



MINISTRY OF JUSTICE
HON. SIROMI TURAGA
MINISTER FOR JUSTICE

WRITTEN QUESTION FOR THE MINISTER FOR JUSTICE

Tuesday 3 December 2024 283/2024

Hon. Ketan Lal to ask the Minister for Justice – Can the Minister inform Parliament on the Stop Departure Order in particular –

- (a) the specific section of Fijian laws under which a Stop Departure Order may be issued;**
- (b) the agency or agencies authorised to issue Stop Departure Orders**

Response:

In short, the question is misconceived and best directed to the Attorney General, and or Minister of Finance who have ministerial oversight over the relevant agencies.

The Ministry of Justice does not deal with Stop Departure.

Stop Departure Order (SDO) and Departure Prohibition Order (DPO) terms are used interchangeably in this response.

That is the prerogative of CEO Fiji Revenue Customs Services (FCRS), CEO, Fiji National Provident Fund (FNPF), Commissioner, Fiji Independent Commission Against Corruption (FICAC) and the courts.

To assist the Honorable member please find supplementary response below:

(a) the specific section of Fijian laws under which a Stop Departure Order may be issued;

- i) Fiji Revenue and Customs Services Act 1998 Section 32G**

[Section 32G] Departure Prohibition Order

(1) Where a person is subject to an amount due and the Chief Executive Officer believes on reasonable grounds that it is desirable

to do so for the purposes of ensuring that the person does not depart from Fiji for a foreign country without—

- a) wholly discharging the amount due; or
- b) making arrangement satisfactory to the Chief Executive Officer for the liability to be wholly discharged, the Chief Executive Officer may, by order in accordance with the prescribed form, prohibit the recipient departing from Fiji for a foreign country.

(2) The Chief Executive Officer must state the following on the departure prohibition order—

- a) the name and address of the recipient; and
- b) the amount due that is or will become payable.

(3) A departure prohibition order has effect throughout Fiji, including aboard any vessel or aircraft within Fiji.

(4) A copy of a departure prohibition order issued in respect of a recipient must, as soon as practicable, be served on the recipient, and upon the Commissioner of Police and the Director of Immigration.

(5) If a departure prohibition order is issued in respect of a recipient, the Commissioner of Police and the Director of Immigration must exercise the powers that they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the recipient from departing Fiji, including the removal and retention of the recipient's passport, identity card, visa or other travel document authorising the recipient to leave Fiji.

(6) A recipient the subject of a departure prohibition order must be refused customs or immigration clearance.

(7) A departure prohibition order remains in force until revoked by the Chief Executive Officer or upon the expiration of 3 years from the date of the order being issued, whichever is the earlier.

- ii) Tax Administration Act 2009 Section 31(1);

Tax Administration Act 2009 Section 31

[Section 31] Departure Prohibition Order

(1) Where:

(a) a person is subject to a tax liability; and the CEO believes on reasonable grounds that it is desirable to do so for the purposes of ensuring that the person does not depart from Fiji for a foreign country without –

- (i) wholly discharging the tax liability; or
- (ii) making arrangement satisfactory to the CEO for the tax liability to be wholly discharged; or
- (b) a person whose tax liability has been written off as bad debts and the Chief Executive Officer has reasonable grounds to reinstate

the bad debts, the CEO may, by order in accordance with the prescribed form co-signed by a board member of the Fiji Revenue and Customs Service, prohibit the taxpayer departing from Fiji.

(2) The CEO must state the following on the departure prohibition order:

(a) the name and address of the taxpayer;

(b) the amount of tax that is or will become payable.

(3) A departure prohibition order has effect throughout Fiji, including aboard any vessel or aircraft within the territory of Fiji.

(4) A copy of a departure prohibition order issued in respect of a taxpayer must, as soon as practicable, be served on the taxpayer, and upon the Commissioner of Police and the Director of Immigration.

(5) If a departure prohibition order is issued in respect of a taxpayer, the Commissioner of Police and the Director of Immigration must exercise the powers that they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the taxpayer from departing Fiji, including the removal and retention of the taxpayer's passport, identity card, visa, or other travel document authorising the taxpayer to leave Fiji.

(6) A taxpayer the subject of a departure prohibition order must be refused customs or immigration clearance.

(7) A departure prohibition order remains in force until revoked by the CEO or upon the expiration of three years from the date the of the Order being issued, whichever is the earlier.

iii) Fiji National Provident Fund Act 2011 Section 104(1);

[FNPF 104] Departure prohibition orders

(1) If—(a)a person is liable to pay an amount as, or on account of, mandated contributions or additional contributions required to be paid by section 38(3);

(b)the amount is due and payable but has not been paid; and

(c)the Chief Executive Officer believes on reasonable grounds that it is desirable to prevent the person from departing from Fiji to another country without—(i)fully satisfying the liability; or

(ii)making arrangements satisfactory to the Board for the liability to be fully satisfied;

the Chief Executive Officer may, by written order, prohibit the departure of the person from Fiji.

(2) A departure prohibition order remains in force until revoked, or set aside by a court.

(3) A departure prohibition order in respect of a person does not prevent the deportation of the person under the Immigration Act 2003.[subs (3) am Act 31 of 2016 s 79, effective 1 December 2016]

(4) The Chief Executive Officer must, as soon as practicable after making a departure prohibition order in respect of a person—
(a) send a copy of the order to the person at the address of the person last known to the Board; and

(b) give a copy of the order, and such information as the Chief Executive Officer considers is likely to help facilitate the identification of the person, to the Permanent Secretary or the Director of the Department of Immigration.

(5) The Chief Executive Officer may give a copy of the order and information described in subsection (4)(b) to any other department of the civil service if, in the Chief Executive Officer's opinion, to do so will assist in giving effect to the order.[subs (5) am Act 2 of 2016 s 20, effective 15 February 2016]

iv) Section 13 (1) (e) of the Fiji Independent Commission Against Corruption Act 2007

[Section 13] Powers of the Commissioner

(1) For the purpose of the performance of his functions under this Promulgation the Commissioner through the Deputy Commissioner and/or through his officers, may

(e) prohibit any person against whom an investigation in respect of an offence to which this Promulgation applies has commenced, from leaving the jurisdiction of the Republic of Fiji for a period of up to 30 days and may give the necessary instructions in writing to the Director of Immigration to enforce the order, provided that the power under this paragraph must only be exercised by the Commissioner and a copy of the order must be served on the suspect or at his or her last known residential address within 24 hours of the issuance of the order.'

v) Constitution Section 21 (6) (a), (b)

[Section 21] Freedom of movement and residence

(6) A law, or anything done under the authority of a law, is not inconsistent with the rights granted by this section to the extent that the law—

(a) provides for the detention of the person or enables a restraint to be placed on the person's movements, whether— (i) for the purpose

of ensuring his or her appearance before a court for trial or other proceedings.

(ii) in consequence of his or her conviction for an offence; or (iii) for the purpose of protecting another person from apprehended violence;

(b) provides for a person who is a non-citizen to be detained or restrained as a consequence of his or her arrival in Fiji without the prescribed entry documentation.'

vi) Debtors Act Section 6

[DEB 6] Absconding defendant may be arrested and detained until security given

'If it is shown to the satisfaction of the court that the defendant in any action for the recovery of a sum exceeding \$10 is about to abscond, the court may, in its discretion, issue a warrant to arrest the defendant and commit him or her to prison, there to be kept until he or she shall have given bail or security in such sum, to be expressed in the warrant, as the court thinks fit, not exceeding the probable amount of debt or damages and costs, for his or her appearance at any time when called upon while the action is pending and until execution or satisfaction of any judgment that may be made against him or her in the action; and the surety or sureties shall undertake, in default of such appearance, to pay any sum of money that may be adjudged against him or her in the action with costs, provided that the court may at any time, upon reasonable cause being shown, release the defendant from such arrest.'

**In relation to the Courts, the Courts have powers to issue Stop Departure Orders when a relevant application with supporting affidavits is made.

(b) the agency or agencies authorized to issue Stop Departure Orders

- i) The Chief Executive Officers, of FRCS and FNPF alike, have legal powers, to enter the departure prohibition orders (DPO) to any taxpayer or person for that matter, for an amount owed by virtue of relevant provisions of the law.
- ii) The DPO in respect of a recipient must as soon as practicable, be served on the recipient and on the Commissioner of Police and the Director of Immigration by the CEO FRCS.

- iii) The Director of Immigration, Immigration authorities and or its officers are obliged to comply with the stop departure orders issued from:
 - Courts;
 - CEO FNPF;
 - CEO FRCS and
 - Commissioner of FICAC.

- iv) Law enforcement and boarder control agencies collaborate or assist in implementing a Stop Departure Order.

- v) Judicial Officers (Resident Magistrates or Judges) assess every application for SDO on its merits respectively
 - Criminal matters: One of the strict bail conditions the court may consider is for the Accused not to leave the jurisdiction of the court, pending determination of the case hence a SDO may be issued.
 - Family matters: Applicants may file Form 12 and 23, seeking the court to issue SDO if they have every reason to believe, with some evidence to show the court that the Respondent is planning or about to flee the Country, to avoid paying maintenance or maintenance arrears or avoid matrimonial property distributions, or to avoid rendering his/her responsibilities for the children when residence/contact application still pending in court etc.
 - Civil: Application could be made by Plaintiffs for SDO through filing of Motion with supporting affidavits on the merits of every case.