

No. 34 of 1989.

Spice Industry Act 1989.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 34 of 1989.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Spice Industry Act 1989,

Being an Act relating to the control of the spice industry, and for related purposes,
MADE by the National Parliament to come into operation in accordance with a notice
in the National Gazette by the Head of State, acting with, and in accordance
with, the advice of the Minister.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III. 3.C (*qualified rights*) of the *Constitution*, namely–

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this law relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**Appeal Committee**” means the Appeal Committee established under Section 30;

“**bounty**” means the bounty determined by the Minister in accordance with Section 22;

“**Fund**” means the Spice Stabilization Fund established by Section 18;

“**the Board**” means the Papua New Guinea Spice Industry Board established by Section 3;

“**member**” means a member of the Board and includes the Chairman and Deputy Chairman;

“**spice export levy**” means the export levy payable under Section 16;

“**Spice Inspector**” means a Spice Inspector appointed under Section 23;

“**spices**” means the following:–

- (a) cardamom (*genera Ellettaria, Amomum and Afromum*);
- (b) chillies, paprika, pimento, tabasco (*Genus capsicum*);
- (c) pepper (*Piper nigrum*);
- (d) ginger (*Zingiber officinale*);
- (e) cloves (*Syzygium aromaticum syn Eugenia carophyllus*);
- (f) nutmeg and mace (*Myristica fragrans*);
- (g) annatto (*Bixa orellana*);
- (h) turmeric (*Curcuma longa*);
- (i) vanilla (*Zanilla fragrans*);
- (j) cinnamon (*Genus Cinnamamum*);
- (k) mint (*genus Mentha*),

and such other spices, essential oils and herbs as may from time to time be declared by the Minister by notice published in the National Gazette to be spices for the purposes of this Act;

“**stabilization levy**” means the stabilization levy fixed by the Board under Section 20.

PART II. – PAPUA NEW GUINEA SPICE INDUSTRY BOARD.

3. ESTABLISHMENT OF THE BOARD.

(1) The Papua New Guinea Spice Industry Board is hereby established.

(2) The Board–

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold and dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Board affixed to a document and shall presume that it was duly affixed.

4. CONSTITUTION OF THE BOARD.

(1) The Board shall consist of seven members being–

- (a) the Departmental Head of the Department responsible for agriculture matters, *ex officio*, or his nominee; and
- (b) four persons who shall be representatives of the smallholder spice growers; and
- (c) two persons who shall be representatives of the larger commercial spice growers or exporters.

(2) The members referred to in Subsection 1(b) and (c)–

- (a)¹ appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* from nominations submitted by organisations and bodies that, in the opinion of the Minister, represent the interests of spice growers in the country; and
- (b) shall be appointed for a term as specified in Subsection (4); and
- (c) are eligible for reappointment.

(3) The Minister shall appoint one of the members to be the Chairman of the Board and the members shall appoint one of their number to be the Deputy Chairman of the Board.

(4) In the case of–

- (a) the first appointments after the coming into operation of this Act–two of the members appointed under Subsection (1)(b) and one of the members appointed under Subsection (1)(c) shall be appointed for a term of 18 months and the remaining members shall be appointed for a term of three years; and

¹ Section 4 Subsection (2) amended by No. 97 of 2006, Sched. 1.

- (b) the second and subsequent appointments—the members shall be appointed for a term of three years.

(5) If the Chairman is absent from a meeting of the Board or is unable to act in relation to a matter, the Deputy Chairman has and may exercise and perform the powers, duties and functions of the Chairman.

5. DUTIES OF MEMBERS.

The functions and duties of each member are—

- (a) to attend meetings of the Board and ensure that the functions of the Board are carried out; and
- (b) subject to the directions of the Board, to make known to the spice industry the activities of the Board.

6. VACATION OF OFFICE BY MEMBERS.

(1) The Minister shall terminate the appointment of a member if the member—

- (a) becomes of unsound mind; or
- (b) is convicted of an offence punishable under law by—
 - (i) death; or
 - (ii) imprisonment for one year or longer; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of his remuneration for their benefit; or
- (d) becomes permanently incapable of performing his duties; or
- (e) resigns his office by written notice to the Minister; or
- (f) absents himself from three consecutive meetings of the Board without the consent in writing of the Chairman; or
- (g) nominates for or is elected to the National Parliament or a Provincial Legislature.

(2) Where a member dies or the appointment of a member is terminated under Subsection (1), the Minister shall, by notice in the National Gazette, declare his office vacant.

7. TERMINATION OF APPOINTMENT.

(1) The Minister may, at any time, by written notice, advise a member that he intends to terminate the appointment of the member on the grounds of inability, inefficiency, incapacity or misbehaviour.

(2) Within 14 days of the receipt of a notice under Subsection (1), the member may reply in writing to the Minister, who shall consider the reply and, where appropriate, terminate the appointment.

(3) Where the member referred to in Subsection (1) does not reply in accordance with Subsection (2), his appointment is terminated.

(4) Where the appointment of a member is terminated under this section, the Minister shall, by notice in the National Gazette, declare his office vacant.

8. MEETINGS OF THE BOARD.

(1) Subject to Subsection (2), the Chairman or Deputy Chairman shall preside at all meetings of the Board.

(2) Where both the Chairman and the Deputy Chairman are absent, the members shall elect one of their number to be chairman for the meeting.

(3) The Board shall meet as often as the business of the Board requires, but in any event shall meet at least once in every four months.

(4) The Chairman shall ensure that notice of an ordinary meeting of the Board is sent to each member at least 14 days before the meeting.

(5) The Chairman shall, if requested to do so by—

(a) the Minister; or

(b) at least four members of the Board,

call an extra-ordinary meeting of the Board as soon as is practicable after receiving the request.

(6) The quorum for all meetings of the Board is four members.

(7) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.

(8) The Chairman has a deliberative vote and, in the event of an equality of votes on a question, a casting vote.

(9) The Board shall cause minutes of its meetings to be recorded and kept.

(10) The exercise and performance of any function of the Board shall not be invalidated by reason of a vacancy in the members of the Board.

9. INDEMNITY OF MEMBERS.

A member is not personally liable for any act done, in good faith, and in the course of carrying out the duties and functions of the Board.

PART III. – FUNCTION AND POWERS OF THE BOARD.**10. FUNCTIONS OF THE BOARD.**

(1) Subject to any direction by the Minister, the functions of the Board are–

- (a) to control and regulate the processing, marketing and export of spices; and
- (b) to promote the consumption and export of spices; and
- (c) to promote research and development programmes for the benefit of the spice industry; and
- (d) to compile statistical data on production, imports and exports of spices and to be familiar with production trends throughout the country and provinces and internationally; and
- (e) to register buyers, processors and exporters of all or any of the spices; and
- (f) to keep a register of buyers, processors and exporters of spices; and
- (g) to formulate a register of processors and of spice grading systems for each of the spices; and
- (h) when required by the Minister, to act as an agent for, and to carry out the obligations of the State in international forums or agreements; and
- (i) to make known to the spice industry the activities of the Board; and
- (j) to do all things which it is required by this Act to do or which are necessary or convenient to be done by the Board for giving effect to this Act.

(2) In the exercise of its functions under this section the Board shall at all times act in the best interest of the spice industry of Papua New Guinea.

11. POWERS OF THE BOARD.

The Board has full powers to do all things necessary to be done to enable it to perform its functions under this Act, including, but without prejudice to the foregoing generality, power–

- (a) to require persons engaged in the spice industry to supply to the Board prescribed information in respect of their activities in the industry; and
- (b) to prohibit or restrict the sale or purchase of spices which fail to comply with prescribed minimum quality standards and to impose such conditions on the disposal of those spices as the Board thinks fit; and
- (c) to monitor prices at which spices are bought and sold; and
- (d) to deal in spices; and
- (e) to enter into contracts; and

- (f) to erect and maintain buildings; and
- (g) to acquire, mortgage or charge, let, hold and dispose of property; and
- (h) to provide assistance to persons engaged in the spice industry; and
- (i) to do anything incidental to its powers.

12. DELEGATION.

(1) The Board may, by instrument in writing under the hand of the Chairman, delegate to any person, all or any of its powers, duties and functions other than this power of delegation.

(2) A delegation under this section is revocable, in writing, at will, and no such delegation prevents the exercise of a power or the performance of a duty or function by the Board.

PART IV. – THE SERVICE OF THE BOARD.

13. APPOINTMENT OF OFFICERS.

(1) The Board may appoint an Executive Officer and such other officers as it considers necessary for the efficient administration of its functions and powers.

(2) Subject to the provisions of the *Salaries and Conditions Monitoring Committee Act 1988*, the Board may determine the terms and conditions of employment of its employees.

(3) If a person appointed under this section was, immediately before his appointment, an officer of the Public Service, his service as an employee of the Board shall for all purposes be counted as service in the Public Service.

14. TEMPORARY AND CASUAL EMPLOYEES.

(1) The Board may appoint such temporary and casual employees as it considers necessary for the purposes of this Act.

(2) An employee appointed under Subsection (1) shall be employed on such terms and conditions as the Board, from time to time, fixes.

PART V. – FINANCE.

15. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

(1) Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Board.

(2) The Board is a trading enterprise for the purposes of Section 62(2) of the *Public Finances (Management) Act 1995*.

16. SPICE EXPORT LEVY.

(1) For the purposes of the administration of the Board, a levy, known as the spice export levy, is payable at a prescribed rate on all spices intended for export.

(2) Different rates of the spice export levy may be prescribed for different types and grades of spices.

(3) Subject to Section 17, the spice export levy shall be calculated, paid and collected as prescribed.

17. BOARD MAY REDUCE, ETC., SPICE EXPORT LEVY.

If, at any time, the Board is satisfied that it is in possession of more money than it requires for the performance of its functions or the exercise of its powers, it may, by notice in the National Gazette, reduce or suspend the obligation to pay the spice export levy imposed by Section 16 for the period specified in the notice.

18. THE SPICE STABILIZATION FUND.

(1) The Spice Stabilization Fund is hereby established.

(2) The Fund is not an asset of the Board, but the Board shall administer the Fund as trustee.

(3) Separate accounts shall be established within the Fund for each of the spices listed in Section 2.

(4) The Board shall administer the Fund with the object of establishing price stabilization within the spice industry.

(5) Payment from the Fund shall not be made to any person except in accordance with this Act.

19. PAYMENTS INTO THE FUND.

The Board shall pay into the Fund—

(a) money received from the collection of the stabilization levy imposed under Section 20; and

(b) money received as interest from money standing to the credit of the Fund; and

- (c) money received from the sale of spices purchased with money from the Fund; and
- (d) money to be used for the purposes of the Fund.

20. STABILIZATION LEVY.

(1) The Board may, from time to time, after consultation with—

- (a) the Minister responsible for agriculture matters; and
- (b) the Minister responsible for financial matters,

by notice in the National Gazette—

- (c) fix a levy, known as the stabilization levy, payable by registered exporters on all spices exported; and
- (d) fix the rate of stabilization levy per tonne of type of spice; and
- (e) fix the date on and from which the stabilization levy is payable; and
- (f) specify the period for which the stabilization levy is payable.

(2) Different rates of stabilization levy may be imposed for different types or grades of spices.

(3) A stabilization levy—

- (a) is payable on all spices exported; and
- (b) shall be collected and paid as prescribed.

(4) A spice, in respect of which a stabilization levy has been fixed but has not been paid, is a prohibited export within the meaning of the *Customs Act 1951*.

21. PAYMENTS FROM THE FUND.

The Board shall not expend money from the Fund except—

- (a) in payment of bounty under Section 22; or
- (b) with the Minister's approval, to recompense the costs necessarily incurred by the Board in administering the Fund.

22. PAYMENT OF BOUNTY FROM THE FUND.

(1) The Minister may, from time to time, after consultation with—

- (a) the Minister responsible for financial matters; and
- (b) the Board,

by notice in the National Gazette, fix a bounty to be made payable to spice growers out of the Fund.

(2) Different rates of bounty may be made payable in respect of different types or grades of spices.

(3) The bounty under Subsection (1) shall be paid as prescribed.

PART VI. – INSPECTION BY THE BOARD.**23. APPOINTMENT OF SPICE INSPECTORS.**

The Minister may, by notice in the National Gazette, appoint persons to be Spice Inspectors for the purposes of this Act.

24. POWERS OF SPICE INSPECTORS.

(1) For the purposes of this Act, a Spice Inspector may, at all reasonable times—

- (a) enter and inspect any place, premises, aircraft, vehicle or vessel; and
- (b) seize and detain, pending an order of court, any spice in respect of which he has reasonable grounds for suspecting that an offence against this Act has been or is being committed; and
- (c) take samples of any spice; and
- (d) examine and take extracts from, or copies of, any delivery docket, waybill, book or other document evidencing the purchase, sale, delivery, ownership, place of production and destination of any spice; and
- (e) require any person taking part, or apparently taking part, in the affairs of a business of buying or selling or processing or selling spices, to provide information relating to the affairs of that business.

(2) The person in charge of any—

- (a) place or premises; or
- (b) aircraft, vehicle or vessel,

on or in which any spice is produced, handled, dried, packed, stored or transported shall give all reasonable assistance to a Spice Inspector for the purpose of the exercise and performance of his powers, functions and duties under this Act.

PART VII. – REGISTRATION OF EXPORTERS, PROCESSORS ETC.

25. BOARD MAY REGISTER BUYERS, PROCESSORS AND EXPORTERS.

(1) The Board may, on application, register a person as a buyer, processor or exporter of all or any of the spices.

(2) Registration under Subsection (1)–

- (a) may be subject to such conditions and restrictions as the Board thinks fit; and
- (b) shall remain in force, unless cancelled in accordance with this Act, for such period (not exceeding three years) as is determined by the Board; and
- (c) may be renewed for such period (not exceeding three years) as is determined by the Board.

26. APPLICATION FOR REGISTRATION.

(1) A person may apply to the Board for registration as a buyer, processor or exporter of all or any of the spices.

(2) An application under Subsection (1) shall–

- (a) be in the prescribed form; and
- (b) contain particulars of the applicant’s financial position and of his proposals relating to the facilities or organization for the storage, control of quality, handling and marketing of the relevant spices; and
- (c) contain such other particulars as are prescribed; and
- (d) be accompanied by the prescribed fee.

27. BOARD TO CONSIDER APPLICATION, ETC.

(1) Where an application is made to the Board under Section 26, the Board shall consider the application and may, in its discretion–

- (a) grant the application and register the applicant as a buyer, processor or exporter of all or any of the spices subject to such conditions and restrictions (if any) as the Board thinks fit; or
- (b) refuse the application.

(2) Without prejudice to or limiting the Board’s discretion under Subsection (1), the Board may refuse an application where, in the opinion of the Board, the applicant has not adequate finance, facilities or organization for the storage, control of quality, handling or marketing of the relevant spices.

28. CERTIFICATE OF REGISTRATION.

Where the Board registers a person under Section 27(1)(a) it shall issue to him a certificate of registration in the prescribed form and shall endorse on the certificate of registration any conditions referred to in Section 27(1)(a).

29. CANCELLATION OF REGISTRATION.

The Board may cancel the registration of a person as a registered buyer, processor or exporter under Subsection (1) if the Board is satisfied that—

- (a) registration was obtained by—
 - (i) means of a false or misleading statement; or
 - (ii) partly by means of a false or misleading statement; or
 - (iii) fraud; or
 - (iv) by other improper means; or
- (b) the person has been convicted of an offence under this Act; or
- (c) the person has not, in the Board's opinion, adequate finance, facilities or organisation for the storage, control of quality, handling or marketing of the relevant spices.

30. APPEAL COMMITTEE.

(1) For the purpose of appeals under Section 31 there is established an Appeal Committee.

(2) The Appeal Committee shall consist of—

- (a) an officer nominated by the Departmental Head of the Department responsible for agriculture matters, who shall be Chairman; and
- (b) two other persons, other than officers of the Public Service, who shall be representatives of the spice industry, appointed by the Minister by notice in the National Gazette.

(3) The Chairman of the Appeal Committee shall determine—

- (a) the time and place of; and
- (b) subject to Section 31(3), the procedure to be followed at,

meetings of the Appeal Committee.

31. APPEALS.

(1) A person, aggrieved by a decision of the Board—

- (a) to refuse under Section 27(1)(b) to grant his application; or
- (b) in relation to any conditions or limitations to which his registration is made subject; or

(c) to cancel his registration under Section 29,
may appeal in writing to the Appeal Committee.

(2) As soon as practicable after receipt of an appeal under Subsection (1), the Appeal Committee shall meet and consider the appeal.

(3) The procedure during the consideration of an appeal shall be informal but regard shall be had at all times to natural justice.

(4) The decision of the Appeal Committee is final and shall be implemented as if it were a decision of the Board.

PART VIII. – OFFENCES.

32. FAILURE TO SUPPLY INFORMATION OR SUPPLYING FALSE, ETC., INFORMATION TO THE BOARD.

A person who fails to supply information, or who supplies false or misleading information, to the Board when required to do so under Section 11(a) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

33. FAILURE TO COMPLY WITH QUALITY STANDARDS, ETC.

A person who—

- (a) contrary to a prohibition or restriction under Section 11(b), sells or purchases spices which fail to comply with prescribed minimum quality standards; or
- (b) fails to comply with, or observe, the conditions imposed by the Board under Section 11(b),

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

34. SPICE INSPECTOR NOT TO EXCEED POWERS.

A Spice Inspector who exceeds or abuses his powers under this Act is guilty of an offence.

Penalty: A fine not exceeding K200.00.

35. OBSTRUCTION, ETC., OF SPICE INSPECTOR, ETC.

A person who, without reasonable excuse (proof of which is on him)—

- (a) hinders or obstructs a Spice Inspector in the exercise or performance of his powers or functions under this Act; or
- (b) fails or refuses, when requested by a Spice Inspector, to provide any document relating to the spice industry in his possession or control; or
- (c) fails or refuses to provide information required under Section 24(1)(e),

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

36. PERSON OTHER THAN REGISTERED BUYER, PROCESSOR OR EXPORTER MAY NOT BUY, PROCESS OR EXPORT SPICES.

A person who is not a—

- (a) registered buyer, who buys spices other than for his own domestic consumption; or
- (b) registered processor, who processes spices other than for his own domestic consumption; or
- (c) registered exporter, who exports spices,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

37. PERSON GIVING FALSE INFORMATION, ETC.

A person who, for the purpose of obtaining registration as a buyer, processor or exporter of spices, gives false or misleading information to the Board, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

38. EXPORT OF SPICES NOT IN ACCORDANCE WITH SAMPLE.

A person who—

- (a) sells; or
- (b) agrees to sell,

any spices for export by sample or description graded according to standards set by the Board and subsequently, wilfully or negligently exports, on the basis of that sample or description, spices which do not substantially conform to that sample or description, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

39. DOMESTIC SALE OF SPICES NOT IN ACCORDANCE WITH SAMPLE.

A person who—

- (a) sells; or
- (b) agrees to sell,

to any person any spices by sample or description graded according to standards set by the Board and subsequently, wilfully or negligently sells or agrees to sell, on the basis of that sample or description, spices which do not substantially conform to that sample or description, is guilty of an offence.

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Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

PART IX. – MISCELLANEOUS.

40. BOARD NOT TO ENGAGE IN POLITICS.

The Board shall not–

- (a) spend money for a purpose connected with politics or a political party; or
- (b) become affiliated with a body, association or organisation having political objectives.

41. REGULATION.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing–

- (a) information to be provided to the Board by persons engaged in the spice industry; and
- (b) qualifying standard for spices; and
- (c) rates of levy payable and the manner in which that levy is to be calculated, paid and collected; and
- (d) the manner in which a stabilization levy imposed under the Act is to be calculated, paid and collected; and
- (e) the manner in which bounty to be paid out under the Act is to be calculated and paid; and
- (f) the manner of sampling spices whether intended for export or otherwise; and
- (g) marks to be placed on containers, containing spices intended for export by exporters; and
- (h) marks to be placed by Spice Inspectors on containers containing spice intended for export; and
- (i) the types, sizes and construction of containers to be used for export; and
- (j) the method of appealing to the Appeal Committee; and
- (k) fees to be paid to the Board; and
- (l) requirements relating to export documentation; and
- (m) penalties of fines not exceeding K1,000.00 for offences against the regulations.