



# **SUPERYACHT CHARTER ACT 2010**

*Revised up to 1<sup>st</sup> August 2022*

## **DISCLAIMER**

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## **Table of Amendments**

Superyacht Charter Act 2010 (No 19 of 2010)<sup>1</sup> commenced on 6 April 2010, as amended by:

<b>Amending Legislation</b>	<b>Date of Commencement</b>
Fiji Revenue and Customs Authority (Amendment) (No 2) Decree 2011 (No 18 of 2011)	1 March 2011
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
Superyacht Charter (Budget Amendment) Act 2017 (No 24 of 2017)	1 August 2017
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Superyacht Charter (Budget Amendment) Act 2022 (No 34 of 2022)	1 August 2022

<sup>1</sup> This was promulgated as Decree 19 of 2010. In accordance with section 3 of the Interpretation Act 1967, the word "Decree" used with reference to any such "Decree" in the title or provisions of any written law or in any document or legal proceeding may be replaced with the word "Act".

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## PART 1 - PRELIMINARY

### (Sections 1–3)

#### [Section 1] Short title and commencement

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

#### [Section 2] Interpretation

In this Act, unless the context otherwise requires—

**\$FJD** means the currency of the Republic of Fiji;

**\$USD** means the currency of the United States of America;

**approved from** has the meaning given in section 2 of the Customs Act 1986;

[def inserted Act 34 of 2022, effective 1 August 2022]

**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;

**Chief Executive Officer** means the Chief Executive Officer appointed under section 27 of the Fiji Revenue and Customs Service Act 1998;

[def am Decree 18 of 2011 s 4, effective 1 March 2011; Act 38 of 2017 s 7, effective 1 August 2017]

**Code of Conduct** means the Code of Conduct determined and published by the body responsible for the overseeing of hotel and tourism from time to time;

[def amended Act 34 of 2022, effective 1 August 2022]

**company** means a company incorporated and registered under the Companies Act 2015 as modified, amended or replaced from time to time;

[def am Act 31 of 2016 s 207, effective 1 December 2016]

**Environment and Climate Adaptation Levy** means the levy prescribed under section 2 of the Environment and Climate Adaptation Levy Act 2015 and charged on the gross charter fee which is payable to the Government of the Republic of Fiji in Fijian dollars as set out in the approved form;

[def insrt Act 24 of 2017 s 2, effective 1 August 2017; def amended Act 34 of 2022, effective 1 August 2022]

## **FIHTA subcommittee**

[def deleted Act 34 of 2022, effective 1 August 2022]

**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 responsible for finance;

[def amended Act 34 of 2022, effective 1 August 2022]

**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 2015 and is duly registered with the Fiji Revenue and Customs Service in accordance with Part 2 of this Act;

[def am Decree 18 of 2011 s 4, effective 1 March 2011; Act 38 of 2017 s 7, effective 1 August 2017]

**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 18 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;

[def amended Act 34 of 2022, effective 1 August 2022]

**superyacht charter  
fee**

[def rep Act 24 of 2017 s 2, effective 1 August 2017]

**superyacht charter permit** means the superyacht charter permit issued by the Chief Executive Officer for each and every charter in accordance with section 8;

**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; and

**vessel owner** means for the purposes of this Act, the owner of the superyacht, the master of the superyacht or authorised representative of the owner or master of the superyacht.

**[Section 3] Object and responsibility of this Act**

(1) The objective of this Act is to establish a charter permit system to allow superyachts to charter in Fiji waters.

(2) This Act shall be administered by the Fiji Revenue and Customs Service.

[subs (2) am Decree 18 of 2011 s 4, effective 1 March 2011; Act 38 of 2017 s 7, effective 1 August 2017]

**[Section 3A] Acts to be read as one**

This Act shall be read as one with the Customs Act 1986

[Section inserted Act 34 of 2022, effective 1 August 2022]

## **PART 2 - REGISTRATION AS A RECOGNISED SUPERYACHT AGENT**

### **(Sections 4–6)**

#### **[Section 4] Registration**

(1) Any company engaged in the leisure marine industry which operates under a code of conduct published by the body responsible for the overseeing of hotel and tourism may apply to the Fiji Revenue and Customs Service in an approved form and fee prescribed by the Chief Executive Officer for registration as a recognised superyacht agent.

[subs (1) am Decree 18 of 2011 s 4, effective 1 March 2011; Act 38 of 2017 s 7, effective 1 August 2017; Act 34 of 2022, effective 1 August 2022]

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

(3) In making a decision under section 4(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(2) within 28 days of an application being made under section 4(1).

(5) A Certificate of Registration as a recognised superyacht agent may be issued by the Chief Executive Officer for a period of one 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 subsection (2) or in imposing conditions under subsection (5), the Chief Executive Officer may consult any relevant person or body.

#### **[Section 5] Termination and suspension of registration**

(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 Act.

(2) Where the Chief Executive Officer decides to terminate or suspend the registration of a recognised superyacht agent under section 5(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(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.

#### **[Section 6] Role of a recognised superyacht agent**

In relation to each application for a 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, levies and taxes required under this Act 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 Act.

[s 6 am Act 24 of 2017 s 3, effective 1 August 2017]



## **PART 3 - PERMITS**

### **(Sections 7– 16)**

#### **[Section 7] Vessel permit**

(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 \$USD30,000 specified under that recognised charter contract or equivalent value in another currency;  
[subsection amended Act 34 of 2022, effective 1 August 2022]
- 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 of Fiji.

(3) A recognised superyacht agent shall pay an application fee of \$FJD3,000 and submit with each application to the Chief Executive Officer for a vessel permit in the approved 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.

[subsection amended Act 34 of 2022, effective 1 August 2022]

#### **[Section 8] Superyacht charter permit**

(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 approved form to the Chief Executive Officer.

[subsection amended Act 34 of 2022, effective 1 August 2022]

(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 Environment and Climate Adaptation Levy for that charter by completing the form contained in the approved form; and  
[subsection amended Act 34 of 2022, effective 1 August 2022]
- d) any other documents reasonably requested by the Chief Executive Officer.

[subs (3) am Act 24 of 2017 s 11, effective 1 August 2017]

(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 Ministry of iTaukei Affairs.

[subs (4) am Act 31 of 2016 s 207, effective 1 December 2016]

### **[Section 9] Grant of vessel and/or superyacht charter permit**

(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(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(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(1), the Chief Executive Officer grants the recognised superyacht agent a vessel and/or superyacht charter permit.

### **[Section 10] Conditions of vessel and/or superyacht charter permit**

The vessel or superyacht charter permit is granted on the terms and conditions contained in this Act and such other relevant and reasonable conditions as the Chief Executive Officer may impose.

### **[Section 11] Duration of vessel and/or superyacht charter permit**

(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.

### **[Section 12] Renewal of vessel permit**

(1) A vessel permit is renewable for 2 additional and continuous periods of 6 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(2).

(6) In making the decision under section 12(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.

### **[Section 13] Payment of application fee**

The recognised superyacht agent must, pay the prescribed application fee to the Fiji Revenue and Customs Service in respect of each application made under section 7, 8 or section 12 at the time of lodgement of the application for a permit.

[s 13 am Decree 18 of 2011 s 4, effective 1 March 2011; Act 38 of 2017 s 7, effective 1 August 2017]

### **[Section 14] Payment of Environment and Climate Adaptation Levy**

The recognised superyacht agent must pay the Environment and Climate Adaptation Levy, as set out in the approved form, to the Fiji Revenue and Customs Service for each and every charter of the superyacht.

[s 14 am Decree 18 of 2011 s 4, effective 1 March 2011; Act 24 of 2017 ss 4 and 11, effective 1 August 2017; Act 38 of 2017 s 7, effective 1 August 2017; subsection amended Act 34 of 2022, effective 1 August 2022]

### **[Section 15] Suspension and cancellation of vessel and/or superyacht charter permits**

(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 or levy specified in this Act or other amount payable to the Chief Executive Officer when due;
- c) breach of this Act 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;
- 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; or
- h) failure to conform to the Customs laws that are related to this Act.

[subs (1) am Act 24 of 2017 s 5, effective 1 August 2017]

(2) The Chief Executive Officer must notify the 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 1986.

### **[Section 16] Appeal to the Minister**

(1) Any decision of the Chief Executive Officer made under this Act 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**

### **(Sections 17 – 21)**

#### **[Section 17] Misleading and deceptive documents**

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 or imprisonment for a term not exceeding 10 years.

[s 17 am Act 24 of 2017 s 6, effective 1 August 2017]

#### **[Section 18] Breach of permit conditions**

A recognised superyacht agent or a vessel owner must not breach the conditions of a permit.

Penalty — A fine not exceeding \$250,000 or imprisonment for a term not exceeding 10 years.

[s 18 am Act 24 of 2017 s 7, effective 1 August 2017]

#### **[Section 19] Operating without a permit**

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 or imprisonment for a term not exceeding 10 years.

[s 19 am Act 24 of 2017 s 8, effective 1 August 2017]

#### **[Section 20] Operating in the Fiji domestic charter market**

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 \$USD30,000;  
[subsection amended Act 34 of 2022, effective 1 August 2022]
- 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 Act.

Penalty — A fine not exceeding \$250,000 or imprisonment for a term not exceeding 10 years for each offence.

[s 20 am Act 24 of 2017 s 9, effective 1 August 2017]

#### **[Section 21] Limitation of liability**

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

[subs (1) am Decree 18 of 2011 s 4, effective 1 March 2011; Act 38 of 2017 s 7, effective 1 August 2017]

(2) The Government of the Republic 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 Act.

## **PART 5 - APPLICATION OF ANCILLARY LEGISLATION**

### **(Sections 22 – 25)**

#### **[Section 22] Amendment to the Customs Tariff Act 1986 — Insertion of Code 239**

Part 3 to Schedule 2 of the Customs Tariff Act 1986 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) of the Superyacht Charter Decree 2010 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 or her immigration status as a holder of a valid visitors permit whilst in Fiji.

(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.”

#### **[Section 23] Amendment to the Immigration Act 2003**

Section 9 of the Immigration Act 2003 is amended by inserting the following provisions immediately following section 9(7) —

“(8) Words and expressions used in subsections (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 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 subsection (2)(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, the Permanent Secretary may issue a permit to reside in Fiji under this section to enable a person to work on board the superyacht and fulfil their obligations under a recognised charter contract.”

#### **[Section 24] Application of the Marine Act 1986**

The Marine Act 1986 is amended by inserting the following as section 6A—

“Superyachts are deemed to comply with the Act

6A (1) Words and expressions used in this section 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.”

#### **[Section 25] Amendment to the Customs Act 1986**

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;”



## SCHEDULE

**(Repealed)**

[Schedule deleted Act 34 of 2022, effective 1 August 2022]

# **PRESCRIBED REGISTRATION AND PERMIT FORMS ORDER 2010**

## **Table of Amendments**

Prescribed Registration and Permit Forms Order 2010 (LN 43 of 2010) commenced on 23 April 2010, as amended by:

Amending Legislation	Date of Commencement
Fiji Revenue and Customs Authority (Amendment) (No 2) Decree 2011 (No 18 of 2011)	1 March 2011
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
Fiji Revenue and Customs Authority (Budget Amendment) Act 2017 (No 38 of 2017)	1 August 2017
Superyacht Charter (Budget Amendment) Act 2022 (No 34 of 2022) [Regulation is Revoked]	1 August 2022