

COFFEE (GENERAL) RULES, 2002

ARRANGEMENT OF RULES

PART I – PRELIMINARY

Rule

1. Citation.
2. Interpretation.

PART II – REPRESENTATIVES OF COFFEE GROWERS AT ANNUAL AND SPECIAL GENERAL MEETINGS CONVENED BY THE BOARD

3. Meetings to which this Part applies.
4. Representation of pulping stations.
5. Covering of meetings.

PART III – REGISTRATION AND LICENSING

6. Certain registration requirements.
7. Cancellation or suspension of licences.
8. Registration of plantation growers.

PART IV – COFFEE CULTIVATION AND PRIMARY PROCESSING

9. Notice to be given of coffee planted or uprooted.
10. Changes to be registered with Board or Co-operative Society.
11. Coffee seeds and plant materials.
12. Minister to take measures to contain coffee diseases.
13. Grower miller to submit records to Board.
14. Movement permit.
15. Advances and loans.
16. Cherry advance system.
17. Amendment of by-laws co-operative society.
18. Arrangements to be made for loan recovery procedures.
19. Agreements signed but not executed before commencement of Act.
20. Board to be informed of abandonment of operation, etc., of pulping station.
- 20A. Notice of appointment of management agent.

PART V – COFFEE MILLING

21. Coffee mills.
22. Milling agreements to be in writing.
23. Coffee to be milled on first in, first out basis.
24. Deduction of milling charges.
25. Millers to mill coffee within sixty days of receipt.
26. Commercial miller to provide returns.
27. Delivery of milled coffee.
28. Miller to obtain insurance.
29. Commercial miller to account for mill by-products.
- 30.
31. Milling charges.

[Subsidiary]

PART VI – COFFEE MARKETING AND PAYMENT OF COFFEE PROCEEDS

Rule

32. Appointment and termination of management agent.
- 32A. Requirements for marketing agents licence.
33. Bank guarantee.
- 33A. No exporter, roaster to be marketing agent.
- 34.
35. Statutory deductions.
36. Marketing agent to disclose selling price, etc.
37. Promotion of Kenya coffee.
38. Books of account by marketing agent, etc.
39. Other duties of marketing agent.
40. Funds accruing from coffee cess.
41. *Deleted.*
42. Advertisements, etc., by marketing agent to be fractural, etc.
43. Marketing agent to submit to Board audited accounts.
44. Marketing agent to publish tariffs, etc.
45. Late payments to attract interest.
46. Reporting of matters affecting the industry.

PART VII – DEALING IN AND MOVEMENT OF COFFEE

47. Certificates.
- 47A. Buyer, etc., of specialty coffee to provide details.
- 47B. Requirements for arrangements for specialty coffee.
- 47C. Inspection of specialty coffee facilities, etc.
48. Stock returns by licensed dealer.
49. No further post auction trade, etc.
- 49A. Local contract of sale, etc., not direct sale.
50. Prohibition of blending foreign and Kenya Coffee.
51. *Deleted.*
52. Marketing agent to issue certificate of purchase.
53. Offence to alter certificate of origin.
54. Dealer to submit to Board certain particulars.
55. Movement permit.
56. Exemption for small quantity.
57. Coffee warehouses to be designated as such.
58. Monitoring of agents.
59. Coffee not to be removed without coffee warrant.
60. Prohibition of lien over coffee by warehousemen.
61. Warehouseman to insure coffee in his custody.

VIII – GENERAL PROVISIONS

62. Management of Nairobi Coffee Exchange.
63. Dispute resolution.
64. Board to appoint inspectors.
65. No seals, labels, etc., to be removed.

Rule

- 66. Sampling of coffee.
- 67. Engagement of experts.
- 67A. Licences to be under seal.
- 68. General penalty etc.
- 69. Temporary provision.

SCHEDULES

- FIRST SCHEDULE – MILLING AGREEMENT
 - SECOND SCHEDULE – OFFICIAL COFFEE GRADES
 - THIRD SCHEDULE – NOTICE OF APPOINTMENT OF MARKETING AGENT
 - FOURTH SCHEDULE – REQUIREMENTS FOR LICENSING MARKETING AGENT
 - FIFTH SCHEDULE – MARKETING AGENCY AGREEMENT
 - SIXTH SCHEDULE – TRIPARTITE MARKETING AGENCY AGREEMENT
 - SEVENTH SCHEDULE – DEED OF GUARANTEE
 - EIGHTH SCHEDULE – *DELETED*
 - NINTH SCHEDULE – DIRECT COFFEE SALES CONTRACT
-

COFFEE (GENERAL) RULES, 2002

[L.N. 123/2002, Corr. No. 114/2002, L.N. 100/2006, L.N. 186/2007, L.N. 79/2012.]

PART I – PRELIMINARY**1. Citation**

These Rules may be cited as the Coffee (General) Rules, 2002.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**coffee sales proceeds**” means monetary consideration received in exchange for coffee at the auction, or through direct sales, being not less than the actual coffee realization;

“**direct sales**” means a contractual agreement between the grower and his or its marketing agent and a buyer located outside Kenya for the sale of clean coffee based on mutually accepted terms and conditions enforceable in law and registered with the Board;

“**inspector**” means an inspector appointed by the Board under these Rules;

“**marketing agency contract**” means a contract between a grower and a marketing agent which specifies the powers and functions to be exercised or performed by the agent on the grower’s behalf;

“**out-turn**” means a millable lot;

“**out-turn statement**” means an out-turn statement in the form prescribed in the Coffee (Forms) Rules, 2002;

“**prompt date**” means the date specified in the sales catalogue on which coffee sales proceeds are to be received by a marketing agent from the dealers or buyers;

“**sales catalogue**” means a document prepared by a marketing agent for sale of clean coffee at the Nairobi Coffee Exchange and through the direct sale;

“**specialty coffee**” means Kenya mild arabica coffee grown above 1,200 metres above sea level and possessing special characteristics defined by the buyer prior to entering into the contract and made known to the Board in writing by the grower or his or its marketing agent.

[L.N. 100 of 2006, s. 2(a).]

PART II – REPRESENTATIVES OF COFFEE GROWERS AT ANNUAL AND SPECIAL GENERAL MEETINGS CONVENED BY THE BOARD**3. Meetings to which this Part applies**

This Part applies to an annual or special general meeting referred to in section 16 of the Act.

[Subsidiary]

4. Representation of pulping stations

(1) A co-operative society shall, in respect of each pulping station, be entitled to five representatives at a meeting distributed evenly on a pulping station catchment area basis and elected by members of the pulping station:

Provided that—

- (a) where a co-operative society does not have a pulping station, it shall be treated as having one pulping station and any reference to a pulping station in this Part shall be deemed to include such co-operative society; and
- (b) no pulping station shall qualify to elect representatives under this rule, or to participate at a meeting unless the pulping station has been active in delivery of coffee during the past one year immediately preceding the meeting.

(2) Every registered plantation grower shall be entitled to send one representative to a meeting, who shall be the owner or a director or partner of the owner of the plantation.

(3) The manager of a pulping station in a co-operative society and each plantation grower shall submit to the Board the names of the representatives they are respectively entitled under this rule to send to a meeting for the purpose of preparing the representatives register.

5. Covering of meetings

The Board shall give registered plantation growers and pulping stations twenty-one days' notice in writing of any meeting to which this Part applies which it proposes to convene.

PART III – REGISTRATION AND LICENSING

[L.N. 100/2006, s. 3.]

6. Certain registration requirements

(1) A person who applies for registration, or for licensing for the first time, shall submit to the Board certified copies—

- (a) in case of a co-operative society, a growers' association or a plantation owner, a certified copy of its certificate of registration and registered by-laws or constitution, as the case may be;
- (b) in case of a company, a certified copy of its certificate of incorporation and memorandum and articles of association;
- (c) in case of an individual, proof of ownership of the business.

(2) An application for a renewal of a licence shall be accompanied by a copy of the list of the current office bearers and board of directors, as the case may be, of the entity making the application.

[L.N. 100/2006, s. 4.]

7. Cancellation or suspension of licences

(1) The Board may cancel, suspend or refuse to renew the licence of any person—

- (a) who contravenes any of the provisions of the Act or these Rules; or
- (b) who does not meet the requirements of, or who contravenes the terms and conditions attached to, the licence.

(2) Before taking action under this rule, the Board shall serve notice on the licensee inviting him to write to the Board to show cause why the action ought not to be taken, and affording him a reasonable time within which to do so.

[Subsidiary]

(3) Any licensee aggrieved by the decision of the Board under this rule may, within thirty days after the decision has been communicated to him, appeal to the Minister, whose decision shall be final.

8. Registration of plantation growers

A person having four or more hectares of coffee planted in an area within reasonable proximity of a co-operative society, or having two or more hectares planted in any area outside such proximity, and who in either case is licensed to operate a pulping station, may be registered as a plantation owner.

[L.N. 100/2006, s. 5.]

PART IV – COFFEE CULTIVATION AND PRIMARY PROCESSING

9. Notice to be given of coffee planted or uprooted

(1) Every plantation owner who plants or uproots his coffee shall, within six months after doing so, inform the Board in writing of the area of coffee planted or uprooted.

(2) Every owner who is a member of a co-operative society who plants or uproots his coffee shall, within six months of doing so, inform the co-operative society in writing of the area planted or uprooted, and the co-operative society shall forthwith give written notice thereof to the Board after registering such details from the owner.

[L.N. 100/2006, s. 6.]

10. Changes to be registered with Board or Co-operative Society

Every grower who changes the name of his farm or estate, its land reference number or its distinguishing marks registered with the Board, whether on a subdivision of the estate or otherwise, shall report such changes—

- (a) to the Board, in the case of a coffee plantation grower; or
- (b) to the co-operative society, in the case of a grower member of a co-operative society:

Provided that the Board shall not effect such charges unless the grower has cleared all the liabilities with financiers or has agreed to liquidate such liabilities.

[L.N. 100/2006, s. 7.]

11. Coffee seeds and plant materials

(1) No person, other than the Coffee Research Foundation and its authorized agents operating laboratories or tissue culture units under the supervision of the Coffee Research Foundation, shall issue certified coffee seeds or seedlings for multiplication in any nursery to any other grower or for export without the approval of the Kenya Plant Health Inspectorate Service.

(2) No certificate or authority to prepare coffee seedlings or plant materials shall be granted by the Board unless the applicant for the certificate or authority holds a phytosanitary certificate issued by the Kenya Plant Health Inspectorate Service.

(3) A person shall not operate a private or commercial coffee nursery without registration by the Board.

[L.N. 79/2012, s. 2.]

12. Minister to take measures to contain coffee diseases

Whenever it appears to the Minister that there is a threat to coffee trees through disease or insect pests, to an extent that endangers neighbouring coffee farms or plantations or that is likely to seriously affect the quality of produce thereon, he may by order prescribe such measures as are necessary to contain such threat.

[Subsidiary]

13. Grower miller to submit records to Board

A grower who or which mills and markets his or its own coffee shall ensure that the delivery records are submitted to the Board for the Board's examination and record.

[L.N. 100/2006, s. 8.]

14. Movement permit

(1) No person shall move coffee unless that person has been issued with a movement permit by the Board in respect of that particular consignment of coffee.

(2) No person shall change his name as entered in the movement permit.

[L.N. 100/2006, s. 9.]

15. Advances and loans

(1) Cherry and parchment advances may be made to a grower by the marketing agent on such terms and conditions as shall be agreed between the parties.

(2) The World Bank funded Smallholder Coffee Improvement Project being implemented through the Co-operative Bank of Kenya and based on negotiations of the credit agreement between the Co-operative Bank of Kenya, the Government of Kenya and the World Bank shall be upheld and suitable arrangements on loan recovery procedures shall be made simultaneously between the Co-operative Bank of Kenya and marketing agents.

(3) Irrevocable orders issued to the Board by any grower in respect of loan or advance commitments shall be transferred from the Board to the respective marketing agents appointed by the growers:

Provided that where the transfer of irrevocable orders or their re-designation is, in the opinion of the Board, impracticable, the Board, in consultation with financiers, may arrange for the issue of fresh irrevocable orders with the marketing agents.

(4) A marketing agent shall issue growers' payment statements showing loan recoveries as instructed by the growers with the concurrence of the financier.

(5) A marketing agent who fails to deduct and remit loan recoveries as specified in subrule (2) shall pay the interest accruing from the loan during the period when that loan remains outstanding owing to such a delay.

[L.N. 100/2006, s. 10(b).]

16. Cherry advance system

(1) No person shall obtain cherry advance under the cherry advance system or demand parchment advances from a financier unless that person has hypothecated crops or stocks and the person has registered a crop development contract with the Board.

(2) The Board shall not register a crop development contract agreement or hypothecation charge in favour of any person if the grower has already entered into a subsisting crop development agreement with another person.

17. Amendment of by-laws of co-operative society

A co-operative society may make provision in its by-laws to facilitate payments to growers through coffee factory bank accounts and for purposes of milling and sale of coffee:

Provided that such services of the co-operative society, if offered, shall not be the only option available to the members.

[L.N. 100/2006, s. 11.]

18. Arrangements to be made for loan recovery procedures

The Board may co-ordinate suitable arrangements between the grower, marketing agents and other financiers on loan recovery procedures.

[L.N. 100/2006, s. 12.]

19. Agreements signed but not executed before commencement of Act

Subject to these Rules, any contract or agreement that was entered into but was not performed, or was not completely performed, by the former Board prior to its replacement may be regularized by the parties, and the marketing agents may recover the loans or advances and remit the same to the former agents, financiers or the Board, as the case may require, and marketing agents may be required to recover the costs, other charges or loans agreed upon by the parties in any agreement.

20. Board to be informed of abandonment of operation, etc., of pulping station

Every grower licensed to construct or operate a pulping station who abandons such construction or operation shall so inform the Board in writing within ninety days of doing so.

20A. Notice of appointment of management agent

Notice of appointment by a grower of a management agent shall be given in writing by the grower to the Board.

[L.N. 100/2006, s. 13.]

PART V – COFFEE MILLING**21. Coffee mills**

(1) All commercial coffee mills shall be located on such land, being either commercial or industrial land in the business area, as may be approved by the local authority.

(2) A person who intends to engage in the business of a coffee miller shall make an application to the Investment Promotion Centre for a general authority in accordance with section 4A of the Investment Promotion Centre Act (Cap. 485).

22. Milling agreements to be in writing

(1) The terms of agreement between a grower and miller for the milling of coffee shall be reduced to writing.

(2) The agreement shall take the form set out in the First Schedule, with such minor modifications or adaptations, if any, as the parties see fit to make.

[L.N. 79/2012, s. 3.]

23. Coffee to be milled on first in, first out basis

Every commercial coffee miller shall mill coffee on a first-in, first-out basis:

Provided that nothing in this rule shall relieve the miller of liability in respect of a requirement to deliver coffee to the marketing agent within the period specified in the relevant agreement.

24. Deduction of milling charges

Except as otherwise agreed between the miller and the grower, milling charges shall be deducted by the marketing agent from the payments due to the grower on each out-turn for remittance to the contracted commercial coffee miller.

[Subsidiary]

25. Millers to mill coffee within sixty days of receipt

Except as otherwise agreed between the miller and the grower, a commercial coffee miller shall mill all the coffee in his possession within sixty days after receipt of the parchment coffee from the grower.

26. Commercial miller to provide returns

A commercial coffee miller shall, after milling, provide returns of stock and any other returns to the grower, the Board and the marketing agent.

[L.N. 100/2006, s. 14.]

27. Delivery of milled coffee

(1) Every commercial coffee miller shall after milling coffee deliver clean coffee within the agreed period to the designated warehouse, from which the marketing agent shall draw samples of coffee for classification.

(2) The coffee so milled shall conform to the standards of the International Standards Organisation and the Kenya Bureau of Standards and shall be in conformity with the seven grades specified in the Second Schedule to these Rules.

28. Miller to obtain insurance

(1) Every commercial coffee miller shall take out insurance cover against fire, thefts and other risks for all coffee delivered to him for milling and for milled coffee which has not yet been handed over to the marketing agent.

(2) A commercial miller shall ensure that the coffee in his possession is properly secured to protect that coffee from any damage, pilferage or degeneration in quality.

[L.N. 100/2006, s. 15(b).]

29. Commercial miller to account for mill by-products

Every commercial miller shall account for mill spillage or sweepings and all other coffee by-products to the grower through his marketing agent, on a weekly basis or at such other intervals as the Board may determine.

30. A private miller or commercial miller shall not be licensed as a coffee dealer.

[L.N. 100/2006, s. 16, L.N. 79/2012, s. 4.]

31. Milling charges

(1) Milling charges shall be declared each year by the miller and monitored by the Board.

(2) A co-operative society's commission used to meet recurrent operating costs shall be set annually by the Commissioner for Co-operative Development as a percentage of the gross receipts by the Co-operative Society, and shall be monitored by the Board.

PART VI – COFFEE MARKETING AND PAYMENT OF COFFEE PROCEEDS**32. Appointment and termination of management agent**

(1) Notice of the appointment by a grower of a marketing agent shall be given in writing to the Board in the form set forth in the Third Schedule, together with the marketing agency agreement by which he is appointed.

[Subsidiary]

(2) A marketing agency agreement shall take the form set out in either the Fifth or the Sixth Schedule, with such minor modifications or adaptations, if any, as the parties see fit to make.

[L.N. 100/2006, s. 17, L.N. 79/2012, s. 5.]

(3) Except as otherwise provided by the marketing agency contract, the contract may be terminated by either party on three months' notice in writing to the other.

(4) Notice of any such termination, whether in accordance with subrule (3) or in accordance with the contract, shall be given to the Board by the party effecting the termination.

32A. Requirements for marketing agents licence

An applicant for a marketing agent's licence shall meet the requirements prescribed in the Third Schedule.

[L.N. 100/2006, s. 18.]

33. Bank guarantee

(1) A marketing agent shall possess—

- (a) a bank guarantee as specified in the Seventh Schedule;
- (b) evidence of ownership of coffee, by a grower who is licensed as a marketing agent.

(2) A bank guarantee to be given to the Board as required by section 24(1)(a) of the Act shall be given by a bank licensed by the Central Bank of Kenya.

(3) In case of default in the payment due to the grower or any institution the Board may have recourse to the bank guarantee and shall ensure that the affected grower or institution is duly paid.

(4) The grower may for this purpose appoint the Board, his financier or both as the attorney to call up the guarantee on his behalf in order to enforce the guarantee in case of default.

[L.N. 100/2006, s. 19, L.N. 79/2012, s. 6.]

33A. No exporter, roaster to be marketing agent

No dealer who exports coffee and no roaster of coffee shall be licensed as a marketing agent.

[L.N. 186/2007, s. 2.]

34. A dealer shall not be licensed as a marketing agent.

[L.N. 100/2006, s. 20, L.N. 79/2012, s. 7.]

35. Statutory deductions

A marketing agent shall remit the statutory deductions to the respective institutions to which they are due as soon as practicable but in any event not later than seven days after the prompt date.

36. Marketing agent to disclose selling price, etc.

(1) The marketing agent shall disclose to the grower and the Board the selling price at the auction and in direct sales, all other deductions and all material facts pertaining to any transaction on coffee.

[Subsidiary]

(2) A marketing agent who contravenes subrule (1) commits an offence.

(3) The contract for direct sales shall be registered with the Board and shall be in the form specified in the Ninth Schedule.

[L.N. 100/2006, s. 21.]

37. Promotion of Kenya coffee

A marketing agent shall contribute to the promotion of Kenya coffee both in the local and overseas markets and shall ensure that coffee received by him from a grower is sold at the best price available.

[L.N. 100/2006, s. 22.]

38. Books of account by marketing agent etc.

(1) A marketing agent shall maintain and preserve, for a period of at least seven years, audited books of accounts in a form prescribed by the Board together with any related documents, and shall produce the same for inspection if required to do so by the Board or an inspector, and failure to do so shall constitute an offence.

(2) A marketing agent shall not wilfully or by culpable negligence fail to disclose all material facts of any transaction in coffee to the grower.

39. Other duties of marketing agent

(1) Every marketing agent shall take out insurance cover against fire, theft and other risks for all clean coffee in his possession.

(2) A marketing agent shall take all reasonable steps to ensure that delivery of coffee from the grower is continuous, that coffee is available for milling and later for auction or direct sales and that supply is assured to buyers and exporters.

(3) A warehousing facility used by a marketing agent shall be sufficient for the storage of coffee at the level of stocks to be held and nothing shall prevent the marketing agent from hiring a warehousing facility provided such facility is approved by the Board prior to it being used as a coffee warehouse.

(4) A marketing agent shall ensure there are adequate coffee samples in the central trade sample room of the Nairobi Coffee Exchange.

[L.N. 100/2006, s. 23.]

40. Funds accruing from coffee cess

The funds accruing from the coffee cess for the maintenance of coffee roads shall be dealt with in accordance with the provisions of the Local Government Act (Cap. 265) and the Agriculture Act (Cap. 318) applying to the agricultural produce cess.

41. Deleted by L.N. 100/2006, s. 24.

42. Advertisements, etc., by marketing agent to be factual, etc.

(1) All advertisements and literature sent or given by a marketing agent to a grower shall be factual, and any statement and professional opinion given by the agent shall be aimed at assisting the grower.

(2) No claim with respect to competence to undertake research or analysis, or the possession of facilities or other capacity, may be made by the agent beyond those actually possessed by the agent making the claim to the grower.

[Subsidiary]

(3) A marketing agent shall not give any misleading professional opinion or make any false advertisement or statement to a grower with intent to mislead the grower.

43. Marketing agent to submit to Board audited accounts

A marketing agent may be required to submit to the Board audited accounts within six months following the close of its financial year.

44. Marketing agent to publish tariffs, etc.

A marketing agent shall publish his tariffs, fees and rates of service charges in his bulletin, and shall inform the growers and the Board in writing of any changes at least three months before the effective date.

[L.N. 79/2012, s. 8.]

45. Late payments to attract interest

A marketing agent who fails to remit in total the net value of the grower's coffee proceeds within the stipulated period shall be liable to pay, together with the un-remitted sum, interest at the prevailing commercial lending rate of the guaranteeing bank, from the date of default to the date of actual payment.

46. Reporting of matters affecting the industry

A marketing agent shall immediately report to the Board and to any other relevant authorities any natural disaster such as floods, drought, outbreak of disease, pests or other calamity known to him and which is likely to adversely affect the coffee industry.

PART VII – DEALING IN AND MOVEMENT OF COFFEE

47. Certificates

(1) No person shall export coffee or cause any coffee to be exported unless either a certificate of inspection, a certificate of origin or a certificate of re-export, as the case may require, relating to such coffee is produced to the Commissioner of Customs and Excise before such export.

(2) No coffee grown outside Kenya shall enter Kenya in transit for export unless accompanied by a certificate of origin.

(3) No coffee imported into Kenya shall be subsequently exported in any condition or quantity other than that in which it was imported into Kenya except with a certificate of re-export.

(4) A certificate of origin for coffee produced outside Kenya shall be valid only if issued by the certifying agency of the relevant country and endorsed and completed by the relevant Government agency of that country.

(5) A certificate of origin for coffee grown in Kenya, and any certificate of re-export for coffee grown outside Kenya but re-exported from Kenya, shall be issued only by the Board.

(6) In this rule—

“**certificate of inspection**” means a certificate issued by the Board for all coffee produced in Kenya and destined for export;

“**certificate of origin**” means a certificate issued by the certifying agency indicating the country of origin of coffee;

[Subsidiary]

“certificate of re-export” means a certificate issued by the certifying agency indicating that the coffee had been imported into the country and underwent further processing and is now being re-exported;

“certifying agency” means an authority competent, under the laws of another country, to issue certificates in respect of the country of origin, exportation and other matters relating to coffee.

[L.N. 100/2006, s. 25]

47A. Buyer, etc., of specialty coffee to provide details

A buyer of specialty coffee and the grower or its marketing agent shall each provide the Board with full details of specialty coffee intended for export indicating the name of the grower, type, grade, class and the special characteristics, quantity, price, name of buyer and destination.

[L.N. 100/2006, s. 26.]

47B. Requirements for arrangements for specialty coffee

Any person intending to enter into special arrangements with a grower to produce specialty coffee for export shall—

- (i) enter into formal contracts with a grower specifying the rights and obligations of the grower on one part and the contracting person on the other;
- (ii) ensure that the grower receives the highest percentage of the price obtained from the transaction; and
- (iii) register the transaction with the Board before execution.

[L.N. 100/2006, s. 26.]

47C. Inspection of specialty coffee facilities, etc.

Any person contracted to produce and market specialty coffee shall give access to persons authorized by the Board to inspect the farms, processing facilities, warehouses and shall, when required to do so, to produce for the purpose of inspection any document or information related to production, processing and export of the coffee.

[L.N. 100/2006, s. 26.]

48. Stock returns by licensed dealer

(1) Every licensed dealer, marketing agent, shall submit to the Board two copies of a return of the total stock of coffee held by such licensed dealer, marketing agent, on a monthly basis.

(2) The Board may, upon receipt of returns under this rule and upon such inquiry or investigation as it may think necessary, issue to the applicant a stock certificate relating to a quantity of coffee in such form and containing such particulars as the Board may prescribe.

[L.N. 100/2006, s. 27, L.N. 79/2012, s. 9.]

49. No further post auction trade, etc.

There shall be post-auction trade between dealers and such trade shall be limited to a maximum of ten per cent of the total volume of coffee bought at the auction by a dealer and the dealer shall submit returns to the Board.

[L.N. 100/2006, s. 28, L.N. 79/2012, s. 10.]

49A. Local contract of sale, etc., not direct sale

A local contract of sale between a marketing agent and a dealer or a buyer located in Kenya shall not qualify as direct sale.

[L.N. 100/2006, s. 29.]

50. Prohibition of blending foreign and Kenya Coffee

No person shall blend any or various grades or classes of coffee produced in Kenya with any other coffees produced outside Kenya and any coffee so blended shall not be represented by any person to have Kenya as its origin.

51. Deleted by L.N. 100/2006, s. 30.

52. Marketing agent to issue certificate of purchase

A marketing agent shall, after every sale of coffee, issue to the purchaser a certificate of purchase in such form, and containing such details of the coffee purchased, as the Board may prescribe.

53. Offence to alter certificate of origin

No person shall alter any certificate of origin, any certificate of inspection or any certificate of re-export, certificate of purchase, stock certificate or other document prepared for the purposes of these Rules.

[L.N. 100/2006, s. 31.]

54. Dealer to submit to Board certain particulars

A licensed dealer or marketing agent exporting any coffee shall, within fourteen days of the export of that coffee, submit to the Board a copy of the relevant certificate of origin or certificate of re-export, as the case may be, stamped by the Commissioner of Customs and Excise, together with a non-negotiable bill of lading relating to the coffee.

[L.N. 100/2006, s. 32.]

55. Movement permit

(1) No person shall move coffee or cause any coffee to be moved without an original movement permit issued by the Board.

(2) Duplicate copies or photocopies of the original movement permit shall not be used or allowed for coffee movement.

(3) A person who moves coffee contrary to this rule commits an offence.

[L.N. 100/2006, s. 33.]

56. Exemption for small quantity

Nothing in these Rules shall apply to the export or despatch of any coffee when the coffee concerned—

- (a) consists only of a sample or a parcel not exceeding 20 kg in weight; or
- (b) is for consumption on ships, aeroplanes or other international carriers.

57. Coffee warehouses to be designated as such

(1) No premises or building shall be designated as a coffee warehouse by the Board until the premises have or building has been inspected and an inspection report filed with the Board.

(2) An inspection report referred to in subrule (1) shall conform to the standards set by the Kenya Bureau of Standard's specifications and shall include the relevant certification by a public health officer.

(3) No building or premises shall be used as a coffee warehouse unless it is designated as such and registered by the Board.

[Subsidiary]

(4) A person who operates or utilizes a building or premises contrary to this rule commits an offence.

[L.N. 100/2006, s. 34.]

58. Monitoring of agents

(1) The Board shall monitor the movement of parchment coffee between stores and the movement of clean coffee and hulled buni to the market in order to ensure that the coffee is safe from pilferage.

(2) The Board shall cause warehouses and warehousing activities to be inspected on regular basis.

[Corr. No. 114/2002, L.N. 100/2006, s. 35.]

59. Coffee not to be removed without coffee warrant

No coffee shall be removed or caused to be removed from a coffee warehouse without a coffee warrant issued by the marketing agent and registered with the warehouseman.

60. Prohibition of lien over coffee by warehousemen

No warehouseman shall have a lien of any nature over coffee whether in his possession or not.

61. Warehouseman to insure coffee in his custody

Every warehouseman shall take out insurance cover for all coffee in his warehouse or under his custody against fire, theft and any other relevant insurable risk.

PART VIII – GENERAL PROVISIONS**62. Management of Nairobi Coffee Exchange**

The Nairobi Coffee Exchange shall be managed by the Exchange Committee as provided for in the Nairobi Coffee Exchange Trading Rules.

[L.N. 100/2006, s. 36, L.N. 79/2012, s. 11.]

63. Dispute resolution

(1) Where any dispute arises between any two or more persons required to be licensed or registered under the Act, the disputing parties may refer the matter to the Board for resolution.

(2) On referral to it of a matter under this Rule, the Board may refer the matter to an arbitration panel which shall consist of five members appointed as follows—

- (a) one member appointed by each party to the dispute;
- (b) two members appointed by the Board;
- (c) the chairman of the panel, who shall be appointed by the Board:

Provided that the Board may constitute a panel of at least three members in case one of the disputing parties does not appoint the required arbitrator.

(2) The quorum for the business of the arbitration panel shall be three members.

(3) The Board shall make the final decision based on the findings and recommendations of the arbitration panel.

64. Board to appoint inspectors

(1) The Board may appoint inspectors to conduct independent inspection of a grower's farm or a mill or warehouse or marketing or management agent's or dealer's premises to ascertain whether the requirements of the Act and these Rules are being complied with.

(2) A grower, miller, warehouseman or marketing agent, dealer, management agent shall afford the inspector full and free access and all necessary assistance to any such inspector.

(3) No coffee grower, miller, marketing agent, dealer, management agent, or warehouseman, and no agent of such grower, miller, marketing agent, dealer, management agent, or warehouseman, shall refuse entry to an inspector acting in the course of that inspector's duty or obstruct an inspector from making an entry or conducting an inspection of mill or premises.

[L.N. 100/2006, s. 37, L.N. 79/2012, s. 12.]

65. No seals, labels, etc., to be removed

No agent, and no person employed by an agent, shall, otherwise than with express written authority of the grower, remove labels or seals or open technically sewn or closed packets of coffee unless for the purpose of inspection to determine their validity and genuineness or with other reasonable cause.

66. Sampling of coffee

(1) Sampling of parchment coffee by a miller shall be limited to one kilogram per sample, while sampling of clean coffee by marketing agents shall be limited to 200 grams per sample, and the value of the sample shall be accounted for.

(2) Sampling of the coffee lots for the purposes of sale of the grower's coffee by the marketing agent, shall be done in accordance with the current international procedures or with such standards as may be approved by the Board.

[L.N. 100/2006, s. 38.]

67. Engagement of experts

(1) For the purpose of determining milling standards, all millers shall engage qualified coffee liquorers and other coffee experts.

(2) For the purpose of determining coffee classifications, every marketing agent shall engage qualified coffee liquorers and other appropriate coffee experts.

(3) Every miller, marketing agent, or dealer shall engage a registered coffee liquorer.

(3A) A person intending to act as a coffee liquorer shall apply to be registered as a coffee liquorer by the Board.

(4) The Board may demand evidence of engagement of a liquorer by a miller, marketing agent, or dealer.

[L.N. 100/2006, s. 39.]

67A. Licences to be under seal

All licences issued by the Board shall be under seal.

[L.N. 100/2006, s. 40.]

[Subsidiary]

68. General penalty, etc.

(1) A person who contravenes any provisions of these Rules commits an offence.

(2) A person who commits an offence under these Rules shall be liable to a fine of not less than one hundred thousand shillings and not exceeding five hundred thousand shillings or to a term of imprisonment of not less than one year and not exceeding two years or to both fine and imprisonment.

[L.N. 100/2006, s. 41.]

69. Temporary provision

(1) A person who—

(a) immediately before the repeal of the Coffee Act (Cap. 333), was lawfully engaged in any business or activity for which a licence or certificate of registration is now required under the Coffee Act, 2001 (No. 9 of 2001); and

(b) applies for the licence or certificate,

may continue to engage in the business or activity pending determination of the application.

FIRST SCHEDULE

[Rule 22, L.N. 100/2006, s. 42.]

MILLING AGREEMENT

AGREEMENT made this day of two thousand and

BETWEEN:

..... of, a licensed miller [Licence No.] (hereinafter called the "miller", which expression shall where the context so admits include his or its successors and assignees) of the First Part;

AND

..... of a registered grower of coffee [Registration No.] (hereinafter called the "grower", which expression shall where the context so admits include his or its successors and assignees) of the Second Part.

WHEREAS:

- (a) the miller is duly licensed under the Coffee Act, 2001 and the rules made thereunder; and
(b) the grower has requested the miller to provide milling services and the miller has agreed to provide such services to the grower upon the terms and conditions appearing hereinafter.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

- 1. The grower shall deliver the parchment coffee and buni under the conditions herein stipulated in respect of moisture content, properly labelled bags, well sorted out to distinguish different grades and without foreign matter and the miller shall reserve the right to refuse to accept delivery or provide services if the grower fails to comply with the said conditions.
2. Transport services from the factories of the grower to the mills may be provided by the miller at such rate of charge per bag as may be agreed between the parties. The transport of milled coffee and buni to the marketing agent shall also be charged at such rate of charge per bag as may be agreed between the parties, all milled coffee and buni being securely transported as per the grower's delivery note and confirmation slips, the grower ensuring that all movements of coffee are covered by the Board's movement permits before transportation or as directed by the Board.

Coffee

[Subsidiary]

FIRST SCHEDULE—continued

3. The grower shall ensure that all coffee in transit to mills is properly insured while the miller shall take out insurance against fire and burglary and any other risk for the coffee delivered for milling until the coffee is handed over to the marketing agent.
4. The grower agrees to pay—
 - (a) milling charges at the rate of US\$;
 - (b) transport charges at the rate of US\$;
 - (c) storage charges at the rate of US\$;
 - (d) drying charges at the rate of US\$;
 - (e) colour sorting charges at the rate of US\$; and
 - (f) hand sorting charges at the rate of US\$
per bag of parchment or buni milled.
5. Drying of coffee received at the mills will be charged according to the moisture content after consent to dry the coffee has been sought and obtained from the client before the drying process starts.
6. Milling shall be done on a first-in first-out basis and empty bags shall remain the property of the grower and shall be returned to him with or without charge.
7. The miller shall ensure that the coffee in his possession is properly stored and secured to protect it from any damage, pilferage or loss of quality.
8. The miller shall submit the milling out-turn statement to the grower as set out in Form F1 in the Coffee (Forms) Rules.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first hereinbefore mentioned.

.....
SIGNED for or on behalf of the miller: in the presence of:

.....
SIGNED for or on behalf of the grower: in the presence of:

SECOND SCHEDULE

[Rule 27.]

OFFICIAL COFFEE GRADES

Grade	General Description	Screen number on which beans are retained. (Sizes as per KSOS-174 or 150415-1980)
E	Elephant - two beans joined together, a genetic defect and includes very large (bold) AA	Retained on 21 (size diameter 8.3 mm)
PB	Pea berries - one ovule develops instead of the usual two	Through 17 retained on 12 (4.76 mm)
AA	Flat beans	Through 21 retained on 18 (7.2 mm)
AB	Flat beans	Through 18 retained on 16 (6.35 mm)

Coffee

[Subsidiary]

SECOND SCHEDULE—continued

Grade	General Description	Screen number on which beans are retained. (Sizes as per KSOS-174 or 150415-1980)
C	Small flat beans	Through 16 retained on 10 (3.96 mm)
TT	Light density beans, from AA, AB and E grades by air extraction	
T	Smallest, consists of broken and small C	Through screen No. 7 (2.9 mm)

Where coffee grade is specified a minimum 95% of beans shall fall in that grade category.

THIRD SCHEDULE

[Rule 32, Act No. 9 of 2001, L.N. 100 of 2006, s. 43.]

NOTICE OF APPOINTMENT OF MARKETING AGENT

The Managing Director
 Coffee Board of Kenya
 P.O. Box 30566
 NAIROBI

I/We hereby appoint of post office number
 telephone number as my/our marketing agent for my/our coffee grown on
 land parcel reference number situated at:
 Sub-location:
 Location:
 Division: District:

Grower's address

 Grower's registration no.
 Grower's name

.....
Signature

FOURTH SCHEDULE

[Rule 32, L.N. 100/2006, s. 44.]

REQUIREMENTS FOR LICENSING MARKETING AGENT

In considering an application for the registration of a marketing agent, the Board shall take into account the following matters—

- (i) demonstrated access to coffee markets and capacity to market coffee;
- (ii) demonstrated capacity to carry out market research and intelligence;

[Subsidiary]

- (iii) bank guarantee in favour of the grower (one and half times the value of coffee transacted by the marketing agent);
- (iv) whether the applicant is registered as a marketing agent by the Board and has a certificate of registration;
- (v) appointment by a grower to be his or its marketing agent;
- (vi) conducts business in the premises as specified in the register;
- (vii) pass integrity test (vetting by appropriate authority as provided for by section 19 of the Act) and free from indebtedness to farmers or farmers' organizations;
- (viii) certificate of incorporation as a company or certificate of registration as the case may be;
- (ix) must have a qualified liquorer;
- (x) if a holding company, give a list of associated companies;
- (xi) must give a business referee;
- (xii) must have a tripartite agreement with a financier, grower and the marketing agent;
- (xiii) in case of a company, information of paid up capital;
- (xiv) payment of annual licence fees;
- (xv) evidence of own coffee in case of a grower by providing the following information; acreage, location of farm, LR. No., production records for the last three years.

FIFTH SCHEDULE

[Rule 32, L.N. 100/2006, s. 45.]

MARKETING AGENCY AGREEMENT

AGREEMENT made this day of two thousand and

BETWEEN:

..... of, a marketing agent

[Licence No. and Registration No.]

(hereinafter called the "marketing agent", which expression shall where the context so admits include its successors and assignees) of the First Part;

AND

..... of,

..... a registered grower of coffee [Registration No.]

(hereinafter called the "grower", which expression shall where the context so admits include its successors and assignees) of the Second Part.

WHEREAS:

- (a) the marketing agent is duly licensed under the Coffee Act, 2001 and the rules made thereunder; and
- (b) the grower has requested the marketing agent to provide the services referred to below and the marketing agent has agreed to provide such services to the grower upon the terms and conditions appearing hereinafter.

[Subsidiary]

FIFTH SCHEDULE—*continued*

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. The grower appoints the marketing agent as the grower's sole marketing agent, for the duration of this Agreement, for the purpose of marketing and selling coffee on behalf of the grower in accordance with the provisions of the Coffee Act, 2001.
2. The marketing agent hereby agrees to take over any contractual obligations of the Coffee Board of Kenya arising under the irrevocable letter of instructions on payment of coffee proceeds issued by the grower to the Board pursuant to hypothecation of stock securities held by the financier.
3. In carrying out its obligations under this Agreement the marketing agent undertakes to conduct his business diligently and professionally at all times in the best interest of the grower.
4. The marketing agent shall sell the coffee at the auction or through direct sales and obtain the best price available in the particular crop year. Upon receipt of any proceeds, the same shall be paid directly to the grower's account as hereinafter provided.
5. The marketing agent shall keep proper and clean records of all coffee delivered to him and of any other services rendered to the grower, and shall in a timely manner render to the grower schedules of out-turns and of all statutory and other deductions made from the proceeds of sale of coffee on the grower's behalf.
6. Save as otherwise provided in the Act and any other applicable law, the marketing agent shall not have a general lien over the grower's payments due from any agency or source.
7. The marketing agent shall—
 - (a) advise the grower on matters pertaining to sales of coffee;
 - (b) receive coffee from millers on behalf of the grower;
 - (c) warehouse, grade and classify coffee by liquoring or otherwise;
 - (d) prepare the coffee sales catalogues after coffee has been delivered by the miller at the designated warehouses;
 - (e) deliver coffee samples to the central trade sample room of the Nairobi Coffee Exchange;
 - (f) set the reserve price in consultation with the grower;
 - (g) reveal the price and agree with the grower for coffee sold through direct sales;
 - (h) monitor the sale of coffee at the Nairobi Coffee Exchange and international coffee exchanges;
 - (i) facilitate the auctioning of coffee at the Nairobi Coffee Exchange and direct sale market;
 - (j) receive the proceeds of sale of coffee and promptly remit the same after making statutory and other deductions;
 - (k) prepare and issue coffee storage warrants;
 - (l) provide such advice from time to time as the grower may reasonably require in relation to milling out-turns and grading, proper financial management, liaison with the miller, financial services to be provided and interest rates and repayment schedules agreed upon with the grower;
 - (m) provide such advice from time to time as the grower may reasonably require in relation to coffee marketing and warehousing facilities, coffee processing, handling, storage, milling, grading and classification, sourcing funds, cherry or parchment advances and financing;
 - (n) appoint a reputable insurance company to insure the coffee in his possession;
 - (o) appoint a duly licensed auctioneer to auction the coffee in case of coffee sold through the Nairobi Coffee Exchange;
 - (p) the marketing agent shall ensure that the coffee in his possession is properly stored and secured to protect it from any damage, pilferage or degeneration in quality.
8. The grower shall pay to the marketing agent fees in an amount not exceeding three percent (3%) of the gross coffee sale proceeds.
9. This Agreement shall bind the parties for a period of one year from the date of its coming into operation.

FIFTH SCHEDULE—continued

10. Either the grower or the marketing agent may terminate this Agreement by giving the other party at least three months' notice in writing:
 Provided that no such termination shall in any way affect any accrued right of either party hereunder.
11. Coffee sold by the marketing agent on the grower's behalf shall be sold on condition that ownership of coffee shall not pass to the buyer unless and until it has been paid for.
12. (1) All coffee proceeds received by the marketing agent, less the statutory deductions, milling costs, warehousing, insurance costs, auctioneer's fees and other proper charges, shall be paid directly to such bank account of the grower as the grower may from time to time in writing direct, such payments to be made—
 - (a) as soon as practicable but in any event not later than seven days from the prompt date, as provided by section 35 of the Act; and
 - (b) in United States dollars or such other hard currency as may from time to time be agreed and as the rules of the Coffee Exchange may permit.
- (2) If the marketing agent shall fail to remit the balance of the proceeds of sale by the due date, he shall be liable to pay, on the outstanding balance from time to time of the unremitted sum, interest at the prevailing commercial lending rate of the guaranteeing bank, compounded daily, from the date on which the payment was due until the date when the payment is made.
13. By this Agreement the grower irrevocably authorizes and directs the marketing agent to deduct the milling, other charges and any credit or advance hypothecated on the crop and after statutory deductions to remit the balance as hereinbefore provided.
14. The grower authorizes the marketing agent to deduct not more than—
 - (a) percent (..... %), being the total marketing charges;
 - (b) one percent (1%) being *ad valorem* levy due to the Board;
 - (c) two percent (2%) being *ad valorem* levy due to the Foundation;
 - (d) one percent (1%) being the produce cess from coffee sales proceeds, and distributed in the ratio of 0.8% to Kenya Roads Board and 0.2% to the county councils and to pay the said percentages to the parties entitled to them and remit the balance to the grower in the manner hereinbefore provided.
15. The fees of any auctioneer appointed by the marketing agent shall not exceed percent (..... %) of the gross sales of the grower's coffee.
16. The marketing agent shall appoint an insurance company to insure the grower's coffee in his possession.
17. Delivery of coffee shall be the basis of payments or advances and loans to growers but the marketing agent shall give tariffs and rates for service and in case of any changes he shall advise the grower in writing at least three months before the effective date.
18. In his dealings with the grower, the marketing agent shall observe and comply with any requirements of the Coffee Act, 2001 and of the rules made thereunder.
19. All the parties to this Agreement affirm and undertake to honour all obligations among them including, but not limited to, all irrevocable payment instructions that may be issued by the grower to the Board or any other marketing agents from time to time.
20. Any disputes and differences which may arise between the parties hereto in connection with this Agreement shall be referred for arbitration to the Board as provided for in rule 63.
21. Any notice under this agreement shall be in writing and shall be deemed to have been duly given or made if delivered at the offices for the time being of the parties hereto or sent by pre-paid letter of post to the last known addresses of the parties hereto, and if sent by post such notice shall be effectual for all purposes four days after the date of posting thereof and in proving service by post it shall be sufficient to prove that the letter containing the notice was properly stamped, addressed and put into the Post Office.

Coffee

[Subsidiary]

FIFTH SCHEDULE—continued

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the day and date first hereinbefore mentioned.

SIGNED for and on behalf of the marketing agent in the presence of:

SIGNED for and on behalf of the grower in the presence of:

SIXTH SCHEDULE

[Rule 32, L.N. 100/2006, s. 47, 48]

TRIPARTITE MARKETING AGENCY AGREEMENT

AGREEMENT made this ... day of ... two thousand and ...

BETWEEN:

... of ... marketing agent

[Licence No. ... and Registration No. ...]

(hereinafter called the "marketing agent", which expression shall where the context so admits include its successors and assignees) of the First Part;

AND

... of ...

... a registered grower of coffee [Registration No. ...]

(hereinafter called the "grower", which expression shall where the context so admits include its successors and assignees) of the Second Part;

AND

... of ... (hereinafter called the

"financier", which expression shall where the context so admits include its successors and assignees) of the Third Part.

WHEREAS:

- (a) the marketing agent has been duly licensed under the Coffee Act, 2001 and the Rules made thereunder as a marketing agent;
(b) the grower has appointed the marketing agent as his or its marketing agent to market his or its coffee upon the terms and conditions hereinafter appearing;
(c) the financier has provided and/or continues to provide finance and/or extend financial accommodation to the grower and/or marketing agent, upon terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

- 1. The grower appoints the marketing agent as the grower's sole marketing agent, for the duration of this Agreement, for the purpose of marketing and selling coffee on behalf of the grower in accordance with the provisions of the Coffee Act, 2001.

SIXTH SCHEDULE—*continued*

2. The marketing agent hereby, agrees to take over any contractual obligations of the Coffee Board of Kenya arising under the irrevocable letter of instructions on payment of coffee proceeds issued by the grower to the Coffee Board pursuant to hypothecation of stock securities held by the financier.
3. In carrying out its obligations under this Agreement the marketing agent undertakes to conduct his business diligently and professionally at all times in the best interest of the grower.
4. The marketing agent shall sell the coffee at the coffee auction or through direct sales and obtain the best price available in the particular crop year. Upon receipt of any proceeds, the same shall be paid directly to the grower's account with the financier as hereinafter provided.
5. The marketing agent shall keep proper and clean records of all coffee delivered to him and of any other services rendered to the grower, and shall in a timely manner render to the grower schedules of out-turns and of all statutory and other deductions made from the proceeds of sale of coffee on the grower's behalf.
6. Save as otherwise provided in the Act and any other applicable law, the marketing agent shall not have a general lien over the grower's payments due from any agency of source.
7. The marketing agent shall—
 - (a) advise the grower on matters pertaining to sales of coffee;
 - (b) receive coffee from millers on behalf of the grower;
 - (c) warehouse, grade and classify coffee by liquoring or otherwise;
 - (d) prepare the coffee sales catalogues after coffee has been delivered by the miller or his agent at the designated warehouses;
 - (e) deliver coffee samples to the central trade sample room of the Nairobi Coffee Exchange;
 - (f) set the reserve price in consultation with the grower and the financier;
 - (g) revealing the price and agreeing with the grower for coffee sold through direct sales;
 - (h) monitor the sale of coffee at the Nairobi Coffee Exchange;
 - (i) facilitate the auctioning of coffee at the Nairobi Coffee Exchange and direct sale market;
 - (j) receive the proceeds of sale of coffee and promptly remit the same after making statutory and other deductions;
 - (k) prepare and issue coffee storage warrants;
 - (l) provide such advice from time to time as the grower may reasonably require in relation to milling out-turns and grading, proper financial management, liaison with the miller, financial services to be provided and interest rates and repayment schedules agreed upon with the grower;
 - (m) provide such advice from time to time as the grower may reasonably require in relation to coffee marketing and warehousing facilities, coffee processing, handling, storage, milling, grading and classification, sourcing funds, cherry or parchment advances and financing;
 - (n) appoint a reputable insurance company to insure the coffee in his possession;
 - (o) appoint a duly licensed auctioneer to auction the coffee in case of coffee sold through the Nairobi Coffee Exchange;
 - (p) the marketing agent shall ensure that the coffee in his possession is properly stored and secured to protect it from any damage, pilferage or degeneration in quality.
8. The grower shall pay to the marketing agent fees in an amount not exceeding three percent (3%) of the gross coffee sale proceeds.
9. This Agreement shall bind the parties for a period of one crop year from the date of its coming into operation but shall thereafter continue in force until determined in accordance with clause 11 hereof.
10. Either the grower or the marketing agent may terminate this Agreement by giving the other at least three months' notice in writing:

Provided that no such termination shall in any way affect any accrued right of either party hereunder.

[Subsidiary]

SIXTH SCHEDULE—continued

11. Coffee sold by the marketing agent on the grower's behalf shall be sold on condition that ownership of coffee shall not pass to the buyer unless and until it has been paid for and the grower has received the balance of the proceeds of sale after statutory and other proper deductions.
12. By this Agreement the grower irrevocably authorizes and directs the marketing agent to deduct the milling, other charges and any credit or advance hypothecated on the crop and after statutory deductions to remit the balance as hereinbefore provided.
13. (1) All coffee proceeds from coffee dealers received by the marketing agent, less the statutory deductions, milling costs, warehousing, insurance costs, auctioneers' fees and other proper charges, shall be paid directly to such bank account of the growers as the grower may from time to time in writing direct, such payments to be made—
 - (a) as soon as practicable but in any event not later than seven days from the prompt date as provided by section 35 of the Act; and
 - (b) in United States dollars or such other hard currency as may from time to time be agreed and as the rules of the Coffee Exchange may permit.
- (2) If the marketing agent shall fail to remit the balance of the proceeds of sale by the due date, he shall be liable to pay, on the outstanding balance from time to time of the unremitted sum, interest at the prevailing commercial lending rate of the guaranteeing bank, compounded daily, from the date on which the payment was due until the date when the payment is made.
14. The grower authorizes the marketing agent to deduct not more than—
 - (a) percent (..... %), being the total marketing charges;
 - (b) one percent (1%) being *ad valorem* levy due to the Board;
 - (c) two percent (2%) being *ad valorem* levy due to the Foundation;
 - (d) one percent (1%) being the produce cess from coffee sales proceeds, and distributed in the ratio of 0.8% to Kenya Roads Board and 0.2% to the county councils and to pay the said percentages to the parties entitled to them and remit the balance to the grower in the manner hereinbefore provided.
15. The fees of any auctioneer appointed by the marketing agent shall not exceed percent (..... %) of the gross sales of the grower's coffee.
16. The marketing agent shall appoint an insurance company to insure the grower's coffee in his possession.
17. That the marketing agent may provide other field advisory services, transport, training, coffee seeds or seedlings, storage of coffee or warehousing facilities.
18. Delivery of coffee shall be the basis of payments or advances and loans to growers but the marketing agent shall give tariffs and rates for service and in case of any changes he shall advise the grower in writing at least three months before the effective date.
19. In his dealings with the grower, the marketing agent shall observe and comply with any requirements of the Coffee Act, 2001 and of the rules made thereunder.
20. The grower hereby irrevocably appoints the financier to be the attorney of the grower and in the name and on behalf of the grower to execute and do any assurances acts and things which the grower ought to execute and do under the covenants and agreements contained herein and in the Act and the rules made thereunder, including making claims under guarantees and other legal instruments issued in favour of the grower and generally to use the name of the grower in the exercise of all or any of the powers hereby or by law respectively conferred on the grower or its marketing agents.
21. All the parties to this Agreement affirm and undertake to honour all obligations among them including, but not limited to, all irrevocable payment instructions that may be issued by the grower to the Board or any other marketing agents from time to time.
22. Any disputes and differences which may arise between the parties hereto in connection with this Agreement shall be referred to arbitration in accordance with the provisions of the Arbitration Act.

SIXTH SCHEDULE—continued

23. Any notice under this agreement shall be in writing and shall be deemed to have been duly given or made if delivered at the offices for the time being of the parties hereto or sent by pre-paid letter of post to the last known addresses of the parties hereto, and if sent by post such notice shall be effectual for all purposes four days after the date of posting thereof and in proving service by post it shall be sufficient to prove that the letter containing the notice was properly stamped, addressed and put into the Post Office.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the day and date hereinbefore mentioned.

.....
SIGNED for and on behalf of the marketing agent: in the presence of:

.....
SIGNED for and on behalf of the grower: in the presence of:

.....
SIGNED for and on behalf of the financier: in the presence of:

SEVENTH SCHEDULE

[Rule 33, L.N. 100/2006, s. 46.]

DEED OF GUARANTEE

DEED OF GUARANTEE made this day of two thousand and by [name of Bank issuing the guarantee] (hereinafter referred to as the 'Guarantor') of [address] whose registered office is situated at

WHEREAS:

- (a) [name of marketing agent] of [address] (hereinafter referred to as "the marketing agent") has applied to the Coffee Board of Kenya (hereinafter referred to as "the Board") under the provisions of section 24(1)(a) of the Coffee Act, 2001 for a licence to conduct business as a marketing agent;
- (b) by section 24(1)(a) of the Coffee Act, 2001, the grant of a marketing licence is conditional upon the issuance and production by the marketing agent to the Coffee Board of Bank guarantee for the amounts specified in the said section to be registered in favour of the grower, and appointment of the marketing agent by a grower through specific agreement as the grower's marketing agent; and
- (c) the marketing agent has been duly appointed as the marketing agent for the growers specified in the Schedule hereto (hereinafter referred to as "the growers");

[Subsidiary]

SEVENTH SCHEDULE—*continued*

- (d) the marketing agent has by these presents agreed to take over the contractual obligations of the Board arising under the irrevocable letters of instructions issued by the growers to the Board with regard to payment of the growers' coffee proceeds;
- (e) by these presents the Guarantor has agreed to issue such bank guarantee to be registered by the Coffee Board in favour of the growers as per the terms and conditions hereinafter set out.

NOW THIS DEED WITNESSETH AND THE GUARANTOR HEREBY DECLARES AND WARRANTS AS FOLLOWS:

1. The Guarantor hereby unconditionally and irrevocably guarantees to the Growers and or its marketing agent the due and punctual payment of a sum not exceeding US dollars on demand as and when the same shall become due in accordance with the terms hereof, provided that the amount of the Guarantor's liability under this guarantee shall be limited to US dollars for each grower jointly and severally specified in the attached schedule.
2. If the marketing agent fails to make payment to the growers as per the provisions of the Coffee Act and the tripartite agreement entered into between the Grower, Marketing agent and the financier, the Guarantor agrees to cause any such payment to be made as if such payment were made when due and payable by the marketing agent.
3. The liability of the Guarantor under this Deed of Guarantee shall not be lessened, affected or impaired by any time or indulgence granted to the marketing agent by the Board or by any other person or by any compromise, scheme or arrangement affecting the marketing agent or by the dissolution, liquidation or bankruptcy of the Marketing agent or by any change in the status, functions, control of or ownership of shares in the marketing agent.
4. The Guarantor agrees that its obligations hereunder shall be unconditional, irrespective of the legality, validity, regularity or enforceability of the tripartite agreements or any other agreements engagements or understandings entered into between the growers and any other parties.
5. Save for instances where the Guarantor is also the Financier, all payments by the Guarantor under this Deed of Guarantee shall be made without set-off or counterclaim and free and clear of, and without deduction for any taxes, levies, duties, charges, deductions or withholdings of any nature now or hereafter imposed.
6. The records of the growers held at the Board, as the case may be, shall, in the absence of manifest error, be conclusive evidence of the amount owing and claimable under this Deed of Guarantee and shall be good and sufficient evidence in Court and elsewhere of the Guarantor's liability hereunder.
7. This Deed of Guarantee shall be deposited with and held by the Board until the termination date and for so long thereafter as any claim made under this Deed shall not have been finally adjudicated, settled or discharged.
8. The Guarantor hereby acknowledges the right of the growers or their marketing agent and/or attorney to demand payment under this Deed of Guarantee when the same becomes due under the terms hereof.
9. Any amount received or recovered by the growers in respect of any sum expressed to be due to them or either of them from the Guarantor under this Deed of Guarantee in a currency other than the currency in which the same was due shall only constitute a discharge to the Guarantor to the extent of the amount in due currency which the grower is able to purchase at prevailing rates with the amount so received or recovered in such other currency. If the amount is less the Guarantor shall and hereby indemnifies the grower or its marketing agents and attorneys against any loss sustained by them or either of them as a result thereof.
10. The illegality, invalidity or un-enforceability of any provision of this Deed of Guarantee under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.
11. Any claim under this Guarantee must be made within thirty (30) days from the date of default and settlement made by the Guarantor within fourteen (14) days from the date of receipt of the claim together with interest on the unpaid funds at the prevailing commercial interest rate applicable to the grower's credit facilities for the period from the due payment date to the grower.

SEVENTH SCHEDULE—continued

- 12. Any notice or demand for payment by the grower under this Guarantee shall be in writing or by telex addressed to the Guarantor and shall be deemed to have been duly given or made if delivered at the Guarantor's office for the time being or sent by pre-paid post letter to the Guarantor and shall be effective for all purposes two days after the posting thereof.
- 13. This Deed of Guarantee shall be governed by and construed in all respects in accordance with the Laws of Kenya and the Guarantor agrees to submit to the non-exclusive jurisdiction of the Kenyan courts.
- 14. This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual right or remedy or any guarantee, indemnity, lien, pledge, bill, note, mortgage, charge or other security now or hereafter held by the grower or the grower's financiers.
- 15. On expiry of 12 months from the date hereof, this guarantee shall be deemed renewed for further periods of 12 months in the absence of 60 days written notice of termination, which notice must be issued to the growers and financier.

SIGNED SEALED AND DELIVERED by the duly constituted attorney of the Guarantor:

.....

in the presence of:

.....

Advocate

EIGHTH SCHEDULE

[Rule 33, Deleted by L.N. 79/2012, s. 13.]

BANKS THAT MAY ISSUE GUARANTEES

NINTH SCHEDULE

[Rule 36, L.N. 100/2006, s. 49.]

DIRECT COFFEE SALES CONTRACT

PART I – PARTICULARS OF MARKETING AGENT

- Name
- Identity Card No./Certificate of Incorporation No.
- Registration No.
- PIN No.
- VAT No.
- Postal address
- Telephone
- E-mail
- Sub-location
- Location
- Division

Coffee

[Subsidiary]

NINTH SCHEDULE—continued

District
L.R. No. or No.s. where applicable
Acreage

PART II – PARTICULARS OF OVERSEAS BUYER

Name
Postal address
Registered address
Town/City
Country
E-mail

PART III – CONTRACT DETAILS

Contract Ref. No.
Grades of coffee
No. of bags of coffee
Net weight
Price per 60 kg bag
Total Value

PART IV – TERMS AND CONDITIONS

Shipment
Payment
Insurance
Sample
Shipper
Destination
Condition (f.o.b.)
Special condition (if any)
Arbitration/Terms

I/We certify that the information given above is true to the best of my/our knowledge and information.

COFFEE (GROWER'S LEVY) ORDER, 2002

[L.N. 383/2002.]

1. This Order may be cited as the Coffee (Growers Levy) Order, 2002.
2. There is hereby imposed a levy, described in section 33 of the Act as a grower's *ad valorem* levy, at the rate of three per centum of the gross sales of all clean coffee sold by each marketing agent on behalf of a grower.
3. The amount of the levy shall be remitted as follows—
 - (a) one per centum of the gross sales referred to in paragraph 2 shall be remitted to the Board; and
 - (b) two per centum of such gross sales shall be remitted to the Coffee Research Foundation.
4. This Order shall be deemed to have come into operation on 2nd July, 2002:

Provided that, for the purposes of the application of this Order in respect of a sale of coffee that took place before the date on which this Order is published in the *Gazette*, the reference in section 33(2) of the Act to the date of receipt of coffee proceeds by a marketing agent shall be deemed to be a reference to the date of such publication.

COFFEE (APPLICATION FEES) RULES, 2002

[L.N. 384/2002.]

1. These Rules may be cited as the Coffee (Application Fees) Rules, 2002, and shall be deemed to have come into operation on 2nd July, 2002.
 2. There shall be an application fee payable to the Board of one thousand shillings for every licence specified under section 18 of the Act.
 3. Notwithstanding the provisions of sections 23(3) and 24(4) of the Act, any registration or certificate of registration shall be subject to payment of a registration fee of five hundred (KSh. 500) shillings to the Board.
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COFFEE (ELECTIONS) RULES, 2002

ARRANGEMENT OF RULES

Rule

1. Citation.
2. Interpretation.
3. Allocation of electoral areas.
4. Registers.
5. Inspection of registers.
6. Representatives of pulping stations or co-operative societies.
7. Representatives of plantation growers.
8. Representatives of coffee trade organizations.
9. Submission of names.
10. Convening of electoral area meetings.
11. Returning officer.
12. Proposal and secondment of candidate.
13. Publication of list of candidates.
14. Elections to be by secret ballot.
15. Candidate to be registered in his area.
16. Procedure at election.
17. Voter to be present in person.
18. Submission of names of elected candidates to returning officer and the Minister.
19. First meeting of the Board.
20. Obstruction of voting.
21. Appeals.
22. General penalty.

SCHEDULES

- FIRST SCHEDULE – ELECTORAL AREAS FOR ELECTIONS TO THE
COFFEE BOARD OF KENYA
- SECOND SCHEDULE – FORMS
-

[Subsidiary]

COFFEE (ELECTIONS) RULES, 2002

[L.N. 44/2002.]

1. Citation

These Rules may be cited as the Coffee (Elections) Rules, 2002 and, shall come into operation on the 25th March, 2002.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**Board**” has the meaning assigned to it by the section 3 of the Act;

“**chairman**” means the chairman of the Board elected under rule 19:

“**election**” means the process of selecting a person to represent the interests of registered coffee growers who are members of registered co-operative societies, plantation coffee growers or coffee trade organizations as the case may be in the Board and includes the process of selecting a replacement for a Board member under section 6 of the Act.

“**electoral area**” means a coffee growing zone as specified in the First Schedule;

“**presiding officer**” means a person appointed by the returning officer to be in-charge of the electoral process at a polling station.

“**returning officer**” means a person appointed by the Minister to be in-charge of the electoral process;

“**secretary to the Board**” means the Managing Director of the Board appointed under section 11 of the Act.

3. Allocation of electoral areas

The Board, or in case of a small holder grower, the co-operative society acting on behalf of the Board, upon registering a grower shall—

- (a) allocate an electoral area to the grower; and
- (b) Notify the grower of the allocation.

4. Registers

(1) The manager of a co-operative society shall keep a register of growers for each pulping station for purposes of electing representative, to the zonal electoral meetings.

(2) The secretary to the Board shall keep a register containing—

- (a) the name of each grower or co-operative society; and
- (b) the electoral area allocated to the grower or as the case may be, the co-operative society.

5. Inspection of registers

The registers kept under rule 4 shall be available for inspection by any person during the normal working hours of the Board or the co-operative society.

6. Representatives of pulping stations or co-operative societies

(1) The growers in each pulping station of a co-operative society shall elect five representatives to represent such groups at the election of members of the Board in their respective zones.

[Subsidiary]

(2) The five representatives shall be evenly distributed from the area from which the pulping station receives coffee from growers.

(3) A co-operative society which does not have a pulping station shall be deemed to have one pulping station for the purposes of the elections under these Rules.

7. Representatives of plantation growers

Every registered plantation grower shall nominate one representative, to elect a member of the Board in his respective zone.

8. Representatives of coffee trade organizations

Every coffee trade organization registered under any written law for the time being in force shall nominate one representative to a meeting of directors of those organizations to elect a member of the Board to represent the interests of the coffee trade.

9. Submission of names

Every factory manager of a pulping station in a co-operative society, plantation grower and registered coffee trade organization shall submit the name(s) of the representatives elected under rules 6, 7 and 8 to the secretary to the Board for purposes of preparing the electoral register.

10. Convening of electoral area meetings

(1) The Minister, after giving thirty (30) days notice in the *Gazette* and in at least two local dailies of national circulation, shall convene meetings in the electoral areas specified in the First Schedule for the purpose of holding elections of members of the Board.

(2) The meetings referred to in paragraph (1) shall be meetings of—

- (a) representatives of co-operative societies elected under rule 6:
- (b) representatives of plantation growers nominated under rule 7: and
- (c) representatives of coffee trade organizations nominated under rule 8.

(3) Members of the Board shall be elected at the meetings referred to in paragraph (2).

(4) The number of members to be elected to the Board from an electoral area or from any interest group shall be as specified in the First Schedule.

11. Returning officer

For purpose of election of the members of the Board, the Minister shall appoint a returning officer who shall be a public officer in the ministry for the time being responsible for matters relating to agriculture.

12. Proposal and secondment of candidate

(1) A candidate for election to the Board shall be proposed and seconded by at least ten registered growers entitled to vote at the meeting at which the election is held from ten different co-operative societies or ten coffee plantations, as the case may be provided that of the ten registered growers five shall propose and the other five shall second the candidate as specified in the Second Schedule.

(2) Where the number of co-operative societies in paragraph (1) is less than ten, the Minister may, from time to time, determine the number applicable.

(3) The candidate referred to in paragraph (1) shall submit his/her candidature to the secretary to the Board fifteen days before the date of elections.

[Subsidiary]

13. Publication of list of candidates

The secretary to the Board shall publish in the *Gazette* and in at least two dailies of national circulation a list of the names of the candidates by the zones for which they intend to be elected, seven days before the date of election.

14. Elections to be by secret ballot

The elections to the Board shall be by secret ballot and each plantation grower, elected representative of a pulping station in a co-operative society or coffee trade organization shall have one vote.

15. Candidate to be registered in his area

A candidate for election to the Board must be a registered coffee grower in the area which he aspires to represent and shall be elected to represent the electoral area allocated to him under rule 3.

16. Procedure at election

(1) Where a single candidate is nominated for election at a meeting convened under rule 10, the presiding officer shall forthwith declare such candidate to be duly elected to the Board.

(2) Where more than one candidate is nominated for election, the presiding officer shall cause a plain piece of paper to be delivered to every registered grower or elected representative present and entitled to vote and the registered coffee grower or elected representative shall record his vote by writing on the paper the name of a candidate who has been proposed and seconded in accordance with rule 12.

(3) No other mark, writing or signature shall be made on the paper, and the registered coffee grower or elected representative shall forthwith fold the paper so as to conceal his vote, and shall deliver it, or cause it to be delivered, to the presiding officer in such manner as the presiding officer shall direct.

(4) Upon receipt and counting of the votes cast under paragraph (3), the presiding officer shall thereupon announce the number of votes cast for each candidate, and shall declare the candidate for whom the greater number of votes has been cast to be duly elected to the Board.

(5) In the event of an equality of votes between two candidates at the end of a poll, a second vote shall be taken pitting the two candidates and the same procedure shall be observed as if it were a first vote.

17. Voter to be present in person

No person, other than the registered coffee growers or elected representatives present in person in the area in which a meeting is held, shall be entitled to vote upon any matter provided for by these Rules, and each registered grower or elected representative shall have one vote.

18. Submission of names of elected candidates to returning officer and the Minister

(1) The presiding officers shall forward the names of the candidates elected in their respective electoral areas to the returning officer.

(2) The names of candidates declared elected under rule 16 shall constitute the names to be submitted from the electoral areas by the returning officer to the Minister for the purpose of constituting the Board.

19. First meeting of the Board

(1) The Minister shall convene the first meeting of the Board, at which the chairman and the vice- chairman shall be elected.

(2) The Secretary to the Board shall forward the name of the chairman of the Board to the Minister for appointment by notice in the *Gazette*.

20. Obstruction of voting

Any person who, interferes with or obstructs any voter or candidate from voting or being elected commits an offence.

21. Appeals

A person aggrieved by the decision of the returning officer to reject his candidature or right to vote may appeal within fourteen days from the date of rejection to the Agriculture Appeals Tribunal established under part XV of the Agriculture Act (Cap. 318).

22. General penalty

A person who contravenes any of these Rules commits an offence and is liable upon conviction to a fine not exceeding six thousands shillings or to imprisonment for a term not exceeding six months or to both.

FIRST SCHEDULE

[Rule 2, 10.]

ELECTORAL AREAS FOR ELECTIONS TO THE COFFEE BOARD OF KENYA

1. Electoral Area in Co-operative Sector

<i>Zone</i>	<i>Districts</i>	<i>No. of Board Members</i>
1.	Kiambu and Thika	1
2.	Murang'a and Maragua	1
3.	Nyeri and Kirinyaga	1
4.	Meru Central, Meru North, Meru South, Embu and Mbeere	1
5.	Machakos, Kitui, Makueni, Taita/Taveta	1
6.	Kericho, Bomet, Buret, Kajiado, Nakuru, Nandi, Uasin Gishu, West Pokot, Laikipia, Trans Nzoia, Baringo, Koibatek, Keiyo and Marakwet.	1
7.	Kisii Central, Kisii North, Gucha, Kuria, Migori, Rachuonyo, Kisumu, Nyando and Siaya	1
8.	Kakamega, Lugari, Bungoma, Vihiga, Teso, Busia and Mt. Elgon	1
	Sub-Total	8

Coffee

[Subsidiary]

FIRST SCHEDULE—continued

2. Electoral Area in Plantation Sector

<i>Zone</i>	<i>Districts</i>	<i>No. of Board Members</i>
1.	Nyeri, Kirinyaga, Meru Central, Meru North, Meru South and Embu	1
2.	Thika, Kiambu, Murang'a, Maragua, Machakos, Makueni and Taita/Taveta	1
3.	District in Rift Valley, Nyanza and Western Provinces	1
Sub-Total		3

		<i>No. of Board Members</i>
3.	Representation for interests of coffee trade organizations	1
	Total Number of Board Members	12

SECOND SCHEDULE

Form A1

(r. 12)

NOMINATION FORM FOR CANDIDATES IN THE ELECTIONS TO THE COFFEE BOARD OF KENYA

(a) Name and number of zone

(b) Candidate's name

(c)

	<i>Proposer's name</i>	<i>Member's number</i>	<i>Name of co-operative society or plantation</i>	<i>Registration number</i>
1				
2				
3				
4				
5				

(d)

	<i>Seconder's name</i>	<i>Member's number</i>	<i>Name of co-operative society or plantation</i>	<i>Registration number</i>
1				
2				
3				
4				
5				

SECOND SCHEDULE—continued

(e) Verification by the manager, of co-operative society or plantation, to which the candidate is a member or director in terms of rules 4, 6 and 7.

1. Name of manager ID No.

Signature of manager

2. Name of witness (committee member/plantation grower ID No.

Witness's Signature

(f) Verification by the manager of coffee pulping station to which the member delivers cherry for pulping in terms of rules 4, 6 and 7.

1. Name of factory manager ID No.

Signature

2. Name if witness (grower) ID No.

Witness's signature

FOR OFFICIAL USE

Received and verified in terms of rules 4, 6, and 7

SECRETARY to the Coffee Board of Kenya

Date

Form A2

(r. 16)

RESULTS OF ELECTIONS TO THE COFFEE BOARD OF KENYA

(a) Name and number of zone

(b)

Serial Number	Candidate's name	Number of votes received
1		
2		
3		
4		
5		

Total votes cast

(c) Verification by the growers present and voting

1. Name ID No Co-operative Society/Plantation

Signature

Coffee

[Subsidiary]

SECOND SCHEDULE—continued

- 2. Name
 ID No Co-operative Society/Plantation
Signature
- 3. Name
 ID No Signature
- 4. Name Signature
 Presiding officer
Date

Form A3

(r. 18)

CERTIFICATE OF ELECTION TO THE COFFEE BOARD OF KENYA

THIS IS TO CERTIFY that
 Mr/Mrs./Ms of zone No.
 has been duly elected as a member of the Coffee Board of Kenya

Signature
 Returning Officer
Date