

SCHEDULE 9

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FIJI AND
THE GOVERNMENT OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA
AND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Fiji and the Government of the Independent State of Papua New Guinea, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

ARTICLE 1

Personal Scope

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. This agreement shall apply to taxes on income imposed by a Contracting State, irrespective of the manner in which they are levied.

2. The taxes which are the subject of this Agreement are:

(a) in the case of Fiji:

(i) the income tax (including normal tax, the non-resident dividend withholding tax, the interest withholding tax, royalty withholding tax and the dividend tax); and

(ii) land sales tax;

(hereinafter referred to as "Fiji tax").

(b) in the case of Papua New Guinea;

the income tax imposed under the law of Papua New Guinea, including:

(i) the salary or wages tax;

(ii) the additional profits tax upon additional profits from mining operations;

(iii) the additional profits tax upon additional profits from petroleum operations;

(iv) the additional profits tax upon additional profits from gas operations;

(v) the dividend withholding tax upon taxable dividend income;

(vi) the foreign contractor withholding tax;

(vii) the management fee withholding tax; and

(viii) the business payments tax;

(hereinafter referred to as "Papua New Guinea tax").

3. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the taxes of that Contracting State referred to in paragraph 1

of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3

General Definitions

1. In this Agreement, unless the context otherwise requires:

- (a) the term “Fiji” means the islands of Fiji, including the island of Rotuma and its dependencies, the airspace above it and all areas of water which, consistently with international law, have been, or may hereafter be designated under the laws of Fiji as area over which the sovereignty of Fiji may be exercised with respect to the sea, the seabed and its subsoil and the natural resources thereof;
- (b) the term “Papua New Guinea” means the Independent State of Papua New Guinea and, when used in a geographic sense, includes any area adjacent to territorial limits of Papua New Guinea in respect of which there is for the time being in force, consistent with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the Continental Shelf, its sea bed and sub-soil;
- (c) the terms “a Contracting State”, “one of the Contracting States” and “the other Contracting State” mean Fiji or Papua New Guinea as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
- (e) the term “company” means a body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “tax” means Fiji tax or Papua New Guinea tax as the context requires;
- (h) the term “national” means:
 - (i) any individual possessing the nationality or citizenship of a Contracting State;
 - (ii) any legal person, partnership, association or any other entity deriving its status as such from the laws in force in a Contracting State;
- (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term “competent authority” means:
 - (i) in the case of Fiji, the Commissioner of Inland Revenue or his authorised representative; and
 - (ii) in the case of Papua New Guinea, the Commissioner General of Internal Revenue or an authorised representative of the Commissioner General of Internal Revenue.

2. In determining, for the purposes of Articles 10, 11 or 12, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.

3. In this Agreement the terms “Fiji tax” and “Papua New Guinea tax” do not include any amount which represents a penalty or penal interest imposed under the law of either Contracting State relating to the taxes to which this agreement applies.

4. In the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting State” means:

- (a) in the case of Fiji a person who is resident in Fiji for the purpose of Fiji tax; and
- (b) in the case of Papua New Guinea a person who is resident in Papua New Guinea for the purposes of Papua New Guinea tax.

2. Where by reason of the provisions of paragraph 1 a person, being an individual is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules:

- (a) the person shall be deemed to be a resident of the Contracting State in which the person has a permanent home;
- (b) if a permanent home is available to the person in both States, or in neither of them, the person shall be deemed to be a resident of the State with which the person's personal and economic relations are the closer (centre of vital interests);
- (c) if the Contracting State in which the person's centre of vital interests cannot be determined, and the person has no permanent home in either State, the person shall be deemed to be a resident of the State in which the person has an habitual abode;
- (d) if the person has an habitual abode in both Contracting States or in neither of them, the person shall be deemed to be a resident of the State of which the person is a national;
- (e) if the person is a national of both Contracting States or is a national of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States then its resident shall be determined in accordance with the following rules:

- (a) it shall be deemed to be a resident of the State in which its place of effective or practical management is located;
- (b) if it is not possible to determine its place of effective or practical management, the

competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forestry products;
 - (g) an installation or structure used for the exploration or exploitation of natural resources;
 - (h) a farm, plantation or other place where agricultural, forestry, pastoral, plantation or other related activities are carried on; and
 - (i) a building site, or a construction, installation or assembly project which exists for more than 120 days in any 365 day period.
3. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:
 - (a) it carries on supervisory activities in that State for more than 120 days in any 365 day period in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State;
 - (b) substantial equipment is being used in that Contracting State by, for or under a contract with the enterprise; or
 - (c) services are furnished in that State, including consultancy services through employees or other personnel engaged by the enterprise for such purposes, and those activities continue for the same or a connected project within that State for a period or periods aggregating more than 120 days in any 365 day period.
4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. A person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:
- (a) the person has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise;
 - (b) the person maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
 - (c) the person manufactures, assembles, processes, packs or distributes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.
6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
- However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Real Property

1. Income derived by a resident of a Contracting State from real property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Agreement, the term "real property" shall be defined in accordance with the laws of the Contracting State in which the property in question is

situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work or the right to explore for, mineral deposits, oil or gas deposits, quarries and other places of extracting of natural resources including indigenous and exotic timber or other forest produce. Ships, boats and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

ARTICLE 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

- (a) that permanent establishment; or
- (b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including an allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment provided that the law shall be applied, so far

as the information available to the competent authority permits, consistent with the principles of this Article.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

8. Nothing in this Article shall affect the operation of:

(a) any law of a Contracting State relating to tax imposed on profits from insurance with non-residents; or

(b) the law of Papua New Guinea relating to the taxation of income derived by a foreign contractor from a prescribed contract, where, in accordance with this Agreement, that contractor is a resident of Fiji with a permanent establishment in Papua New Guinea,

provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (other than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

ARTICLE 8

Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by an enterprise of a Contracting State from containers in the course of a business principally consisting of the operation of ships shall be taxable only in that State except in a case where the containers are shipped in the other Contracting State for delivery in that State. In that case the profits of the enterprise from the containers for the period for which the containers are so shipped may be taxed in that other State.

3. For the purposes of paragraph 2 profits are derived from containers if the profits are derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport or storage of livestock, mail, goods or merchandise.

4. Profits derived by an enterprise of a Contracting State from a contract which provides for the rental of a ship on a bareboat basis in the course of a business principally consisting of the operation of ships for the carriage of passengers, livestock, mail, goods or merchandise shall be taxable only in that State except where the profits are derived from a contract under which the ship is used wholly or mainly in the other Contracting State. If the ship is so used the profits from that contract may be taxed in that State.

5. Where an enterprise of a Contracting State derives profits from participation in a pool, a joint venture or an international operating agency, the provisions of this Article shall apply to those profits to the extent that they would have applied had the activities carried on jointly been undertaken exclusively by that enterprise.

6. The term "operation of ships or aircraft" shall mean the business of transportation by sea or air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft and the incidental lease of ships or aircraft.

ARTICLE 9

Associated Enterprises

1. Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;

between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistent with the principles of this Article.

3. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

1. Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 17 percent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the law relating to tax, of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of interest.

3. Notwithstanding the provisions of paragraph 2 the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from the other State.

4. For the purposes of paragraph 3, the term "Government":

(a) in the case of Fiji means the Government of the Republic of Fiji and shall include:

(i) Fiji National Provident Fund;

(ii) Fiji Development Bank;

(iii) The Reserve Bank of Fiji (Central Bank).

(b) in the case of Papua New Guinea means the Government of the Independent State of Papua New Guinea and shall include:

(i) the Provincial Authorities;

(ii) the Local Level Government Authorities;

(iii) the statutory authorities.

(c) in the case of both Fiji and Papua New Guinea, any other institution the capital of which wholly owned by either the Government of Fiji or the Government of Papua New Guinea as may be agreed from time to time between the competent authorities of both the Contracting States.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate

in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with:

- (a) such permanent establishment or fixed base; or
- (b) business activities referred to in sub-paragraph 1(b) or 1(c) of Article 7.

In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

9. The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments or credits of any kind received as consideration for:

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application of enjoyment of, any such property or right as is mentioned in sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such knowledge or information as is mentioned in sub-paragraph (c);
- (e) the use of, or the right to use:
 - (i) photograph or motion picture films; or
 - (ii) films or video tapes in connection with television; or
 - (iii) tapes in connection with radio and television broadcasting; or
 - (iv) computer software or programs developed in connection with the use of computers; or
- (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with:

- (a) such permanent establishment or fixed base; or
- (b) business activities referred to in sub-paragraph 1(b) or 1(c) of Article 7.

In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying such royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

7. In this Article, a reference to royalties paid or to the payment of royalties includes royalties credited or the crediting of royalties.

ARTICLE 13 Technical Fees

1. Technical fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such technical fees may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the technical fees the tax shall not exceed 15 per cent of the gross amount of the technical fees.

3. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. If a resident of one of the Contracting states, who receives and beneficially owns technical fees which arise in the other Contracting State, so elects for any year of assessment, financial year or year of income, the tax in respect of those technical fees in the Contracting State in which they arise shall be calculated in the last-mentioned Contracting State and as if those technical fees were taxable in accordance with Article 7 or Article 15, as the case may be, as profits attributable to that permanent establishment or fixed base.

6. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

Gains from the Alienation of Property

1. Gains from the alienation of real property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of property other than real property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of property other than real property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State. However, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and property other than real property pertaining to the operation of such ships or aircraft shall be taxable only in the State of which the enterprise is a resident.
3. Gains from the alienation of any property or assets, other than those mentioned in paragraphs 1 and 2 of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless:
 - (a) a permanent establishment or fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities, in which case, so much of the income as is attributable to activities exercised from that permanent establishment or fixed base may be taxed in the other State;
 - (b) income is derived by the individual from a resident of that other Contracting State and exceeds an amount of 5000 Fiji dollars or its equivalent in Papua New Guinea currency in any 365 day period, in which case so much of the income as is derived from the activities in that other Contracting State may be taxed in that State; or
 - (c) an individual's stay in that other Contracting State exceeds 120 days in any 365 day period, in which case so much of the income as is derived from activities in that other Contracting State may be taxed in that State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages, gratuities, allowances and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is

exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in aggregate 120 days in any 365 day period; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State; and
- (d) the remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that state.

ARTICLE 17

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in their capacity as member of the board of directors of a Company which is resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from personal activities as such exercised in the other Contracting State, may be taxed in the other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in that capacity accrues not to the entertainer or sportsman but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, a local authority or a statutory body itself.

ARTICLE 19

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 21, any pensions and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term “annuity” includes a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

ARTICLE 20

Government Services

1.(a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision or a local authority or statutory body thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:

(i) is a national of that other State; or

that other State solely for the purpose of performing the services.

2. The provisions of Articles 16, 17 and 19 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political subdivision or a local authority or a statutory body thereof.

ARTICLE 21

Students and Trainees

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

(a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;

(b) as a business or technical apprentice;

(c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance program entered into by the Government of either State;

shall be exempt from tax in that other State on:

(i) all remittances for the purposes of maintenance, education, study, research or training arising from sources outside the State in which the person is a student or trainee;

(ii) the amount of such grant, allowance or award; and

(iii) any remuneration not exceeding 5000 Fiji dollars or its equivalent in Papua New Guinea currency per annum in respect of services in that other State, provided the services are performed in connection with the person’s study, research or training or are necessary for the purposes of the person’s maintenance.

ARTICLE 22

Teachers and Researchers

1. An individual who is a national of a Contracting State who, at the invitation of any university, college or other similar public institution, visits the other State for a period not exceeding two years solely for the purpose of teaching or research or both at such public institution, shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting State.
2. This Article shall not apply to income from teaching or research if such teaching or research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 23

Income Not Expressly Mentioned

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.
2. However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.
3. The provisions of paragraph 1 shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 24

Elimination of Double Taxation

1. Subject to the laws of Fiji regarding the allowance as a credit against Fiji tax of tax payable in any country other than Fiji, Papua New Guinea tax payable under the laws of Papua New Guinea and in accordance with this Agreement by a resident of Fiji in respect of income derived from Papua New Guinea shall be allowed as a credit against Fiji tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Papua New Guinea to a company which is a resident of Fiji and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account Papua New Guinea tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Fiji tax, as computed before the credit is given, which is appropriate to such item of income.
2. For the purposes of paragraph 1, the term "Papua New Guinea tax payable" shall be deemed to include any amount which would have been payable as Papua New Guinea tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under any provisions of Papua New Guinea law, or any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

3. Subject to the provisions of the law of Papua New Guinea from time to time in force which relate to the allowance of a credit against Papua New Guinea tax of tax paid in a country outside Papua New Guinea, Fiji tax payable under the laws of Fiji and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Papua New Guinea for the purposes of the law of Papua New Guinea relating to Papua New Guinea tax from sources in Fiji (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Papua New Guinea tax payable in respect of that income.

4. For the purposes of paragraph 3, the term ‘Fiji tax payable’ shall include an amount equivalent to the amount of any tax foregone which, under the laws of Fiji and in accordance with this Agreement, would have been payable as tax on income but for an exemption from, or a reduction of tax on that income resulting from the operation of the special incentives under the laws of Fiji for the promotion of economic development of Fiji which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Fiji in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

ARTICLE 25

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, the person may, notwithstanding of the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of which the person is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or for the prevention or detection of fraud, evasion or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall be

disclosed only to persons or authorities (including a court or reviewing authority) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

ARTICLE 27

Diplomatic and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Entry into Force

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in Fiji:
in relation to Fiji tax, in respect of income, profits or gains derived during any income year beginning on or after the first day of January in the calendar year immediately following that in which this Agreement enters into force.
- (b) in Papua New Guinea:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the later of these notifications is given;
 - (ii) in respect of any other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the later of these notifications is given.

ARTICLE 29

Termination

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement by giving notice of termination through the diplomatic channel, at least six months before the end of any calendar year

beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

(a) in Fiji:

- (i) in relation to Fiji tax, in respect of income, profits or gains derived during any income year beginning on or after the first day of January in the calendar year following that in which the notice is given.

(b) in Papua New Guinea:

- (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice is given;
- (ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the notice is given.

IN WITNESS the undersigned, being duly authorised thereto, by their respective Governments, have signed this Agreement.

Done in duplicate at Port Moresby this 29th day of April 1998.

signed

signed

.....
For the Government of Independent State
of Papua New Guinea

.....
For the Government of The Republic of Fiji

I hereby certify that the above is a fair print of the *Income Tax (International Agreements) (Amendment No. 2) Act 1998* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Income Tax (International Agreements) (Amendment No. 2) Act 1998* was made by the National Parliament on 29 April 1998.

Acting Speaker of the National Parliament.

