



I assent.

[L.S.]

J. I. ULUIVUDA
President

[4th November 2004]

AN ACT

TO ESTABLISH A TRUST FUND FOR FIJIANS AND ROTUMANS, TO PROVIDE FINANCIAL AUTONOMY TO THE BOSE LEVU VAKATURAGA, TO EARN INCOME FOR THE PURPOSES OF THE FUND AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) This Act may be cited as the Fijians Trust Fund Act 2004.

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

Interpretation

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

“beneficiaries” means persons or institutions that are beneficiaries of the Fund under section 5;

“BLV” means the Bose Levu Vaturaga (Great Council of Chiefs) established under the Fijian Affairs Act (Cap.120);

“Board” means the Fijians Trust Fund Board established under section 7;

“Fijian Affairs Board” means the Fijian Affairs Board established under the Fijian Affairs Act (Cap. 120);

“Fund” means the Fijians Trust Fund established under section 3.

PART 2—ESTABLISHMENT OF FIJIANS TRUST FUND AND BOARD

Establishment of the Fund

- 3.—(1) This section establishes the Fijians Trust Fund consisting of—
- (a) trust property and retained earnings of the Fijians Trust Fund, an incorporated trust for charitable purposes registered on 18 January 2002;
 - (b) amounts received by way of dividends and other income from investments of the capital of the Fund as authorized under this Act;
 - (c) any amount appropriated by Parliament; or
 - (d) any grant or donation to the Fund.

(2) The Board must not transfer or assign to the BLV or any person any part of the Fund other than in accordance with this Act.

(3) Income from the Fund may be applied for the purpose of meeting the operating expenses of the Fund and the Board, including all costs, charges and expenses incidental to the management of the Board or to the exercise of any power, duty or function of the Board.

(4) The Trustee Act (Cap. 65) does not apply to the Fund or the Board.

Purposes of the Fund

4. The purposes of the Fund are—
- (a) to provide financial independence and autonomy in relation to the operations and administration of the BLV;
 - (b) to provide funding for the undertaking, promotion and sponsoring of programmes on Fijian and Rotuman languages, culture and the study of ethno-geography and ethno-history;
 - (c) to provide funding to help develop the management, leadership and entrepreneurial skills of indigenous Fijians and Rotumans;
 - (d) to sponsor research into languages, art and culture of indigenous Fijians and Rotumans and the better understanding and preservation of their heritage;
 - (e) any other purposes approved by the BLV as advantageous to the beneficiaries.

Beneficiaries of the Fund

5. The beneficiaries of the Fund are indigenous Fijians and Rotumans and their institutions, including the BLV, selected under guidelines determined by the BLV, and registered and issued with certificates as prescribed by regulation.

Application of Fund income

6. The Board must expend the net income from the Fund for the purposes of the Fund.

Establishment of the Board

7.—(1) This section establishes the Fijians Trust Fund Board.

(2) The Board is a body corporate with perpetual succession and a common seal, which may acquire, hold or dispose of property, enter into contracts and sue and be sued in its corporate name.

(3) The Board consists of 8 members to be appointed by the Minister including—

- (a) 5 members nominated by the BLV;
- (b) one member, who must be a legal practitioner registered under the Legal Practitioners Act 1997;
- (c) one member, who must be a chartered accountant in public practice registered under the Fiji Institute of Accountants Act (Cap. 259);
- (d) one member, who must be a person with suitable qualifications and work experience as an economist, professional manager, sociologist, historian or similar expertise.

(4) Nominations made under subsection (3)(a) are not limited to members of the BLV and appointments made under paragraphs (b), (c) and (d) of subsection (3) are not limited to indigenous Fijians and Rotumans.

(5) The Minister, after consultation with the BLV, shall designate a member of the Board as Chairperson of the Board.

(6) Unless earlier removed in accordance with this Act, members are appointed for a term of 3 years and are eligible for re-appointment for one subsequent 3-year term.

(7) A member of the Board may be removed from office for inability to perform the functions of a member, whether arising from infirmity of body or mind or any other cause, or for misbehaviour or for absence from 3 consecutive meetings of the Board without reasonable excuse, and may not otherwise be removed.

Functions of the Board

8.—(1) The functions of the Board are—

- (a) to invest the Fund, as the Board determines, in any investment approved by the Minister of Finance or of a kind authorized under the Trustee Act; and
- (b) after making provision for the expenses of administration, to expend the net income arising from the investments.

(2) The Board may in respect of any moneys invested under subsection (1) vary, sell and transfer any such investments as may from time to time be necessary for the proper administration of the Fund.

Meetings of the Board

9.—(1) The Board must meet at least once every 3 months or upon the written request to the Chairperson by not less than 5 members.

(2) In the absence of the Chairperson at a meeting, the members must appoint a temporary Chairperson to exercise the powers and function of the Chairperson for that meeting.

(3) The quorum at a meeting of the Board consists of 4 members, not less than 3 of whom must be appointed under section 7(3)(a).

(4) If there is an equality of votes on any question before the Board, the Chairperson shall have a casting vote.

(5) The Board may take independent legal advice on any matter concerning the position of a member of the Board or on the administration of the Fund.

(6) The Board may appoint one or more special purpose subcommittees of the Board to examine specific topics and report their findings to the full Board, and in the performance of such examination, a subcommittee may recruit the assistance of professional and other advisors.

(7) The Board shall determine its own procedure.

Powers of the Board

10. The Board is empowered—

- (a) to draw up for approval by the Fijian Affairs Board and subsequent endorsement by the BLV, an annual strategic plan and budget, and set performance objectives and implement and monitor performance under such plans and objectives;
- (b) to determine the quantum of allocation of funds from the income of the capital of the Fund for beneficiaries selected by the BLV, in a manner and under terms and conditions that the Board considers to be in the best interests of the Fund and the recipient beneficiaries;
- (c) to require beneficiaries to furnish any information in respect of funds to be allocated and may require an independent audit of the funds allocated;
- (d) to terminate funding arrangements for any beneficiary upon non-compliance of any terms or conditions of the funds allocated;
- (e) to pay from the income of the Fund any expenses, cost or expenditure, including legal and accounting fees, properly incurred in the discharge of its functions under the Act;

- (f) to retain income in the Fund, after paying expenses, costs or expenditure, to be applied for the purposes of the Fund;
- (g) to do all acts and things which the Board considers necessary or desirable and proper to further the purposes of the Fund and in the best interests of the beneficiaries.

Disclosure of interest

11. A member of the Board who has an interest in a matter to be discussed or determined by the Board must declare his interest and must not take part in any decision of the Board on the matter.

Allowances, fees and expenses

12. The members of the Board are entitled to allowances, fees and expenses as prescribed by the Minister.

PART 3—MANAGEMENT AND FINANCIAL PROVISIONS

Chief Executive Officer and other staff

13. The Board may appoint a Chief Executive Officer and other staff as it considers necessary for the proper and efficient carrying out of the functions of the Board.

Power to give directions

14. The Minister, on the recommendation of the Fijian Affairs Board, may give a general or special policy direction to the Fijians Trust Fund Board relating to the exercise of its functions under section 8(1)(b) and the Board must comply with the direction.

Power to borrow

15. The Board may, with the approval of the Minister of Finance, borrow any sums required by the Board to exercise its powers or carry out its functions and duties.

Accounts and audit

16.—(1) The Board must keep accounts and records of transactions of the Fund and its operations and must prepare financial statements and accounts for each financial year.

(2) The accounts of the Board must be audited annually by an auditor who is a chartered accountant registered under the Fiji Institute of Accountants Act (Cap. 259), and holds a certificate of public practice as required under section 36 of that Act and is approved by the Minister.

Annual report

17.—(1) The Board must in each year prepare a report on its activities and on the Fund, including its financial report, and submit the report to the Minister within 6 months from the end of the year to which the report relates.

(2) The Minister must cause a copy of the annual report to be laid before each House of Parliament at the meeting of Parliament after the Minister receives the report.

PART 4—MISCELLANEOUS

Protection from personal liability

18. A member of the Board or of a committee, the Chief Executive Officer, the Secretary to the Board or other staff member of the Board is not personally liable for any act or default done or omitted to be done in good faith under this Act and any sums of money, damages or costs which may be recovered against the member or staff member in respect of such an act or default are to be paid out of the Fund.

Termination

19. The Fijians Trust Fund incorporated in the Fiji Islands on 20 December 2001 under a Declaration of Trust and a Funding Deed registered with the Registrar of Deeds on 18 January 2002 is terminated.

Regulations

20. The Minister may make regulations to give effect to the provisions of this Act and in particular to provide for registration as beneficiaries and the issue of certificates and their content.

Transitional and savings

21.—(1) At the commencement of this Act, any property, rights, obligations or liabilities vested in or belonging to the Fijians Trust Fund incorporated in the Fiji Islands on 20 December 2001 is vested in or transferred to the Fund without conveyance, transfer or assignment to be held by the Fund for the purposes of the Fund.

(2) At the commencement of this Act, the members of the Board of Trustees of the Fijians Trust Fund incorporated in the Fiji Islands on 20 December 2001 continue as if they had been appointed under this Act until their terms of office expire.

(3) At the commencement of this Act, the Chief Executive Officer of the Fijians Trust Fund continues as if he had been appointed under this Act until his term of office expires.

Consequential amendment

22. Section 17 of the Income Tax Act (Cap. 201) is amended by substituting the full-stop at the end of paragraph (60) with a semi-colon and by adding the following paragraph—

“(61) the income of the Fijians Trust Fund.”.

Passed by the House of Representatives this 30th day of September 2004.

Passed by the Senate this 22nd day of October 2004.