATADOLA BAY DEVELOPMENT DECREE 2010
(DECREE NO. 24 OF 2010)

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 maybe cited as the Natadola Bay Development Decree 2010.
- (2) This Decree comes into force on the date appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Decree, unless the contrary intention appears -

"Director of Lands" means the person holding all State Lands on behalf of the State

under section 4(1) of State Lands Act [Cap. 132];

"Fiji National Provident Fund" as the context requires means the Fiji National Provident Fund and the Fiji National Provident Fund Board under the Fiji National Provident Fund Act [Cap. 219];

"FNPF Investments Limited" means the Fiji incorporated limited liability company having its registered office at Level 4, Plaza 2, Provident Plaza, Ellery Street, Suva, Fiji;

"Foreign Investment Certificate" means a Foreign Investment Certificate under Part 2 of the Foreign Investments Act 1999;

"Foreign Shareholder" means Hotel Property Pacific Limited.

"Hotel Property Pacific Limited" means the Fiji incorporated limited liability company having its registered office as 99 Gordon Street, Suva formerly known as Natadola Marine Resort Limited which was formerly known as Asia Pacific Resorts International Limited;

"instrument of title" has the meaning as defined in the Land Transfer Act [Cap. 131] or the Agricultural Landlord and Tenant Act [Cap. 270] and includes any agreement to lease issued by the Director of Lands or the Native Land Trust Board;

"Minister" means the Minister responsible for Finance.

"Natadola Bay Development" or "Natadola Bay" means the integrated resort development at Natadola within the boundaries of the lands depicted in the original Master Plan of Natadola Bay Development as shown in the Schedule to this Decree;

"Natadola Land Holdings Limited" means the Fiji incorporated limited liability company having its registered office at Level 4, Plaza 2, Provident Plaza, Ellery Street, Suva, Fiji;

"Natadola Bay Resort Limited" means the Fiji incorporated limited liability company having its registered office at Level 4, Plaza 2, Provident Plaza, Ellery Street, Suva, Fiji;

"Native Land Trust Board" shall have the same meaning as in the Native Land Trust Act [Cap. 134];

"Registrar of Companies" means the Registrar as defined in section 2 of the Companies Act [Cap. 247];

"Registrar of Titles" means the Registrar as defined in section 2 of the Land Transfer Act [Cap. 131];

"Schedule" means the Schedule to this Decree;

"subsidiary" or "subsidiaries" means any or all of Natadola Land Holdings Limited,

Natadola Bay Resort Limited and FNPF Investments Limited.

Object of the Decree

3.-(1) The object of this Decree is to protect the members funds invested in the Natadola Bay Development at Natadola by the Fiji National Provident Fund through its subsidiaries.

(2) The Decree achieves this object by-

(a) providing for the forfeiture of shares held in Natadola Land Holdings Limited following the cancellation of the Foreign Investment Certificate issued to Hotel Property Pacific Limited, being a foreign shareholder in Natadola Land Holdings Limited, which cancellation was caused by deliberate non-disclosure of bankruptcy and related information of past activities of a director of Hotel Property Pacific Limited;

(b) providing for the forfeited shares held in Natadola Land Holdings Limited to be vested in FNPF Investments Limited, for the benefit and protection of the members of the Fiji National Provident Fund and of the investments made by its subsidiaries;

(c) providing for the transfer of all real and personal property within the boundaries depicted in the Schedule in the ownership of Natadola Land Holdings Limited, Hotel Property Pacific Limited and FNPF Investments Limited to Natadola Bay Resort Limited.

PART 2-EFFECT ON ASSETS FOLLOWING CANCELLATION OF FOREIGN INVESTMENT CERTIFICATE

Effect of cancellation of Foreign Investment Certificate

4.-(1) The shares, except for one share, held by Hotel Property Pacific Limited in Natadola Land Holdings Limited and any other assets belonging to Hotel Property Pacific Limited are forfeited to FNPF Investments Limited and the remaining one share to the Chief Executive Officer for the time being of Fiji National Provident Fund on trust for FNPF Investments Limited with effect from 12th June 2007, being the effective date of cancellation of Natadola Land Holdings Limited's Foreign Investment Certificate Number 2076.

(2) The shares, except for one share, held by any person or body in Hotel Property Pacific Limited are forfeited to FNPF Investments Limited and the remaining one share to the Chief Executive Officer for the time being of Fiji National Provident Fund on trust for FNPF Investments Limited with effect from 12th June 2007 being the effective date of cancellation of Hotel Property Pacific Limited's Foreign Investment Certificate Number 05-0464.

Trading and actions of Natadola Bay Resort Limited valid

5.-(1) Notwithstanding the cancellation of the Foreign Investment Certificate Number 05-0539 effective from 10th December 2007 of Natadola Bay Resort Limited and the continued trading by it and Natadola Land Holdings Limited since the effective dates of cancellation of their Foreign Investment Certificates by the majority shareholder, FNPF Investments Limited, all actions taken by the majority shareholder, Board of Directors, officers, management and employees of FNPF Investments Limited, Natadola Bay Resort Limited, Natadola Land Holdings Limited and the Fiji National Provident Fund Board since the said date shall be valid and effective notwithstanding any failure to comply with the provisions of

or in contravention of the Companies Act or any other written law.

(2) For the avoidance of any doubt the provisions of subsection (1) shall not in any way exempt any person from any civil or criminal liability for any action taken by them in breach of any duty or reckless, wilful or deliberate conduct not *bona fide* taken in the interest of continuing the operations of Natadola Land Holdings Limited and Natadola Bay Resort Limited following the cancellation of the Foreign Investment Certificates of the two companies or for any persons misconduct leading to the cancellation of the Foreign Investment Certificates of Hotel Property Pacific Limited, Natadola Land Holdings Limited or Natadola Bay Resort Limited.

Registrar of Companies to effect necessary changes

6. The Registrar of Companies shall make the necessary changes to the entries in the register of shareholders of the affected companies to give effect to the provisions of section 4.

Minister may exempt stamp duty and other registration fees

7. The Minister may in his discretion and in writing exempt any transfer or other document which may be required to carry into effect the provisions of section 4 from stamp duty or registration fees.

Part 3-VESTING OF OTHER PROPERTY

Vesting of other property

8.-(1) Except in the case of shares, all property, whether real or personal (except in the case of FNPF Investments Limited which shall be limited to real property) and whether covered by registered or unregistered instruments of title, presently held by Natadola Land Holdings Limited, Hotel Property Pacific Limited or FNPF Investments Limited at Natadola Bay which formed part of the original Master Plan of Natadola Bay Development as depicted in the Schedule or later varied or subsequently acquired and included in the development by Hotel Property Pacific Limited, Natadola Land Holdings Limited or FNPF Investments Limited at Natadola shall on the commencement of this Decree be deemed to have been transferred into the ownership of Natadola Bay Resort Limited.

(2) All documents or instruments brought into existence for the purpose of evidencing, recording or effecting the matters referred to in subsection (1) shall be exempt from stamp duty under the Stamp Duties Act [Cap.205] as amended.

(3) Without limiting the generality of the foregoing, the Stamp Duties Act [Cap. 205] shall not:

(a) apply to any agreement brought into existence for the purpose of recording, evidencing or effecting any transfer of property of Natadola Land Holdings Limited or Hotel Property Pacific Limited or FNPF Investments limited to Natadola Bay Resort Limited or the vesting of any such property in the Natadola Bay Resort Limited;

(b) apply to any instrument recording evidencing or effecting anything which is the subject of this Decree; or

(c) operate to impose or attract any duty fine impost penalty or assessment required or

reasonably necessary to give effect to the purpose and intent of this Decree.

(4) Without limiting the generality of any other provision of this Decree, nothing in the State Acquisition of Lands Act [Cap. 135], State Lands Act [Cap. 132], Forest Decree 1992, Land Sales Act [Cap. 137], Land Transfer Act [Cap. 131], Native Lands Act [Cap. 133], Native Land Trust Act [Cap. 134], and any other written law amending or made thereunder shall invalidate or affect any instrument, agreement, document or transfer given or made to Natadola Land Holdings Limited or Hotel Property Pacific Limited or FNPF Investments Limited to which Natadola Bay Resort Limited by virtue of this Decree has become entitled to in the place of Natadola Land Holdings Limited or Hotel Property Pacific Limited or FNPF Investments Limited and the Registrar of Titles shall make such entries to give effect to the above provisions or as may be directed by the Minister.

(5) No further consent, permit, certification, ratification, fees or charges, registration fees of any kind, filing fees, lodgement fees, or fees of any kind whatsoever shall be required to be given or paid in respect of any document or instrument sought to be registered for the purpose of evidencing, recording or effecting the matters referred to in subsections (1) and (2) notwithstanding any provision to the contrary in any written law.

(6) The vesting of any interest in any land in Natadola Bay Resort Limited by virtue of this Decree shall be valid and effective notwithstanding any non-compliance with any written law.

(7) The powers and rights conferred upon Natadola Bay Resort Limited by the operation of this Decree shall not be limited or restricted in any way by the provisions of or non-compliance with any written law.

PART 4-MISCELLANEOUS

Certain decisions not to be challenged

9.-(1) No court, Tribunal, Commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any challenges by any person or body, or to entertain or grant any remedy to any person or body, which seeks or purports to challenge or question:

- (a) the validity, legality or propriety of this Decree;
- (b) any decision of any Minister or any State official or body, made under this Decree;
- (c) any decision, action or omission made under or arising out of the provisions of this Decree;
- (d) the validity of the process, grant or issue of any leases, licences or other instruments of title by the Native Land Trust Board or the Director of Lands prior to the commencement date hereof to Hotel Property Pacific Limited, Natadola Land Holdings Limited or Natadola Bay Resort Limited for any land within the boundaries depicted in the Schedule;
- (e) any transfer or assignment or any agreement for the transfer or assignment of any

land within the boundaries depicted in the Schedule to Hotel Property Pacific Limited, Natadola Land Holdings Limited or Natadola Bay Resort Limited which was effected or to be effected or pending prior to the commencement of this Decree;

(f) the grant, issue or any agreement to grant or issue any lease or licence to Natadola Bay Resort Limited after the commencement of this Decree for any land within the boundaries depicted in the Schedule, against the Native Land Trust Board or the Director of Lands;

(g) any damage caused or anything done or omitted to be done by virtue of breach of any duty or obligation imposed under any statute, common law, equity, agreement, deed, document or any interest in land prior to the commencement date hereof arising out of the use of any land, lease, licence or other interest in any land within the boundaries depicted in the Schedule hereto by Natadola Land Holdings Limited, Natadola Bay Resort Limited, FNPF Investments Limited or the Fiji National Provident Fund whether owned by the said bodies or not.

(h) the failure to honour any duty or obligation imposed on Natadola Land Holdings Limited, Natadola Bay Resort Limited, FNPF Investments Limited or the Fiji National Provident Fund under any Development Management Agreement or any related agreement which was made between any party which was prior to the commencement date hereof associated at anytime in any way whatsoever with the foreign shareholder whether by way of a joint venture arrangement, partnership, shareholding or by way of having common directorships, officers, managers, employees, agents, contractors, consultants or otherwise entered into for the management of the Natadola Bay Development and any associated infrastructure on any land within the boundaries depicted in the Schedule hereto.

(2) Any proceeding, claim, challenge or dispute of any nature whatsoever in any Court, Tribunal, commission or before any other person or body exercising a judicial function, in respect of any of the subject matters in subsection (1) that had been instituted before the commencement date of this Decree but had not been determined at that date, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall wholly terminate upon the commencement of this Decree, and a certificate to that effect shall be issued by the Chief Registrar, Tribunal, Commission or any other person or body exercising a judicial function.

(3) A certificate under subsection (2) is, for the purposes of any proceedings in a Court, Tribunal, Commission or any other person exercising a judicial function, conclusive of the matters stated in the certificate.

(4) A decision of the Chief Registrar, Tribunal, Commission or any other person exercising a judicial function to issue a certificate under subsection (2) is not subject to challenge in any Court, Tribunal, Commission or any other adjudicating body.

GIVEN under my hand this 28th day of April 2010.

EPELI NAILATIKAU
President of the Republic of Fiji

SCHEDULE

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