



STANDARD OPERATING PROCEDURE (SOP)

SUPERYACHT(SY) CHARTER DECREE- 2010

MANUAL

DATE: 12/05/2010

INDEX		
SECTION	TOPICS	Page
A	INTRODUCTION	2
B	REGISTRATION REQUIREMENTS	2 -3
C	ROLE OF CUSTOMER ENQUIRY CENTRE	3-4
D	SUPERYACHT VETTING COMMITTEE	4-5
E	PROCESS FLOWCHART	6
F	CUSTOMS PROCESSES	7-15

PART A: PROCEDURES

SECTION A: INTRODUCTION

1. This Standard Operating Procedure (SOP) sets out the procedures for the administration of Superyacht (SY) Charter Decree (Decree) which vests with CEO- FIRCA with effect from 6th April 2010. Under this Decree the superyacht agents are given the right to operate in Fiji waters as Charterers subject to the Decree.
2. The prospective superyacht agents are required to register with FIRCA as a recognized superyacht agent and subsequently obtain Vessel permit and Superyacht charter permit on behalf of the Vessel owner and Charterer respectively.
3. The purpose of this package given to superyacht agents in Fiji is to attract niche up-market tourism to enjoy the privileges and beauty of elite small islands of pristine Fiji waters.
4. The prospective superyacht agents will register with FIRCA after payment of the prescribed amount of fees as stipulated in the Decree.

SECTION B: REGISTRATION REQUIREMENTS

1. Recognised Superyacht Agents

- 1.1 The superyacht agent shall be required to lodge an application for registration in the form approved by CEO -FIRCA (Form 1) together with a non refundable fee of \$5000 as required under section 4 of the Decree.
- 1.2 The completed form should be lodged at the Customer Enquiry Center (CEC) either in Suva, Lautoka or Labasa. The forms will be screened for correctness and accuracy before the application is processed. CEO may require further information where the form is incomplete.

2. Vessel Permit

- 2.1 Once Form I has been approved and sealed by CEO the superyacht agent shall then proceed with the lodgment of Form 2 which is the application for Vessel Permit as required under section 7 of the Decree.
- 2.2 A non refundable fee of \$3000 should be attached with the form before the application is processed.

- 2.3 The applicant shall ensure that all relevant details with necessary evidence are submitted as required by the Decree of 2010.
- 2.4 The completed form should be lodged at the CEC either in Suva, Lautoka or Labasa. CEO may require further information if the form is incomplete.

3. Superyacht Charter Permit

- 3.1 Once Form 2 has been approved and sealed by CEO, you then proceed to the lodgment of Form 3 which is the application for Charter Permit by superyacht agent as required under section 8 of the Decree.
- 3.2 The applicant should ensure that all relevant details with necessary evidence are submitted as required by the Decree.
- 3.3 A 12.5% charter fees will be charged per week to the superyacht agent on the gross charter amount as per the charter contract.
- 3.4 All fields of details shall be checked for correctness and accuracy as it is this Permit which will allow the Super Yacht Agent in Fiji to commence charter operations. Form 3 may be accessed on FITS but a copy must be placed in the inward Super Yacht manifest (file).

SECTION C: ROLE OF CUSTOMER ENQUIRY CENTRE (CEC)

1. Registration forms for superyacht agent are handled at any of the Customer Enquiry Centers in Suva, Lautoka or Labasa. All registration officers must familiarize themselves with the relevant forms whilst registering superyacht agents.
2. When an application is received, the registration officer should check that the name of the “Entity” and other details (Company name/address, name of Authorised officer etc.) reconcile with the information on FITS. All relevant fields in the form should be completed and the form should be properly signed by the Authorised officer of the company. If there are any differences, the registration officer should clarify these with the applicant or liaise with the chairperson of the Superyacht Vetting Committee or its members if need be.
3. The registration officer should receive and date stamp the registration form with any other document in FITS. After this is done you must send the cheque or cash with the registration form to the cashier in the Despatch section. The Despatch section will receipt the payment using Tax Type 20 with Tax Class-01 for Registration of Agents, Tax Class-02 for Vessel Permit and Tax Class-03 for Charter Permit for superyacht payments allocated by IT section. Cashiers should

ensure that all superyacht payments should be in the form of cash or bank cheques only. A receipt will be generated through FITS for all such payments.

4. The Despatch section will then send all forms including the copy of receipt to the Superyacht Vetting Committee for approval.
5. After approval is given by the Superyacht Vetting Committee the registration certificates or permits as the case may be is issued by the Secretary of the Committee. If an application is declined, a notification letter will be issued to the applicant of CEO's decision.
6. The Secretary must ensure that each application form and other supporting documents are trimmed and filed properly. These documents are to be filed at Policy Section under TIN sequence for ease of reference.

SECTION D: SUPERYACHT VETTING COMMITTEE

1. Superyacht Vetting Committee consist of:

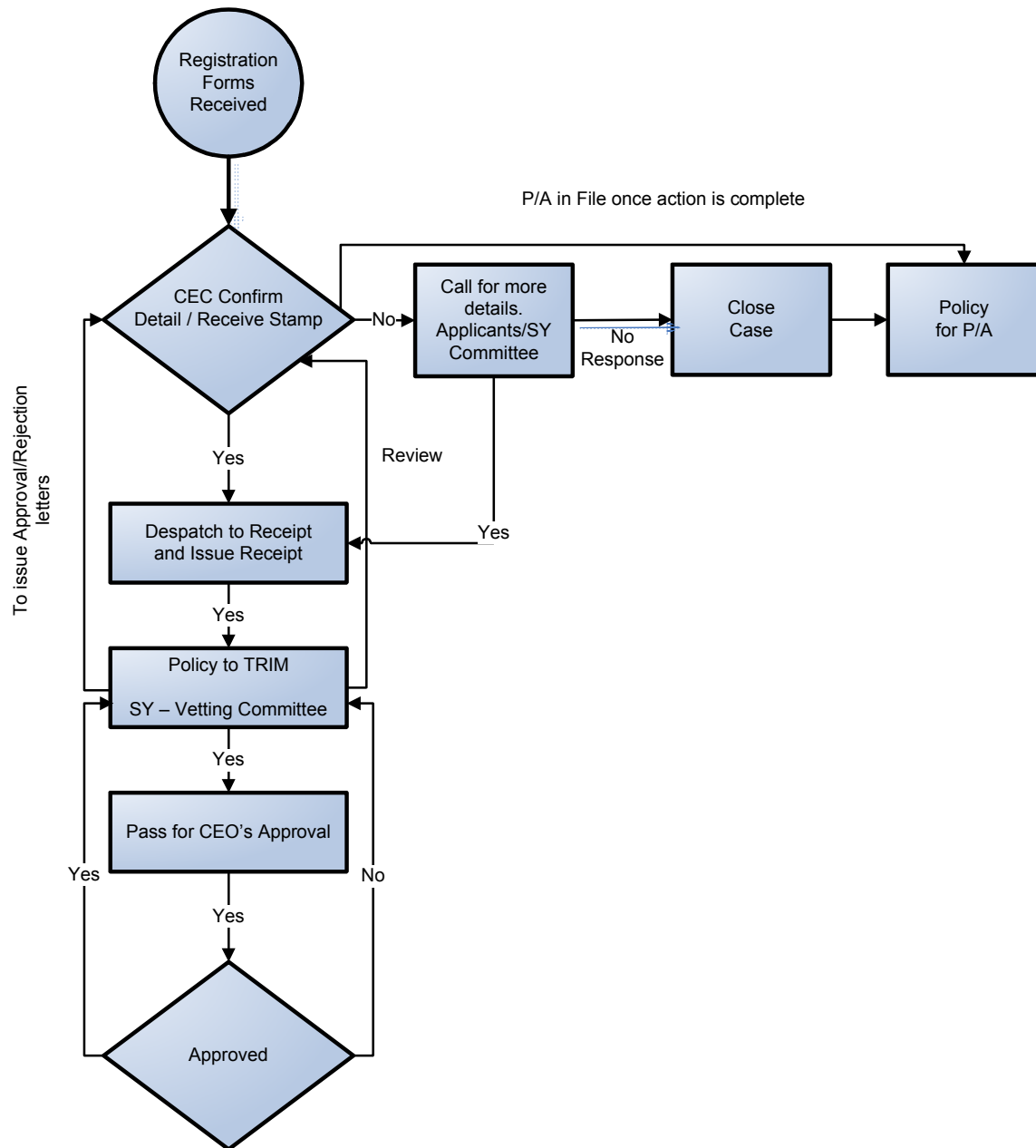
Fazrul Rahman	- NM Policy (Chairperson)
Moala Nata	- A/GM Taxation
Bhupendra Solanki	- NM Legal
Kelera Buatoka	- Manager Policy Advice
Umesh Chandra	- NM IT
Jone Louie	- NM Risk & Compliance
Watisoni Rauicava	- NM Border Control
Joji B. Seru	- Manager Revenue
Satish Chand	- IRS Representative
Mereia Waqa	- Secretary

2. All superyacht applications received from Customer Enquiry Centre (CEC) or Despatch will be acknowledged by the Secretary of the said committee. The Secretary will convene a meeting for the committee as soon as practicable and process the application forms received. The committee shall ensure that the application forms are processed within 28 days for the Registration of Superyacht agents, 14 days for the application for Vessel Permit and 3 days for the application of the Charter Permit from the receipt date of the form.
3. The forms will be vetted by the Superyacht Vetting Committee which makes appropriate recommendations to CEO-FIRCA. Once a decision is made by CEO for all approved applications, the Secretary will issue registration certificate or permit whichever applicable to the applicant. If an application is declined, a notification letter will be issued to the applicant of CEO's decision.

4. All letters, certificates or permits shall be generated through FITS with the help of IT section.
5. The applicant has the right to appeal to the Min. of Tourism within 72 hours after receiving the decision of the CEO if the application has been declined.
The appeals process will take place in the office of the Tourism Minister and they may consult CEO-FIRCA for clarification if required.

SECTION E: PROCESS FLOW CHART

Super Yacht (SY) Process Flow Chart



PART B: CUSTOMS PROCESSES

- 1) All legislative references shall be taken to mean the Superyacht Charter Decree 2010, unless the context otherwise refers to any other law, such as Customs, Tax, Immigration, Health and Biosecurity. In such cases, appropriate reference feature of the particular law shall be mentioned by name.
- 2) Negotiations between overseas-based Superyacht owner and prospective Superyacht Charter Agent in Fiji must have commenced before the Agent would apply to the CEO FIRCA for any permits (Form1).
- 3) The Superyacht Charter Agent is not a licensed general shipping agent as required for shipping agents under the Customs Act. However, the Agent may hire the services of a licensed Shipping Agent upon first arrival to facilitate Customs boarding clearances. This point is vital.
- 4) It is important to note the deals shall be between overseas owner and the Fiji Agent and not any other middle party, such as hiring agency, as this will complicate taxation issues including DTA¹. (See dry lease).
- 5) Privately owned cruising pleasure yachts operated by a bona fide tourist, transiting through Fiji, may be admitted under Code 228² and not Code 239³; but Superyachts must be admitted under Code 239 only and not under Code 228.
- 6) Privately owned transiting pleasure yachts admissible under Code 228 are generally situations of partly-motorised sailing yachts (generally) exceeding 7 meters but below 23 meters at the waterline.
- 7) Distinction must be drawn between Superyachts and Megayachts and recently the new Giga Yachts.
- 8) When it is detected that the vessel being applied for under Superyacht Charter Decree 2010 is not a Superyacht but other type, then a written report of that detection must be sent to the CEO FIRCA soonest possible (within the same day), so that the complications arising could be discussed with the Minister responsible for Tourism.

¹ DTA = Double Taxation Agreement

² Code 228 = Part 3 to the Customs Tariff Act Schedule

³ Code 239 = Part 3 to the Customs Tariff Act Schedule

- 9) A Superyacht is generally at 24 meters or exceeding 24 meters at the waterline with vessel weight ranging between 150 GVT⁴ - 3,000 GVT and passenger capacity limited to 12 persons maximum. Superyacht must conform to MCA⁵ Merchant Shipping Notice No 1792 of 1968.
- 10) A Megayacht is generally longer than 34 meters at the waterline bow to stern but not exceeding 84 meters, with no classifications in weight limit but may be exceeding 3,000 GVT. Megayachts may be having sails (rarely) but generally always motorised to handle the required logistics of a vessel of that size.
- 11) A Gigayacht exceeds Megayacht (Gigayacht is generally exceeding 130 meters at the waterline) and may include swimming pools and helicopter. Gigayachts are almost as large as small cruise ships and are always motorised and without sails.
- 12) Another important key decider to note is that the Superyacht (vessel) must never be allowed to enter Fiji under Code 239 unless and until, the Fiji Agent has been fully subscribed to fundamentals of applications, approvals, permits and licences as prescribed under Superyacht Charter Decree 2010. References are prescribed standard Forms 1 to 3.
- 13) Before Forms 1 to 3 are processed by FIRCA, it shall be absolutely necessary for the CEO FIRCA to get clearance certification from Director FIMSA, that the chartered Superyacht meets all requirements for that yacht to operate commercially in Fiji and internationally and in full compliances to IMO SOLAS⁶, seaworthiness certificate and insurance liabilities in the event of maritime mishap within the Fiji EEZ⁷. Fiji Government shall not be liable.
- 14) On a point of clarity, the provisions of Code 239 states “imported solely for contracted cruising in the Fiji Islands” must not be subjectively taken to mean that the Superyacht vessel will be literally straddled across a cargo ship. In all practicality, it is rather improbable that any cargo ship will have derricks large and powerful enough to lift in one action, a massive Superyacht weighing 150-3,000 tons. At same time it is not to be assumed that the Superyacht must be sailed or driven to Fiji, although it is most likely as so.

⁴ GVT = Gross Vessel Tonnage

⁵ MCA = Maritime and Coastguard Agency of United Kingdom

⁶ IMO SOLAS = International Maritime Organization Safety of Life at Sea

⁷ EEZ = Exclusive Economic Zone under Fiji Marine Spaces Act Cap 158A.

- 15) The provisions for a regular foreign-registered vessel to remain in Fiji upon arrival is limited to 4 consecutive days under the definition of “transit” however, in the case of Superyacht Charter, this legislation has been amended to allow the chartered Superyachts to remain operating in Fiji, until the termination of the contract and thereafter, Code 239 is deemed lapsed and the contracted Superyacht must immediately depart Fiji to another definite foreign destination.
- 16) It must be noted that after initial boarding and clearance from Customs border control, the Superyacht shall operate as domestic and should not be compelled for Customs enter and clear for each movement as in Code 228.
- 17) Settlement of negotiations between Superyacht owner and the Agent in Fiji is very important as the terms of the deal is subject of contract and the contract will vary circumstantially, from bareboat long term lease to mid-term dry lease or short-term wet lease and the leased contracted period would need to fit within the window of opportunities to Code 239.
- 18) A bareboat charter is an arrangement for the hiring of a vessel, whereby no crew or provisions are included as part of the agreement; instead, the people who rent the vessel from the owner are responsible for taking care of such things.
- 19) There are distinct legal differences between a bareboat charter and other types of charter arrangement, such as crewed or luxury yacht charter, commonly called *time* or *voyage* charters. In a voyage or time charter the charterer (Agent) charters the ship for a particular voyage or for a set period of time. In these charters the charterer (Agent) can direct where the ship will go but the owner of the ship retains possession of the ship through its employment of the master and crew.
- 20) In a bareboat or demise charter, on the other hand, the owner gives possession of the ship to the charterer (Agent) and the charterer (Agent) hires its own master and crew. The bareboat charterer (Agent) is sometimes called a "disponent owner".
- 21) The giving up of possession of the vessel by the owner is the defining characteristic of a bareboat or demise charter.
- 22) A dry lease is a leasing arrangement whereby a vessel financing entity, provides a vessel without insurance, crew, ground staff, supporting equipment, maintenance, etc. Dry lease is typically utilized by leasing companies and banks, requiring the lessee (Agent) to put the vessel on its own and provide vessel registration. A typical dry lease starts from two years onwards and bears certain conditions with respect to depreciation, maintenance, insurances, etc, depending also on the geographical location, political circumstances, etc.

- 23) A wet lease is a leasing arrangement whereby one Superyacht owner (lessor) provides the Superyacht, *complete with crew, maintenance, and insurance* to another (Agent in Fiji as the lessee), which pays by days operated.
- 24) The lessee (Agent) provides fuel and covers port fees, and any other duties, taxes, etc. Wet lease generally lasts one month to two years; anything less would be considered an *ad-hoc* time-charter. A wet lease is typically utilized during peak traffic seasons or annual heavy maintenance checks, or to initiate new cruise routes. A wet leased vessel may be used to cruise services into countries where the lessee (Agent) is banned from operating.
- 25) They (dry or wet leased vessel) can also be considered as a form of charter whereby the lessor provides minimum operating services, and the lessee (Agent) provides the balance of services along with Charter Numbers.
- 26) A point that must be borne in mind at all times is that the entire Superyacht Charter deals in Fiji shall be driven by principles of Risk Management. The operations shall be sea-based and periodic accruals of revenue shall be risk based as well.
- 27) Officers involved in managing Superyacht Charter should be operationally conversant with foundational principles of Risk Management. The delivery of services to Superyacht Charter insofar as Risk Management matters shall be attuned to qualitative rather than quantitative.
- 28) Once the deal between the Superyacht owner and the Agent in Fiji is comprehensively completed, the master or the Agent must inform Customs by notification process, of the Superyacht arrival by electronic means, including submission of vessel details as prescribed under Customs Act at s.11A, including registration of a manifest. The notification time is not less than 2 days.
- 29) Before the arrival and boarding of the Superyacht in Fiji, the Agent should have applied for and obtained necessary approvals and permits as required under the Superyacht Decree (Form 1, Form 2 and Form 3).
- 30) Another important point that evolves from the leasing arrangement of bareboat, dry lease or wet lease is that the master and crew may not remain in Fiji after arrival in Fiji.
- 31) Generally, the delivery master and delivery crew (if bareboat or dry lease) will deliver the Superyacht to the Agent and then after signing off all handing over documents, they all leave and return home. Sometimes licensed professional delivery master and crew are used.
- 32) Other times, especially if wet lease, the master and crew remain on board the vessel after delivery to Agent and continue throughout the leased period as

supplied master and crew. Generally, the master and crew get replaced when taking shore leave after 6 months, as required under IMO SOLAS.

- 33) The same situation will also apply in the case of bareboat charter in Fiji that the original master and crew initiating the charter process will get replaced within the maximum window of 18 months. This point is very important. Under the Immigration Act, the master and crew will initially get 2 months visa. That visa is extendable for another 4 months to 6 months. In extreme cases, for yachts, a special visa may be extended to another maximum of 6 months giving an aggregate of 12 months. Thereafter a definite change in master and crew would have to be affected.
- 34) Alternatively, the Agent may fly over a local master and some crew to the Superyacht owner overseas, for the locals to steer the Superyacht to Fiji.
- 35) The Superyacht master will fly the quarantine flag (letter Q) on main mast immediately upon arrival at the Fiji port and require first boarding by the Health Quarantine, unless a Free Pratique was granted.
- 36) This point is very important as the Superyacht may have been operating in certain areas threatened with sicknesses such as malaria, typhoid, small pox, etc.
- 37) Superyachts arriving from any point north of Brisbane, including Papua New Guinea, Solomon Islands and Vanuatu must not be boarded unless Health has issued the Pratique.
- 38) Thereafter, Customs, Immigration, Biosecurity and Agent will board the Superyacht for full compliance under Code 239.
- 39) Most Superyachts have on board several types of flower pots and pot plants with various types of herbage growing in them. These will have to be referred to Biosecurity for appropriate action as these may hold bacteria, viruses or any kind of agricultural pests and diseases.
- 40) Boarding Officers must ensure that nothing is removed from the Superyacht throughout its contracted duration in Fiji.
- 41) Boarding Papers required for Superyacht have some apparent similarity with those of pleasure yachts of Code 228 but are distinctly different and come under different administrative jurisdiction of Code 239. They must never be confused.
- 42) Boarding Papers shall comprise:
 - (a) Superyacht Arrival Notification;
 - (b) Certificate of Customs Clearance from Last Port;
 - (c) Inward Report for Superyacht under Code 239 of the Customs Tariff Act;

- (d) Stores and Bar List;
 - (e) Medicines, Drugs and Narcotics List;
 - (f) Arms and Ammunition List;
 - (g) Form D;
 - (h) Marine Declaration;
 - (i) Manifest of any Cargo for Landing in Fiji;
 - (j) Parcels List (for any non-cargo);
 - (k) Sighting of Superyacht Register for details;
 - (l) Notice to Owners/Masters of Overseas Superyacht Compliance Conditions of Temporary Entry into Fiji.
- 43) Superyacht master and crew will be permitted crew allowances equivalent to final landing passengers within the limitation of Code 218 and no more. Surplus items shall be either (a) duty paid or (b) transferred on entry to a general bonded warehouse for safe keeping and drawn in legal lots after duty-payment.
- 44) Most Superyachts carry large stocks of high duty goods such as beer, wines, champagne, liquor and tobacco goods. These will have to be temporarily sealed until duty paid or removed to bonded warehouse. Some Superyachts are quite large and have special bond stores designed to be sealed by Customs as in cruise ships. In such cases the Manager must be informed and stores allowed sealing on board. Appropriate and exact endorsement must be made on the stores list. If however, there is no satisfactory sealing facility on board then all such high duty goods will have to be detained and subjected to either payment of duty or re-exports upon final departure.
- 45) The Agent must give Customs an Open Indemnity that the chartered Superyacht shall not be thrown open to public thoroughfare, except to paying Superyacht passengers. This point must be enforced without fail, as the Superyacht generally carries wide variety of expensive high technology items, which are generally not available locally.
- 46) In addition, the indemnity shall have clauses that shall not impose any liability against the Fiji Government for any damage of whatsoever nature to the Superyacht, or its master and crew or to any passenger faring on that Superyacht.
- 47) The VFD⁸ for most Superyachts would be ranging from a few million dollars to several millions of dollars.
- 48) Consequently, as preventive measures against piracy and similar threatening risks, most Superyachts (including Megayachts and Gigayachts) are heavily armed with automatic assault weapons and caches of ammunitions.

⁸ VFD = Value for Duty under General Agreement on Tariff & Trade (WTO + WCO)

- 49) Superyachts also carry on board very expensive sporting items such as specialist scuba diving gear, jet-skis, hovercraft, etc and none of these would be permitted to be removed from the Superyacht and taken ashore in Fiji.
- 50) Similarly, Megayachts and Gigayachts also carry very expensive sports items and in some cases include helicopters. The risk assessment here would be “Extreme Risk” and must be treated immediately in lowering that risk to “low or negligible.”
- 51) All bar stocks will have to be duty paid up front soon after arrival and include sealing of bars. After duty payment of high duty stores, the bar seals shall be broken and duty paid stocks will be released.
- 52) All fuel remaining on board the Superyacht after arrival at boarding would have to be accounted for and duty paid at prescribed rates. Section 21 of the Customs Act sets minimum size of vessels at 100 NRT and hence Superyachts heavier than 100 NRT may apply for C.35 and take on fuel as under-bond exports only at final departure exiting Fiji. Fuel concessions under Code 117 for inter-island shipping shall not apply to Superyachts.
- 53) All arms and ammunitions including all explosives entered on Form D must be detained and with full documentary conveyances over to Police.
- 54) The duration of Superyacht in Fiji waters shall be in three consecutive periods of 6-months each (stop/start) or a single period of 6-months and final termination of contract under Superyacht Charter Decree 2010 and Code 239.
- 55) No further duty free stocks will be loaded on any Superyacht for consumption within Fiji waters whilst still bound by Code 239, except for ultimate final departure and return of Superyacht to outside Fiji and consequently deemed termination of Code 239. Under s.21 of the Customs Act, the Superyacht must also weigh greater than 100 NRT.
- 56) In addition, the Superyacht Agent must demonstrate to the CEO FIRCA the details of vessel’s international certification process without the need to do though the local FIMSA process.
- 57) Once a Charter Permit has been issued, the Agent shall ensure that the Super Yacht is allowed to navigate legally through Fiji waters and using Fiji Admiralty Charts.
- 58) After the Charter Permit (Form 3) has been issued, then the Customs head at the seaport must immediately send a notification informing them of the validity of the Superyacht operating in Fiji. The details are in the “**Annex**” as **Form 4**. They must be sent to the following agencies:

- (a) Fiji Border Police;
 - (b) Director of Immigration;
 - (c) Fiji Navy and
 - (d) Ministry of Indigenous Affairs.
- 59) Whilst the duration of a Superyacht in Fiji is at 6 months, the provisions exist at s.12 of the Superyacht Decree, for renewal for a maximum of two times to maximum stretch to 18 months.
- 60) On the contrary, the Superyacht Charter Decree 2010 has punitive provision at s.15 for suspension and cancellation of the Superyacht Charter Permit Form 3 after having failed any of the eight stipulations and the CEO FIRCA must inform the Superyacht Agent within three days of any such decision.
- 61) Once the CEO FIRCA has suspended or cancelled the Superyacht Charter Permit Form 3, the Agent and/or owner must immediately lodge an application for Customs foreign departure Certificate of Clearance. These comprise:
- (a) Certificate of Customs Clearance;
 - (b) Outward Report for Superyacht;
 - (c) If the Superyacht exceeds 500GVT, then that vessel must also comply with IMO ISPS⁹ before final departure from Fiji.
 - (d) The final departure from Fiji must be from a port of entry to meet up to IMO ISPS certifications.
- 62) Any other essential document may be added depending of the expressed circumstances of the situation.
- 63) In full recognition of democratic rights and principles, the Agent may appeal to the Minister responsible for Tourism against the decision of the CEO FIRCA to suspend or cancel the Charter Permit.
- 64) In a nutshell, a Superyacht Charter facilitates equivalent of a 5-Star luxury hotel at sea.

⁹ IMO ISPS = International Maritime Organisation International Ship Security and Port Security

ANNEX



Form 4

1. Superyacht name: _____
2. Country of Registration: _____
3. Port of Registration: _____
4. Registration No: _____
5. (i). Hull Colour: _____
(ii). Deck Colour: _____
6. Hull Construction Material: _____
7. (i). Dimensions (OAL) _____ meters.
(ii). Waterline _____ meters
8. (i). Beam _____ meters. (ii). Draft _____ meters
9. Communications:

SSB Radio	Make	Model	Call Sign
VHF Radio	Make	Model	Call Sign
HAM Radio	Make	Model	Call Sign
Cell phone	Make	Model	Call Sign

10. Agent in Fiji: _____

Agent contacts:

- i. Cell-phone No: _____
- ii. Landline No: _____