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COCONUT INDUSTRY DEVELOPMENT DECREE 2010

GOVERNMENT OF FIJI
 (DECREE NO. 23 OF 2010)



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COCONUT INDUSTRY DEVELOPMENT DECREE 2010
 (DECREE NO. 23 OF 2010)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority Decree 2009, I hereby make the following Decree—

Part I—PRELIMINARY

Short Title and Commencement

- 1.—(1) This Decree may be cited as the Coconut Industry Development Decree 2010.
- (2) This Decree comes into force on the day it is published in the *Gazette*.

Interpretation

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

- “coconuts” means mature coconuts or coconuts sold or capable of being sold or used for the same purpose as mature coconuts, with or without husks;
- “coconut land” means any land on which the coconut palm is grown, and includes any interest in or any benefit arising out of such land and any leasehold or other interest held by any person in any such land and also any buildings, fixtures, machinery and implements thereon;
- “coconut product” means any part or product of the coconut palm, or any product, by-product or waste product obtained by processing any part or product of the coconut palm;
- “coconut grower” means any person growing coconut trees for the purpose of selling coconuts or making copra or any coconut products with his own coconuts;
- “coconut oil” means oil obtained by any process from coconuts or copra;
- “coconut processor” means any person who makes a coconut product by way of trade or business;
- “copra” means the kernel of a coconut grown in the Fiji Islands in its dried condition when it has been extracted from the coconut;
- “coconut exporter” means any person who exports coconut products from the Fiji Islands;
- “coconut trader” means a dealer in coconut products;
- “Fund” means the Coconut Development Fund established under section 11;
- “Ministry” means the Ministry responsible for Agriculture;
- “Minister” means the Minister responsible for Agriculture;
- “Permanent Secretary” means the Permanent Secretary responsible for Agriculture.

Responsibility of this Decree

3.— (1) The Ministry responsible for Agriculture shall be responsible for administration of this Decree.

(2) The objective of this Decree is to repeal the Coconut Industry Development Authority Act 1998 and transfer all its functions, assets and liabilities to the Ministry.

Part II—FUNCTIONS AND POWERS

Licensing

4.—(1) The Permanent Secretary may —

- (a) upon application in the prescribed manner issue licences for the export of coconut products from the Fiji Islands;
- (b) prescribe by rules the qualifications, terms and conditions, procedure and annual fee payable for the application for and issue of such licences; and
- (c) for good cause, which must be recorded in the register kept under section 8(1), refuse to issue a licence, or cancel a licence issued to any person.

(2) A person who is dissatisfied with a decision of the Permanent Secretary under subsection (1)(c) may appeal to the Minister in the prescribed manner and the Minister, after having hearing the appeal, may make any decision.

(3) The Permanent Secretary may in writing authorise any person to inspect the manufacture, packing, storing, transport and sale of coconut products produced under licence in the Fiji Islands.

(4) A person not licensed under subsection (1) who exports coconut products from the Fiji Islands commits an offence.

(5) A person licensed under subsection (1) who —

- (a) fails without reasonable cause to comply with any provision of this Decree or of any regulations made under section 19;
- (b) knowingly maintains false records or provides false returns, information, explanations, or documentary or other evidence; or
- (c) obstructs the Permanent Secretary in the exercise of the powers conferred on it by subsection (3), commits an offence.

Registers

5.—(1) The Permanent Secretary must maintain registers —

- (a) of all coconut land and plantations; and
- (b) of all licences issued or applied for under section 4.

- (2) The Permanent Secretary must maintain registers—
- (a) of all processors and other manufacturers of coconut products;
 - (b) of all auctioneers and brokers engaged in the purchase and sale of coconut products;
 - (c) of all traders in and shippers of coconut products.

(3) Every person who is qualified for registration on a register maintained under subsection (2) must apply for registration within 3 months of this Decree coming into force, or of becoming so qualified, whichever is the later.

- (4) The Permanent Secretary may—
- (a) prescribe by rules the qualifications, terms and conditions, procedure and annual fee payable for registration in a register kept under subsection (2);
 - (b) for good cause, recorded in the register, refuse an application for registration or remove a person from a register;
 - (c) restore a qualified person to a register ;
 - (d) alter any information contained in a register, if satisfied that it is appropriate to do so.

(5) A person who is dissatisfied with a decision of the Permanent Secretary under subsection (4)(b) or (c) may appeal to the Minister in the prescribed manner and the Minister, after hearing the appeal, may make any decision.

(6) Registration under subsection (2) or removal or restoration of registration under subsection (4) is not conclusive evidence on any question in any civil action in which title to land is in issue.

(7) A person who is not on the appropriate register kept under subsection (2) must not process, manufacture, trade in, ship or engage in the purchase or sale of coconut products.

- (8) A person who contravenes subsection (7) commits an offence.

Records and information

- 6.—(1) The Permanent Secretary may, for the purposes of this Decree, by rules—
- (a) require any person to maintain accurate records in a form and containing the particulars specified by the Permanent Secretary;
 - (b) require any person to provide, within a specified time, returns, information and explanations on matters within the knowledge of that person;
 - (c) require any person to produce or cause to be produced before a specified person any document or other evidence required by the Permanent Secretary for the purpose of verifying any facts and entered in any record maintained under paragraph (a), or stated in any information or explanation provided under paragraph (b).

- (2) A person who fails to comply with a requirement imposed under subsection (1) commits an offence.

(3) If the Permanent Secretary has made rules under subsection (1), it may in writing authorise a person to enter and inspect, at any reasonable time, any land, building, office, store, factory, shed or premises for the purpose of examining and verifying any records or for the purpose of verifying the particulars provided in any record kept or information or explanation given to the Permanent Secretary under the rules.

(4) The Permanent Secretary may in writing authorise a person at any reasonable time to enter any land, building, office, store, factory, shed or premises for the purpose of inspecting and checking stocks of any coconut products.

(5) A person performing a duty under subsection (3) or (4) must carry written authorisation from the Permanent Secretary and must produce it on request.

- (6) A person who obstructs a person performing a duty under subsection (3) or (4) commits an offence.

Disclosure of information

7.—(1) Any particulars obtained by the Permanent Secretary by virtue of rules made under section 6(3) must be treated as confidential by the Permanent Secretary and by every member or employee of the Ministry, except where the person furnishing such particulars otherwise agrees, or if the disclosure or publication of such particulars is necessary for the purposes of this Decree or of any legal proceedings under it.

(2) A person who knowingly discloses or publishes any particulars in contravention of subsection (1) commits an offence.

(3) Nothing in subsection (1) prohibits the disclosure or publication for statistical purposes of facts or figures which make no reference to any particular individual or business.

Part III—COCONUT DEVELOPMENT FUND

Coconut Development Fund

8. The Coconut Development Fund is vested in the Ministry from the commencement of this Decree.

Payments into the Fund

9.—(1) The following are to be paid into the Fund—

- (a) all sums of money appropriated from time to time by Parliament for the Fund;
- (b) the proceeds of registration and licence fees imposed under sections 4 and 5;
- (c) the proceeds of value added tax in respect of classes of goods and services specified under section 10;
- (d) the proceeds of the coconut levy collected in the manner set out in section 11;
- (e) any sums of money received by the Ministry by way of loans, donations, gifts or grants from any source, whether in or outside the Fiji Islands.

Payment of value added tax to the Fund

10. The Minister, with the concurrence of the Minister responsible for Finance, may specify, for the purpose of the Fund, any class or description of manufacture of goods and sale of goods and services, and if the Minister so specifies any manufacture or sale, value added tax collected by the Commissioner of Inland Revenue in respect of that manufacture or sale must be credited to the Fund.

Coconut levy

11.—(1) A levy may be charged on all coconut products traded in the Fiji Islands, at a rate determined by the Minister by order and published in the *Gazette*.

(2) Any levy charged under subsection (1) will be payable on all copra sold to coconut oil makers or exporters and on any other coconut product sold to manufacturers of coconut based products for local consumption or for export.

(3) The levy charged under subsection (1) must be paid by every coconut oil maker, coconut product maker or exporter, as the case may be, direct to the Fund in a manner and at times prescribed the Minister by rules.

(4) A person who fails to pay the levy as required under subsection (4) commits an offence.

Part IV—MISCELLANEOUS

Regulations

12.—(1) The Minister, may make regulations for the purpose of carrying out or giving effect to the provisions of this Decree.

(2) Without limiting sub-section (1), the Minister may make regulations in respect of all or any of the following matters—

- (a) the cultivation and methods of cultivation of prescribed coconut lands;
- (b) with the concurrence of the Minister responsible for lands and the Minister responsible for Fijian Affairs, the utilization of land in prescribed coconut lands, including its utilization for other crops and for animal husbandry;
- (c) the manufacture, packing, storing transport and sale of any coconut product;
- (d) standards of quality to which all manufacturers or shippers of a specified coconut product must conform;
- (e) the grading of copra and the appointment of official graders;
- (f) exemptions from all or any of the provisions of this Decree for a class or classes of coconut product or coconut producer;
- (g) the fees and forms for licences issued under this Decree;
- (h) the manner in which manufacturers of a specified coconut product must efficiently dispose of waste;
- (i) for the inspection, supervision, regulation and control of factories, stores, yards, buildings, premises, equipment and machinery used or to be used for the manufacture, packing and storing of any coconut product;
- (j) the methods, techniques, processes and equipment to be used by all manufacturers of a specified coconut product;

- (k) the cultivation of land with coconut, and the cultivation and utilization of any coconut land on a collective or communal basis;
- (l) assigning to the Ministry the function and power of enforcing any of the regulations made under this section;
- (m) all matters which are required by this Decree to be prescribed by regulation, or in respect of which regulations are required to be made;
- (n) all matters incidental to or connected with the matters referred to in this subsection.

(3) Regulations made under this section may prescribe a penalty for a breach of the regulations not exceeding a fine of \$1000.

Power to make rules

13. The Minister may make rules in respect of all or any of the matters for which rules are authorised or required by or under this Decree to be made, but not including penalties for a breach of the rules.

Penalties

14.- (1) A person who commits an offence under this Decree is liable on conviction to a fine of \$200 for a first offence and \$500 for a second or subsequent offence.

(2) If a person is convicted on more than one occasion of an offence under section 4(4) or (5), the Ministry may cancel the person's licence, or suspend it for a period of up to 12 months.

(3) Before taking action under subsection (2) the Ministry must in writing notify the licence holder of the intended action and give him or her an opportunity to make oral or written representations if he or she so wishes.

Protection for action taken under this Decree or on the direction of the Ministry

15.—(1) No action or prosecution may be brought—

- (a) against the Ministry for any act which in good faith is done or purports to be done by the Ministry under this Decree; or
- (b) against any member or employee of the Ministry for any act which in good faith is done or purports to be done under this Decree or on the direction of the Ministry.

(2) Expenses incurred by the Ministry in any action or prosecution brought by or against the Ministry before any court are to be paid out of the Fund, and any costs paid to, or recovered by, the Ministry in any such action or prosecution must be credited to the Fund.

(3) Any expenses incurred by a person referred to in subsection (1) (b) in any action or prosecution brought against him before a court in respect of any act which is done or purports to be done under this Decree or on the direction of the Ministry must, if the court holds that the act was done in good faith, be paid out of the Funds, unless the expense has been advanced to the person by the Ministry or is recovered by him in the action or prosecution.

(4) A writ against a person or property in an action brought against the Ministry must not be issued against an employee of the Ministry personally.

Assets and liabilities

16.—(1) On the date of commencement of this Decree, all movable property vested in the Coconut Industry Development Authority immediately before that date and used or managed by the Coconut Industry Development Authority and all assets, interests, rights, privileges, liabilities and obligations of the Coconut Industry Development Authority are transferred to and vest in the Ministry without the need for any conveyance, assignment, or transfer.

(2) Every right and liability vested under paragraph 1 in the Coconut Industry Development Authority may, on and after the commencement of this Decree, be sued on, recovered or enforced by or against the Ministry in its own name.

(3) On and after the commencement of this Decree, any agreement relating to any property, rights and liabilities transferred to and vested in the Ministry under paragraph 1 to which the Coconut Industry Development Authority was a party immediately before the commencement of this Decree, whether in writing or not, and whether or not of such a nature that rights and liabilities could be assigned by the Ministry, has effect as if the Ministry had been a party to the agreement.

Repeals and savings

17.—(1) The Coconut Industry Development Act of 1998 is repealed.

(2) Subsidiary legislation made under the repealed Act continue in force as if made under this Decree until amended, replaced or repealed under this Decree, unless and to the extent that the subsidiary legislation is inconsistent with the provisions of this Decree.

(3) Delegations, directions, notices, agreements and other administrative actions or decisions of the Minister, the Coconut Industry Development Authority, Director General of the Coconut Industry Development Authority issued or made under the repealed Act which could be issued continue to have effect as if issued or made under this Decree until varied or revoked under this Decree.

Transitional provisions

18.—(1) On the commencement of this Decree employees of the Coconut Industry Development Authority appointments, terms and conditions shall be determined by policy directive from the Minister.

(2) Licences issued under any provision of the repealed Act remain in force until they expire in accordance with their terms, or until revoked.

(3) Any bond, agreement, instrument or arrangement to which the Coconut Industry Development Authority is a party, subsisting immediately before the commencement of this Decree and relating to the functions of the Coconut Industry Development Authority continues to have effect after that date and is enforceable by or against the Ministry as if it had been entered into by the Ministry under the provisions of this Decree.

(4) Any action, arbitration, proceeding or cause of action that relates to a function of the Ministry and that immediately before the commencement of this Decree is pending or existing by, against, or in favour of the Coconut Industry Development Authority, or to which the Coconut Industry Development Authority is a party, may be continued and enforced by and against the Ministry under the provisions of this Decree.

(4) A prosecution for an offence committed against a repealed law must be brought and continued under that law.

GIVEN under my hand this 27th day of April 2010.

EPHEI NAILATIKAU
President of the Republic of Fiji