



Kava Bill - Bill No. 24 of 2016

Introduction

The main goal of the Kava Bill is to establish the Fiji Kava Council for the purpose of the regulation and the management of the Kava Industry and its related matters.

The functions and powers of the Fiji Kava Council are clearly defined in the Bill. The Council will be responsible for administering the Act. It will function as a corporate body with perpetual succession.

Another important feature of this legislation is that the Bill provides for invited experts that may sit during the Council meetings if the Council thinks it is necessary. However; these experts will not have voting rights and it's the Council's discretion whether to accept the views of the experts.

Kava is sold domestically and exported for commercial purposes. The Bill's Explanatory Notes states that the demand for kava has increased in the local and overseas markets. The kava industry in Fiji generates millions of dollars and is a major contributor to the national economy, next in line to dalo and ginger industry. In light of this, the Government proposes that 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.

According to the Explanatory Note, there is also a concern on the false representation of kava that is exported for commercial purposes which should be prohibited by law.

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, which is cultivated and processed in Fiji, as a Fijian commodity. They also desire to maintain kava as a Pacific crop so that they can compete in the international market. They do not wish to risk losing this opportunity to growers from outside the region.

The Kava Bill was tabled in Parliament and had its first reading on 27th April 2016. It had a second reading on 28th April 2016 and was referred to the Standing Committee on Natural Resources.

Why is this legislation necessary?

Currently, the **Fiji Kava Council** is a **member of the International Kava Executive Council (IKEC)**, a non-government organization and there is no legislation in place managing the Kava Industry of Fiji.

PM Bainimarama, during his speech at the launch of the South Pacific Elixir Limited Factory –'Taki Mai Authentic Fiji Kava', addressed the lack of quality control in the industry. He said that:



Bill Summary

“Kava is one of our nation’s most cherished crops and Ovalau has long been known as one of Fiji’s premier kava-producing regions. Despite this, however, we have struggled over the years with exporting kava to overseas markets. Many of you will remember a few years ago when Europe’s demand for kava created a boom in the industry. Unfortunately, in the rush to take advantage of this windfall, little consideration was given to quality control. Leaves and stems were mixed with the roots and look what happened. There was no quality control. Governments must engender quality control and standards. This we are doing through the Ministry of Industry and Trade and the respective private sector stakeholders. This we are promoting through the ‘Buy Fijian’ and ‘Fijian Made’ initiative”.

He further added regarding the production of Fiji grown Kava that:

I’m pleased to see that South Pacific Elixirs is once again targeting overseas markets – in the United States, Australia and other countries. I share their enthusiasm for this product’s potential in these markets and I look forward to them working with local farmers to set a new benchmark for quality and consistency that will boost Fijian-grown kava’s reputation internationally. I look forward to them collaborating with our Ministries of Agriculture and Industry and Trade. I look forward to them moving their entire operations to Fiji where the final product can be made in Fiji. There is no doubt that my Government would provide them with the appropriate initiatives to do so. After all it will not only help SPE take advantage of a bigger and better brand value but help create more jobs right from the growth of yaqona to the end product”.¹

Scope, purpose and intent of the Bill

The main purpose of the Kava Bill 2016 (‘the Bill’) is to 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.

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.

▪ ¹ <http://bainimarama.org/speech-prime-minister-bainimarama-launch-south-pacific-elixir-limited-factory-taki-mai-authentic-fiji-kava/>



Summary of provisions

The Bill comprises of 7 Parts and 33 clauses.

Part 1 – Preliminary

Clause 1 provides for the **short title** and states **commencement** of the Kava Act 2016 (**'Act'**).

Clause 2 provides for the **definitions** of terms used throughout the Bill. The full list of definitions is in **Annex A** of this paper.

Clause 3 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.

Clause 4 states that the **Council** will be **responsible** for administering the Act.

Part 2 – Fiji Kava Council

Clause 5 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.

Clause 6 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.

Clause 7 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'**).

Clause 8 lays out the **functions** of the Council.

Clause 9 provides for the **powers** of the Council.

Clause 10 provides for the **procedures of the meetings** of the Council.



Bill Summary

Clause 11 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.

Clause 12 lays out that a member may be **disqualified** from being a member of the Council.

Clause 13 provides the **term** of the *ex-officio* members.

Clause 14 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.

Part 3 – Administrative Provisions

Clause 15 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.

Clause 16 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.

Part 4 – Accounts And Finance

Clause 17 provides for the **sources of funds** the **Council** can receive or borrow to carry out its responsibilities under the Act.

Clause 18 states that the **financial year** of the **Council** is from 1 July to 30 June in the following year.

Clause 19 requires the **Council** to **prepare** and **submit** an **annual report** to the Minister and the annual report to be tabled in Parliament.

Part 5 – Registration and Licensing

Clause 20 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.

Bill Summary



Clause 21 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**.

Clause 22 provides 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.

Clause 23 provides for the **power** of the **Council** to **issue or refuse licence** with or without conditions.

Clause 24 provides that kava or kava product **not to be imported or exported without licence** and procedures for licensing will be prescribed by regulations.

Part 6 – Appeal

Clause 25 – 29 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.

Part 7 – Miscellaneous

Clause 30 prohibits the **false representation** of kava or kava products exported for commercial purposes.

Clause 31 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.

Clause 32 provides for the **Minister to implement regulations**, on the **advice of the Board** on matters necessary or convenient for giving effect to this Act.

Clause 33 provides for the **Minister to give policy directions to the Council**.

Who does the Bill affect?

- Farmers that produce kava for export purposes and trade at domestic level

Bill Summary



- People that import kava for trade

Which parties may have an interest in the Bill?

- Local Kava Growers
- Kava Exporters
- Kava Importers
- The Fiji Kava Council
- Biosecurity Authority of Fiji

International Kava Executive Council (IKEC)

The International Kava Executive Council (IKEC) is an international organization consisting of delegates from the Pacific and the EU, focusing on re-establishing the Kava trade between the Kava producing South Pacific Island States and the countries of the European Union. The American Herbal Products Association and the American Botanical Council are associated members of IKEC. The Pacific Forum Secretariat; and the Governments of Fiji, Samoa; Tonga; and Vanuatu are inaugural support members of IKEC. The Pacific Governments are represented by their respective Ambassadors in the EU (Brussels/London).

The main goals of IKEC are:

- 1) To focus attention onto the dramatic social and economic consequences for the development of some of the least developed South Pacific Island countries that resulted from the controversial decision by European Health Authorities to ban kava products.
- 2) To seek and identify viable options, with all stakeholders (scientists, representatives of national and international organizations and EU health authorities), to permit a fast return of kava products to European markets.
- 3) To re-establish the kava trade between the Pacific Islands states and the EU member states and to restore the local kava industry, to reduce poverty and unemployment resulting from the ban, in particular among the poor rural communities for whom the proceeds of the kava trade provided the only source of income.
- 4) To provide health professionals and patients suffering from stress, restlessness and mild anxiety, with a safe and effective herbal remedy that, experts recognize, cannot be substituted adequately.

Most of IKEC's activities from 2003 to now have been focused on the removal of trade restrictions imposed on the Kava Trade by various European Countries. Other activities include the organization of:



Bill Summary

- New Scientific research on the safety of Kava
- International Conferences and workshops to bring together stakeholders and international experts to discuss scientific findings; trade developments; and relevant issues relating to the kava trade.
- Meeting with the various countries that have imposed restrictions on the kava trade- to negotiate means of resolving and removing the restrictions
- The creation and preparation of Regional and International Standards for quality and safety production of kava for export and use
- Various forums to promote kava and to lobby for the removal of trade restrictions and any anti-kava trade issues
- Support all efforts both regionally and internationally to improve quality standards and capacity building for the kava trade.
- Fundraising to support the above activities.

Council Members of IKEC:

- 1) HE Ambassador of the Kingdom of Tonga -EU-Brussels;
- 2) HE-Ambassador of Vanuatu-EU-Brussels;
- 3) HE-Fiji High Commissioner-London
- 4) HE-Ambassador of Samoa to the EU-Brussels;
- 5) Pacific Island IKEC Reps;
- 6) EU IKEC Reps;
- 7) Pacific Island Forum Secretariat;
- 8) USA association member;
- 9) University of South Pacific;
- 10) South Pacific Commission and
- 11) Representatives of Industry in Germany. ²

Gender Analysis

Will men and women be given equal opportunity to be a member of the Fiji Kava Council? Does this bill promote any incentives for women to participate in kava farming?

Further Information

- 'Fiji kava industry review could lift profits' ABC Radio Australia, 15/02/12
<http://www.radioaustralia.net.au/international/radio/onairhighlights/fiji-kava-industry-review-could-lift-profits>

² <http://www.ikec.org/>



Bill Summary

- 'SPEECH: Prime Minister Bainimarama at Launch of South Pacific Elixir Limited Factory -Taki Mai Authentic Fiji Kava' 28/07/14 <http://bainimarama.org/speech-prime-minister-bainimarama-launch-south-pacific-elixir-limited-factory-taki-mai-authentic-fiji-kava/>

Disclaimer

This briefing was prepared to assist consideration of the Bill by Members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.



Annex A - Definitions used in the Bill

“**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.