

BILL NO. 9 OF 2018

A BILL

FOR AN ACT TO GIVE EFFECT TO SECTION 30 OF THE CONSTITUTION OF THE REPUBLIC OF FIJI, TO ESTABLISH THE PROCESS FOR THE FAIR SHARING OF ROYALTIES FOR THE EXTRACTION OF MINERALS AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Fair Share of Mineral Royalties Act 2018.
- (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—

“Constitution” means the Constitution of the Republic of Fiji;

“grant” means a grant by the State of a right to extract any mineral from the land or seabed;

“iTaukei land” has the meaning given in section 2 of the iTaukei Lands Act 1905, and includes iTaukei land designated in accordance with the Land Use Act 2010;

“land” means—

- (a) freehold land;
- (b) iTaukei land;
- (c) Rotuman land; or
- (d) land on Rabi Island;

“land on Rabi Island” means land on Rabi Island as referred to in the Banaban Lands Act 1965;

“landowner” means—

- (a) in the case of freehold land, the registered proprietor of the freehold land;
- (b) in the case of iTaukei land, the registered iTaukei landowner;
- (c) in the case of Rotuman land, the owner of the land in accordance with the Rotuma Lands Act 1959; or
- (d) in the case of land on Rabi Island, the owner of the land in accordance with the Banaban Lands Act 1965;

“minerals” has the meaning given in section 163(1) of the Constitution, but does not include clay, gravel, sand or other common mineral substances;

“Minister” means the Minister responsible for mineral resources;

“Ministry” means the ministry responsible for mineral resources;

“owner” means—

- (a) in the case of minerals extracted from the land, the landowner from whose land the minerals are extracted; or
- (b) in the case of minerals extracted from the seabed, the holder of registered customary fishing rights in accordance with the Fisheries Act 1941;

“Rotuman land” means land in Rotuma as referred to in the Rotuma Lands Act 1959; and

“royalty” means any royalty or other money paid to the State in respect of a grant, and includes any interest accrued on the royalty.

Objective

3. The objective of this Act is to give effect to section 30 of the Constitution and to establish the process for the fair sharing of royalties for the extraction of minerals.

Act to bind the State

4. This Act binds the State.

Fair share of royalties

5. For the purpose of section 30(1) of the Constitution and taking into account all relevant factors including the factors specified in section 30(2) of the Constitution, any royalty must be shared in the following manner—

- (a) 20% of the royalty to the State; and
- (b) 80% of the royalty to the owner.

Royalties to be held in trust

6. Any royalty received by the State must be held in trust by the Ministry until such time as the royalty is shared in accordance with this Act.

Payment of royalties

7.—(1) The Ministry must, following the receipt of any royalty—

- (a) liaise with the relevant agencies and consider the relevant registers to correctly identify the owner; and
- (b) ensure that—
 - (i) the royalty is shared in accordance with section 5 and paid to the State and the owner; and
 - (ii) if the land is communally-owned land, the share of the royalty that is paid to the owner is equally distributed to all the owners of the communally-owned land.

(2) If the Ministry is unable to identify the owner for the sharing of any royalty, the Ministry must hold the royalty in trust until such time as the owner is identified.

(3) Any royalty that is shared in accordance with this Act must be paid—

- (a) in the case of the State, into the Consolidated Fund; and
- (b) in the case of an owner, to the person who is the owner at the time the royalty becomes payable.

Regulations

8.—(1) The Minister may make regulations to prescribe 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 and generally for achieving the purposes of this Act.

(2) Without affecting the generality of subsection (1), the Minister may make regulations prescribing offences and penalties not exceeding—

- (a) in the case of a natural person, a fine of \$10,000 or imprisonment for a term of 5 years or both; or
- (b) in the case of a body corporate, a fine of \$100,000.

May 2018

FAIR SHARE OF MINERAL ROYALTIES BILL 2018

EXPLANATORY NOTE

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

1.0 BACKGROUND

1.1 Section 30(1) of the Constitution of the Republic of Fiji (**‘Constitution’**) vests the ownership of all minerals in or under any land or water in the State, provided that the owners of any particular land, whether customary or freehold, or of any particular registered customary fishing rights (**‘owners’**) shall be entitled to receive a fair share of royalties or other money paid to the State in respect of the grant by the State of rights to extract minerals from the land or the seabed in the area of those fishing rights.

1.2 The Constitution requires under section 30(2), that in determining a fair share of royalties, all relevant factors including the following must be taken into account:

- (i) any benefit that the owners received or may receive as a result of mineral exploration or exploitation;
- (ii) the risk of environmental damage;
- (iii) any legal obligation of the State to contribute to a fund to meet the cost of preventing, repairing or compensating for any environmental damage;
- (iv) the cost to the State of administering exploration or exploitation rights; and
- (v) the appropriate contribution to the general revenue of the State to be made by any person granted exploration or exploitation rights.

1.3 The following ratio is for the sharing of royalties between the State and the owners:

- (i) 20% of the royalty to the State; and
- (ii) 80% of the royalty to the owners.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides for the definitions of the terms used throughout the Bill. It is imperative to note that the royalties referred to in the Bill are royalties paid to the State for the extraction of minerals. In line with the definition of “minerals” in the Mining Act 1965, the term “minerals” in the Bill does not include clay, gravel, sand or other common mineral substances.
- 2.3 Clause 3 of the Bill provides for the objective of the Bill. The objective of the Bill is to give effect to section 30 of the Constitution and to establish the process for the fair sharing of royalties for the extraction of minerals.
- 2.4 Clause 4 of the Bill states that the State will be bound by the provisions of the Bill. This means that any obligation conferred on the State will have to be complied with in accordance with the provisions of the Bill.
- 2.5 Clause 5 of the Bill provides for the manner in which the royalty is to be shared between the State and the owners.
- 2.6 Clause 6 of the Bill states that all royalties received by the State are to be held in trust by the ministry responsible for mineral resources (**‘Ministry’**) until the royalties are shared.
- 2.7 Clause 7 of the Bill deals with the payment of royalties by the Ministry. As the administering agency, the Ministry will have responsibilities in respect of the receipt and payment of royalties to the State and the owners.
- 2.8 If the land is communally-owned land, the Ministry must ensure that the share of the royalty that is to be paid to the owners is equally distributed to all the owners. Also, if the Ministry is unable to identify the owners to whom royalties are to be shared, the Ministry must hold the royalties in trust until such time as the owners are identified.
- 2.9 Clause 8 of the Bill empowers the Minister to make regulations to give effect to the provisions of the Bill.
- 2.10 Under the Interpretation Act 1967, the Minister has a general power to prescribe a fine not exceeding \$400 or imprisonment for a term not exceeding 6 months or to both in relation to any subsidiary legislation. Clause 8(2) specifically allows the Minister to prescribe offences and penalties in regulations made under the Act not exceeding —
 - (i) in the case of a natural person, a fine of \$10,000 or imprisonment for a term of 5 years or both; or

(ii) in the case of a body corporate, a fine of \$100,000.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for mineral resources.

A. SAYED-KHAIYUM
Attorney-General