

KAVA BILL 2016
(BILL NO. 24 OF 2016)

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BILL NO. 24 OF 2016**A BILL**

FOR AN ACT TO ESTABLISH THE FIJI KAVA COUNCIL FOR THE PURPOSE
OF THE REGULATION AND THE MANAGEMENT OF THE KAVA INDUSTRY
AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Kava Act 2016.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“annual general meeting” includes the annual general meeting and a special general meeting convened under section 31;

“appointed members” refers to the members appointed by the Minister under section 5(4);

- “CEO” means the chief executive officer appointed under section 15;
- “Chairperson” means the chairperson of the Council;
- “Council” means the Fiji Kava Council established under section 5;
- “financial year” means the period from 1 July to 30 June in the following year, both days inclusive;
- “industry” refers to the Fiji kava industry and related matters;
- “member” means any member of the Council appointed under section 5;
- “Minister” means the Minister responsible for agriculture;
- “Ministry” means the ministry of agriculture;
- “Permanent Secretary” means the permanent secretary responsible for agriculture.
- “person” means any individual or any company or association or body of persons, corporate or incorporated;
- “public officer” means a person in the permanent or temporary employment of the Government including a person appointed under the iTaukei Affairs Act (Cap. 120);
- “kava” means whole plants or parts (roots or stems) of the *Piper methysticum* species whether in the dried or fresh form, and includes imported kava;
- “kava exporter” means any person who is engaged in the business of exporting kava or kava products;
- “kava grower” means any person who cultivates kava for commercial purposes;
- “kava importer” means any person who is engaged in the business of importing kava or kava products;
- “kava processor” means any person who is engaged in the business of processing any type of kava product; and
- “kava product” means any kava product prepared from dried or fresh kava, and includes extracts of kava for beverage, pharmaceutical or dietary purposes.

Objectives

3. The objectives of this Act are to—
- (a) establish a Council that oversees the administration and management of kava business in Fiji;
 - (b) protect the interest of the kava growers, kava processors, kava exporters and kava importers;
 - (c) safeguard the exportation of Fiji brand kava;

- (d) provide for an operating fund for the purpose of the management of the Council; and
- (e) provide for incidental matters.

Administration of the Act

4. The Council, in consultation with the Minister, has the responsibility of administering this Act and must perform all the functions assigned to it by or under this Act.

PART 2—FIJI KAVA COUNCIL

Establishment and composition of the Fiji Kava Council

5.—(1) This section establishes the Fiji Kava Council as a body corporate with perpetual succession and a common seal, and may—

- (a) sue and be sued;
- (b) acquire, hold, possess, dispose of or otherwise deal with any property;
- (c) enter into contracts; and
- (d) perform any other act that a body corporate by law is entitled to do.

(2) The Council consists of 5 *ex-officio* members and 8 other members appointed by the Minister.

(3) The 5 *ex-officio* members or their representatives comprise of the following—

- (a) the Permanent Secretary who shall be the Chairperson;
- (b) the Director for Agricultural Trade Unit;
- (c) the Director for Trade under the Ministry of Trade ;
- (d) the Director for the Food Unit under the Ministry of Health;
- (e) a Manager from the Biosecurity Authority of Fiji.

(4) In appointing the other 8 members of the Council, the Minister must ensure that the Council comprises—

- (a) 4 members to represent the kava growers;
- (b) 3 members to represent the kava exporters and kava importers; and
- (c) a member to represent the kava processors.

(5) Every appointed member referred to in subsection (4) must be elected and nominated from among the registered members or the licence holders, as the case may be, at an annual general meeting.

(6) An appointed member may hold office for 3 years and is eligible for reappointment.

Invited members to the Council meetings

6.—(1) The Council may invite experts on a relevant subject matter to a meeting of the Council for the purpose of obtaining their views for the effective discharge of the functions of the Council.

(2) The Council shall have the absolute discretion of accepting or rejecting the views of the experts.

(3) The experts shall have no voting rights.

(4) The experts may be paid such remuneration for attendance at meetings of the Council, as may be determined by the Minister in consultation with the Minister responsible for finance.

Remuneration of member not a public officer

7. A member of the Council who is not a public officer may be remunerated in a manner and at rates subject to terms and conditions determined by the Minister.

Functions of the Council

8. The functions of the Council are to—

- (a) develop, promote and implement initiatives, guidelines and standards aimed at regulating the cultivation, processing, transportation, and marketing (domestic and export) of kava;
- (b) register and licence kava growers, kava processors, kava importers and kava exporters;
- (c) work in cooperation with the relevant Government departments, institutions and other persons interested in the industry on matters related to the industry, including assisting in the development and implementation of Government policies;
- (d) advise or make recommendations to the Minister on matters relating to the kava industry;
- (e) formulate, develop, approve and implement research plans for the industry;
- (f) endeavour to improve the capacity and efficiencies relating to the cultivation, production, processing, transportation and marketing of kava and related matters;
- (g) provide facilities or services for the purposes of improving the industry, including facilitating funding assistance for research and marketing, and gathering or dissemination of information relevant to the industry;
- (h) formulate, develop, approve and implement standards for the industry, including grading and quality standards for cultivation, production, processing and marketing of kava; and
- (i) perform other functions as may be assigned by the Ministry from time to time.

Powers of the Council

9. The powers of the Council are to—

- (a) enforce any standards made under this Act; and
- (b) perform any other power conferred by this Act or any other written law.

Meetings of the Council

10.—(1) The Chairperson must—

- (a) convene meetings of the Council; and
- (b) preside at all meetings.

(2) Where the Chairperson is absent from any meeting of the Council, the members present must, for that particular meeting, select a member to preside at that meeting.

(3) There must be held at least 4 meetings of the Council in any financial year.

(4) The quorum for any meeting of the Council must be 9 members including the Chairperson or the person presiding at the meeting.

(5) Voting at any meeting of the Council must be as follows—

- (a) each member is entitled to one vote only; and
- (b) if there is an equality of votes, the Chairperson of that meeting will have a casting vote in addition to his or her own vote.

(6) The CEO must—

- (a) keep an accurate record of minutes of every Council meeting; and
- (b) timely distribute minutes of the meeting.

Disclosure of interests

11.—(1) If a member has a direct or indirect personal, pecuniary or other interest in a matter being considered, or to be considered, that member must immediately disclose his or her interest at the meeting.

(2) The disclosure in subsection (1) may be recorded in the minutes of the meeting and unless the Council otherwise determines, the member must not—

- (a) be present during any deliberation of the Council in relation to the matter; or
- (b) take part in or vote on any resolution before the Council in relation to the matter.

Grounds for the disqualification of a member

12. A person shall be disqualified from being appointed or continuing as a member of the Council if he or she—

- (a) is or becomes a Member of Parliament or any local authority;
- (b) is not, or ceases to be, a citizen of Fiji;

- (c) directly or indirectly holds or enjoys any right or benefit under any contract made by or on behalf of the Council;
- (d) has any financial or other interest as is likely to affect prejudicially the discharge by him or her of his or her responsibilities as a member of the Council;
- (e) absents himself or herself from 3 consecutive meetings of the Council without permission from the Council;
- (f) is under any law in force in Fiji or any other country, found or declared to be of unsound mind;
- (g) is a person who having been declared as insolvent or bankrupt under any law in force in Fiji or in any other country, is an undischarged insolvent or bankrupt; or
- (h) is serving or has served a sentence of imprisonment imposed by any court in Fiji or any other country.

Ex-officio members

13. Every *ex-officio* member of the Council shall hold office as long as he or she holds office by virtue of which he or she has been appointed to the Council.

Provisions relating to appointed members

14.—(1) Every appointed member shall, unless he or she vacates office earlier by death, registration, or removal, hold office for a period of 3 years, and shall be eligible for reappointment, unless removed on disciplinary grounds.

(2) The Minister may for reasons assigned remove any appointed member from office.

(3) Any appointed member may resign from office by letter addressed in that behalf to the Minister.

(4) In the event of the death, resignation or removal from office of any appointed member, the Minister may having regard to the provisions of this Act in relation to the appointment of that particular appointed member, appoint another person to act in his or her place.

(5) The Minister shall appoint the member for the purpose of subsection (4) within one month of the vacancy is occurred.

(6) The member appointed under subsection (4) shall hold office for the unexpired period of the term of office of the member whom he or she succeeds.

PART 3—ADMINISTRATIVE PROVISIONS

Appointment of the CEO

15.—(1) The Council must appoint a person from among persons who hold a degree in management to function as the CEO of the Council, who shall also act as the secretary to the Council.

- (2) The CEO is responsible to the Council for the following functions—
- (a) preparation of the minutes of the meetings of the Council;
 - (b) assisting the Chairperson to convene the meetings of the Council;
 - (c) implementation of the resolutions of the Council;
 - (d) maintenance of the records of meetings of the Council;
 - (e) management and control of the financial matters of the Council;
 - (f) administration and disciplinary control of the staff of the Council; and
 - (g) any other function assigned by the Council.

(3) The CEO is entitled to remuneration and allowances determined by the Minister in consultation with the Minister responsible for finance.

(4) The CEO shall not engage himself or herself in any other employment or occupation whether with or without any remuneration.

(5) The CEO must in consultation with the Council appoint the necessary staff of the Council.

Indemnity

16.—(1) The Council or any public officer employed or engaged by the Council is not liable for any action, suit, proceeding, dispute or challenge in any court, tribunal or any other adjudicating body for or in respect of any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Act or any other written law.

(2) Notwithstanding anything contained in subsection (1), the Minister may on an *ex-gratia* basis grant compensation to any person who has suffered any injury or damage to property, caused either directly or indirectly by any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Act or any other written law.

PART 4—ACCOUNTS AND FINANCE

Funds of the Council

- 17.** The funds of the Council comprises—
- (a) money appropriated by the Government for the purpose of this Act;
 - (b) contributions or donations to the Council;
 - (c) money borrowed by the Council; and
 - (d) other money lawfully received by or on behalf of the Council.

Financial reporting and audit of accounts

18.—(1) The financial year of the Council begins on 1 July and ends on 30 June in the following year, both days inclusive.

(2) The Council must keep proper accounts and other records in respect of its operations in accordance with the requirements in the Financial Management Act 2004 and such accounts are subject to the Audit Act (Cap. 70).

(3) The Council must, as soon as practicable, send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report, to the Minister.

(4) The Minister must cause the audited statement of accounts to be laid before Cabinet within 28 days after receiving a report made under this section.

Annual report

19.—(1) The Council must, as soon as practicable, at the end of each financial year, prepare and submit to the Minister, an annual report of its proceedings and operations for the preceding financial year.

(2) The report must be in a form the Council considers appropriate and must include—

- (a) activities undertaken under this Act, related laws, and international instruments;
- (b) the status and developments in the industry; and
- (c) any other information the Minister may require.

(3) The Minister must, as soon as practicable, cause a copy of the report to be laid before Parliament.

PART 5—REGISTRATION AND LICENSING*Registration of growers, processors, importers and exporters*

20.—(1) The Council has the power, with or without conditions, to register a person as—

- (a) a kava grower;
- (b) a kava processor;
- (c) a kava importer; or
- (d) a kava exporter,

if the Council is satisfied that the applicant has complied with the requirements prescribed by regulations.

(2) The Minister may by regulations prescribe the procedure for the registration under subsection (1).

(3) The Council must maintain one or more registers for the purpose of subsection (1).

(4) A person may apply to the Council to inspect the register.

Removal of names from the register

21.—(1) The Council may, subject to the approval of the Minister, remove the name of any person or body from the register if—

- (a) the kava grower, kava processor, kava importer or kava exporter ceases to be a grower, processor, importer or exporter of kava;
- (b) the kava grower, kava processor, kava importer or kava exporter fails to obtain and maintain reasonable standards, quality and efficiency as the Council determines; or
- (c) fails to comply with any directions of the Council in relation to compliance with the provisions of this Act.

(2) If the Council wishes to remove a name from the register, the Council must notify the person to provide reasons and representations to the Council as to why the name should not be removed from the register.

Import and export licence

22. A person who wishes to import or export any kava or kava product may apply, in the prescribed form accompanied by the prescribed application fee, to the Council.

Power to issue licence

23.—(1) The Council has the power to—

- (a) issue;
- (b) refuse to issue; or
- (c) suspend,

an import or export licence whether with or without conditions.

(2) The Council may take into account the following when considering whether or not an import or export licence is to be granted or not—

- (a) the applicant is registered under section 20; and
- (b) other matters prescribed by regulations.

(3) The Council may grant the applicant a licence where the applicant satisfies the requirements under this Act for the issuance of a licence.

(4) If the Council is of the opinion that the applicant does not satisfy some of the requirements in subsection (1), the Council must—

- (a) inform the applicant about those requirements; or
- (b) request the applicant to make a written or oral representation to it, within a period specified by the Council, before it makes a final decision.

(5) The Council may reject the application where the applicant fails to satisfy the requirements for a licence under this Act.

(6) Where the Council rejects an application for a licence, the Council must inform the applicant such refusal with reasons therefore.

(7) The Minister may, by regulations prescribe matters pertaining to obtaining or issuing an import or export licence.

Prohibition on export and import of kava

24.—(1) A person, including a registered kava grower, kava processor, kava importer or kava exporter, is prohibited from importing or exporting any kava or kava product unless the person is licensed under this Act.

(2) This section does not apply to importation or exportation of kava within the limit set by regulations made under section 32 for personal use or for traditional purposes.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000 or to a term of imprisonment for a term not exceeding 2 years, or to both.

PART 6—APPEAL

Right to appeal

25. Any person who is aggrieved by a decision of the Council may appeal against such decision to the Minister.

Lodgement of appeal

26.—(1) Any appeal made under this Act must be made within 20 working days of notification of the decision to the appellant except where the Minister may, for good cause, extend the period of 20 working days.

(2) An appeal by an applicant under this Act must—

- (a) be in writing;
- (b) clearly and concisely set out the grounds for the appeal;
- (c) be accompanied by the prescribed fee; and
- (d) be sent to the Minister.

Minister to inquire

27. The Minister must, upon receiving an appeal under section 26, refer a copy of the appeal to the Council within 5 working days and request a written statement from the Council for the decision appealed against.

Council to respond

28. The Council must, within 10 working days of receiving a copy of an appeal under section 27, provide to the Minister a written statement setting out the reasons for the decision appealed against.

Decision of the Minister

29.—(1) The Minister must, within 10 working days of receipt of the Council's written statement under section 28, either—

- (a) affirm the Council's decision;
- (b) vary the Council's decision; or
- (c) set aside the Council's decision and make a new decision in its place.

(2) The Minister must, as soon as possible after an appeal has been determined, forward the decision in writing to the appellant.

(3) The decision of the Minister on an appeal made under this Act is final and conclusive and not subject to any appeal.

PART 7—MISCELLANEOUS

Prohibition on false representation of Fijian kava

30.—(1) A person must not export from Fiji any bag, container or other receptacle containing kava or kava products unless each of the following is clearly marked on the label—

- (a) the scientific name of the variety of the kava;
- (b) the island of origin of the kava;
- (c) the distinct organs of the kava; and
- (d) any other word that the Minister may prescribe by notice in the Gazette.

(2) This section does not apply to importation or exportation of kava within the limit set by regulations made under section 32 for personal use or for traditional purposes.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000 or to a term of imprisonment for a term not exceeding 2 years, or to both.

Annual general meetings

31.—(1) The annual general meeting of the registered growers, processors, importers and exporters of kava must be held once a year.

(2) The following matters must be dealt with at the annual general meeting—

- (a) to elect registered members as representatives of growers, processors, importers and exporters to the Council; or
- (b) to discuss other matters of interest to the members of the Council, the registered kava growers, kava processors, kava importers and kava exporters.

(3) The Council may convene a special meeting under this section for the purposes of discussing any urgent matter relating to the industry.

Regulations

32. The Minister may make regulations, on the advice of the Board, prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, including but not limited to—

- (a) forms, fees, charges and levies for the purposes of this Act;
- (b) rules and standards pertaining to grading, quality, labelling and marketing;
- (c) procedures and conditions for import or export licences;
- (d) rules and procedures pertaining to the conduct of annual general meetings;
- (e) rules and conditions pertaining to the registration of growers, processors, importers and exporters; and
- (f) any other matters required to be prescribed under the provisions of this Act.

Power to give directions

33.—(1) The Minister has the power to give policy directions to the Council.

(2) The Council must comply with the policy directions.

April 2016

KAVA BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The demand for kava has increased in the local and overseas markets where the kava industry in Fiji is a major contributor to the national economy, next in line to dalo and ginger industry.
- 1.2 Kava is sold domestically and exported for commercial purposes, therefore generating millions of dollars into the Fijian economy. Hence, there is an urgent need for a proper legal framework to establish the Council which will manage, administer and assist the growth of the kava industry.
- 1.3 Moreover, there is also a concern on the false representation of kava that is exported for commercial purposes which should be prohibited by law.
- 1.4 On the other hand, with the renewed opening of markets for kava in the European market and a viable market in the United States of America, Fiji must explore the opportunity to protect kava cultivated and processed in Fiji as a Fijian commodity and not only that, but as a Pacific crop as well in terms of competing in the international market or risk losing this opportunity to growers from outside the region.
- 1.5 The creation of the Kava Bill 2016 (**'Bill'**) will ensure that the trading of kava at domestic level and exported or imported at international level, will be done according to appropriate standards and procedures. This is also a requirement by the Regional Strategy for Kava that the kava producing countries in the Pacific are to have a kava management legislation. A copy of the Bill is attached in the Annexure.
- 1.6 Additionally, the implementation of the Bill will ensure that a legitimate platform is provided for the stakeholders to voice their opinions and concerns, particularly the local kava growers and kava exporters.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and states commencement of the Kava Act 2016 (**‘Act’**).
- 2.2 Clause 2 of the Bill provides for the definitions of terms used throughout the Bill.
- 2.3 Clause 3 of the Bill provides for the objective or the purpose of the Bill which is to establish a Council that will administer the management of the kava industry and protect the interest of the kava stakeholders and safeguard the trading of kava domestically and internationally.
- 2.4 Clause 4 of the Bill states that the Council will be responsible for administering the Act.
- 2.5 Clause 5 of the Bill provides for the establishment of the Fiji Kava Council (**‘Council’**) which will function as a body corporate with perpetual succession. The Council will consist of 5 *ex-officio* members and 8 other members appointed by the Minister.
- 2.6 Clause 6 of the Bill also provides for invited experts that may sit in during the Council meetings should the Council think necessary for the relevant subject matter. These experts will have no voting rights and the Council may or may not accept the views of the experts as it thinks necessary.
- 2.7 Clause 7 of the Bill provides that members of the Council (**‘members’**) that are not public officers may be remunerated according to the terms and conditions determined by the Minister for agriculture (**‘Minister’**).
- 2.8 Clause 8 of the Bill lays out the functions of the Council.
- 2.9 Clause 9 of the Bill provides for the powers of the Council.
- 2.10 Clause 10 of the Bill provides for the procedures of the meetings of the Council.
- 2.11 Clause 11 of the Bill states that it is mandatory that the members to disclose any direct, or indirect pecuniary or other interest in a matter that is to be considered in a meeting.
- 2.12 Clause 12 of the Bill lays out that a member may be disqualified from being a member of the Council.
- 2.13 Clause 13 of the Bill provides the term of the *ex-officio* members.
- 2.14 Clause 14 of the Bill provides for the term of appointment of the appointed members. Appointed members shall hold office for a term of 3 years and are eligible for reappointment unless removed on disciplinary grounds.

- 2.15 Clause 15 of the Bill provides for the appointment of the chief executive officer (**‘CEO’**) who should be a qualified person with a degree in management. The CEO will act as the secretary to the Council and is responsible to conduct the secretarial work of the Council. The CEO is not to engage in any other employment or occupation whether for remuneration or not, but is entitled to remuneration and allowances as determined by the Minister in consultation with the Minister responsible for finance.
- 2.16 Clause 16 of the Bill articulates situations where acts done within the duties prescribed under the Act or any written law by any member of the Council or public officers employed by the Council will be exempt from liability to any action, lawsuit, proceeding, dispute or challenge in any court of law.
- 2.17 Clause 17 of the Bill provides for the sources of funds the Council can receive or borrow to carry out its responsibilities under the Act.
- 2.18 Clause 18 of the Bill states that the financial year of the Council is from 1 July to 30 June in the following year.
- 2.19 Clause 19 of the Bill requires the Council to prepare and submit an annual report to the Minister and the annual report to be tabled in Parliament.
- 2.20 Clause 20 of the Bill requires kava growers or farmers, processors, importers and exports to be registered. Discretion will be with the Council whether to register a person with or without conditions.
- 2.21 Clause 21 of the Bill provides that the Council may remove a person or body from the register for failing to comply with the conditions set up by the Act.
- 2.22 Clause 22 of the Bill has power to issue or refuse a licence for import or export with or without conditions. If in the opinion of the Council that the applicant does not satisfy the requirements for registration, the Council is to inform the applicant and request the applicant to make a written or oral representation.
- 2.23 Clause 23 of the Bill provides for the power of the Council to issue or refuse licence with or without conditions.
- 2.24 Clause 24 of the Bill provides that kava or kava product not to be imported or exported without licence and procedures for licensing will be prescribed by regulations.
- 2.25 Clauses 25 to 29 of the Bill provide for the right to appeal by an aggrieved party regarding the decisions of the Council. The aggrieved party can then appeal to the Minister and the procedures for appeals provided under this Part of the Act.
- 2.26 Clause 30 of Bill prohibits the false representation of kava or kava products exported for commercial purposes.

- 2.27 Clause 31 of the Bill provides that registered growers, processors, importers and exporters of kava to have an annual general meeting once a year to discuss matters related to their interest in the industry.
- 2.28 Clause 32 of the Bill provides for the Minister to implement regulations, on the advice of the Board on matters necessary or convenient for giving effect to this Act.
- 2.29 Clause 33 of the Bill provides for the Minister to give policy directions to the Council.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for agriculture.

A. SAYED-KHAIYUM
Attorney-General

