



LAWS OF KENYA



COFFEE ACT

CHAPTER 333

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CHAPTER 333

COFFEE ACT

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CHAPTER 333**COFFEE ACT**

[Date of assent: 31st December, 2001.]

[Date of commencement: 25th March, 2002.]

An Act of Parliament, to provide for the development, regulation and promotion of the coffee industry, and for connected purposes

[Act No. 9 of 2001, L.N. 43/2002, Act No. 6 of 2005, Act No. 17 of 2006, Act No. 5 of 2007, Act No. 8 of 2009.]

PART I – PRELIMINARY**1. Short title**

This Act may be cited as the Coffee Act, 2001.

2. Interpretation

In this Act, unless the context otherwise requires—

“**auction**” means the auction system under which coffee is offered for sale at the Nairobi Coffee Exchange;

“**Board**” means the Coffee Board of Kenya established under section 3;

“**Board of Trustees**” means the Board of Trustees of the Fund established by section 34;

“**buni**” means coffee dried in the fruit or cherry but does not include hulled buni, also referred to as clean coffee, heavy buni or light buni;

“**buyer**” means a person engaged in buying clean coffee for blending, roasting, grinding and packaging for resale in the local or export market;

“**coffee**” means the plant botanically known as *Coffea* species (L.) and includes the fruit, whether on the plant or detached therefrom, the seed known as buni, parchment coffee, clean coffee, roasted seeds and ground coffee;

“**coffee plantation**” means any large area of land or group of contiguous areas of land under the same management on which coffee is grown for the production of coffee for sale;

“**coffee trade**” means the business of dealing in the commodity of coffee and includes milling, warehousing, selling, buying, roasting, grinding and packaging of roasted seed or ground coffee for reward or profit but does not include cultivation or production of coffee;

“**commercial miller**” means any person who mills ten thousand or more metric tonnes of parchment coffee per crop year on wholesale basis for the purpose of providing service for financial profit;

“**co-operative society**” means a co-operative society registered under the Co-operative Societies Act, 1997 (Cap. 490);

“**crop year**” means the period from 1st October to 30th September of the following year;

“**dealer**” means a person who or which buys clean coffee at the auction for himself or itself as an exporter or on behalf of a dealer residing outside Kenya, whether or not for the purpose of resale in the export market;

“**dealing in coffee**” means acquiring, holding, selling, or exporting coffee for purposes of trade but does not include distributing or moving coffee from one area to another;

“**Director**” means the Director of Agriculture;

“**Foundation**” means the Coffee Research Foundation incorporated under the Companies Act (Cap. 486) with the principal object of promoting research into and investigating all problems relating to coffee in Kenya;

“**Fund**” means the Coffee Development Fund established by section 34;

“**grower**” means any person who cultivates coffee in any area in Kenya and is registered with the Board and includes a co-operative society, co-operative union, growers’ association or a plantation owner;

“**inspector**” means a police officer, or an agricultural officer or an officer of the Board appointed in writing by the Director or the Board respectively, to be an inspector, for purposes of this Act and gazetted by the Minister;

“**management agent**” means any person, registered by the Board, and appointed through a specific agreement by a grower as the grower’s agent for the management of his coffee farm or pulping station;

“**marketing agent**” means a grower licensed by the Board to market his or its clean coffee, or any person duly licensed by the Board and appointed by the grower through a specific agreement to market the grower’s clean coffee;

“**marketing of coffee**” means the offering for sale of clean coffee by a marketing agent;

“**milling**” means mechanical hulling or dehusking of coffee and includes grading of clean coffee;

“**milling agent**” means a person who performs services in specific functions of secondary processing or milling of coffee and who is contracted by a grower as his agent in consideration of a fee;

“**millers’ licence**” means a miller’s licence issued under section 19;

“**Minister**” means the Minister for the time being responsible for Agriculture;

“**Nairobi Coffee Exchange**” means the central coffee auction which is the trading floor of coffee;

“**packer**” means any person who roasts and packs roasted seed or ground coffee into packets or containers intended for sale in the local or export market;

“**private miller**” means a person who mills parchment coffee from his own coffee plantation;

“**pulping station**” means any coffee factory where coffee is pulped, fermented or otherwise treated for the preparation of parchment coffee;

“**sales catalogue**” means a sales catalogue prescribed pursuant to paragraph (h) of section 45 (2);

“**secretary**” means the Managing Director of the Board provided for under section 11;

“**sell**” includes offering coffee for sale but does not include sale of cherry, buni and parchment coffee;

“**smallholder**” means a grower cultivating coffee in a small parcel or in small parcels of land who does not possess his own pulping station;

“**trustees**” means the trustees of the Board of Trustees;

“**warehouse**” means a designed storage facility for coffee, specifically designed to guarantee the quality and safety of coffee;

“**warehouseman**” means any person who or which manages his or its own or a leased warehouse where coffee is handled and stored for reward or profit.

[Act No. 6 of 2005, s. 48.]

PART II – ESTABLISHMENT OF THE BOARD

3. Establishment of the Board

(1) There is established a board to be known as the Coffee Board of Kenya.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other acts or things necessary for the proper performance of its functions under this Act as may be lawfully done or performed by a body corporate.

4. Composition of the Board

(1) The Board shall consist of—

- (a) such number of members as may be appointed by the Minister on the basis of their interest and expertise in the coffee industry and approved by the relevant Parliamentary Committee;
- (b) *deleted by Act No. 6 of 2005, s. 49 (a)*;
- (c) *deleted by Act No. 6 of 2005, s. 49 (a)*;
- (c) *deleted by Act No. 6 of 2005, s. 49 (a)*;
- (e) the Permanent Secretary in the Ministry for the time being responsible for Agriculture or his representative;
- (f) the Permanent Secretary in the Ministry responsible for Trade;

- (g) the Permanent Secretary in the Ministry responsible for Co-operative Development;
- (h) the Managing Director appointed under section 11 who shall be an *ex officio* member of the Board:

Provided that no person shall qualify for membership of the Board under this section if such person is a member of the Board of Directors of the Coffee Research Foundation, the Co-operative Bank of Kenya Limited or the Kenya Planters Co-operative Union.

(2) The Minister shall publish in the *Gazette* the election to the Board of every member elected under paragraphs (a), (b), (c) and (d) of subsection (1).

(3) The Board shall elect a vice-chairman from amongst the members elected under paragraphs (b) and (c) of subsection (1).

(4) The chairman and the members of the Board other than the members provided for under paragraphs (e), (f), (g) and (h) shall hold office for a term of three years but shall be eligible for re-election:

Provided that the chairman shall not be eligible for re-election for a third term.

[Act No. 6 of 2005, s. 49.]

5. Cessation of membership of Board

A member of the Board shall cease to be a member of the Board if—

- (a) he resigns his office as such in writing to the Board;
- (b) he is absent from three consecutive meetings of the Board without the permission of the chairman;
- (c) he is adjudged bankrupt;
- (d) he is incapacitated by prolonged physical or mental illness;
- (e) he ceases to represent the interest in respect of which he was elected or nominated to the Board;
- (f) he is otherwise unable or unfit to discharge the functions of his office.

6. Replacement of Board member

If the office of a member of the Board becomes vacant the Board shall notify the interested group or organization which elected that member to the Board under section 4 with a view to arranging a replacement through an election by that group or organization.

7. Objects and functions of the Board

(1) The object and purpose for which the Board is established is to promote competition in the coffee industry, production, processing and branding of Kenya coffee locally and internationally, and generally to regulate the coffee industry in the public interest.

- (2) Without prejudice to the generality of subsection (1), the Board shall—
- (a) in consultation with the Ministry for the time being responsible for agriculture and other interested parties, formulate policies and make rules to regulate the coffee industry;
 - (b) carry out registration of and regulate the operations of growers, pulping stations, millers, marketing agents, management agents, buyers, roasters, packers, warehousemen, coffee nurseries and auctioneers;
 - (c) license pulping stations, millers, exporters, coffee nursery owners, marketing agents, dealers, buyers, roasters and packers, warehousemen and auctioneers;
 - (d) provide advisory services related to coffee production and quality enhancement;
 - (e) collect, collate and analyse data, maintain a database on coffee, and document and monitor coffee through registration of any person dealing with coffee under this Act;
 - (f) advise and guide the Foundation in the carrying out of research on, investigation into and co-ordination of training in all matters relating to the coffee industry;
 - (g) represent the Government, if so directed, in international fora;
 - (h) arbitrate in the case of any disputes in the industry referred to it;
 - (i) in consultation with the Jomo Kenyatta University of Agriculture Technology, establish an Institute of Coffee Research jointly with the Coffee Research Foundation, at Ruiru and its substations at Meru, Muhoroni and Kisii, to carry out research into and investigate matters relating to value adding and to improvement of the quality of coffee in Kenya.

(3) The Board shall, subject to the directions of the Minister, be the agent of the Government in respect of all matters pertaining to international agreements made or to be made in relation to coffee.

[Act No. 6 of 2005, s. 50.]

8. Conduct of business of the Board

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule the Board may regulate its own procedure.

9. Authority to raise or borrow money

The Minister, after consultation with the Minister responsible for Finance, may authorize the Board to raise or borrow such sums of money to finance its operations as it may think fit and the Board may secure the repayment of such sums.

10. Power to employ officers and servants

The Board may appoint and employ, on such terms and conditions as it may from time to time determine, such officers and servants as it may consider necessary for the proper and efficient administration of the work of the Board.

11. Management of the Board

(1) There shall be a Managing Director of the Board who shall be appointed by the Board.

(2) The Managing Director shall be responsible for the day to day management of the affairs of the Board and shall be the secretary to the Board.

12. Employment of agents of the Board

The Board may appoint and employ, on such terms and conditions as it may determine, agents to carry out any of its functions under this Act.

13. Directions by the Minister

In the exercise of its powers and in the performance of its functions under this Act, the Board shall act in accordance with any general or special directions as may be given to it by the Minister.

14. Delegation of powers of the Board

The Board may, by resolution either generally or in any particular case delegate any of the powers conferred on it by this Act to any of its members, officers or servants or to any committee, whether constituted wholly of members of the Board or jointly with members of any body established in any other country and having responsibilities similar to those of the Board.

15. Liability of members

No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith and without negligence in the course of the operations of the Board:

Provided that in the conduct of the affairs of the Board, members of the Board shall exercise due prudence and diligence and shall be held jointly and severally responsible for any losses incurred due to any act done by them and which is contrary to this Act or the regulations of the Board or to the direction of any general meeting.

16. Annual meeting of representatives of coffee growers

(1) The Board shall, at least once in every year, convene an annual general meeting of representatives of coffee growers for the purposes of considering the annual reports and accounts mentioned in subsection 3 of section 37 and for the purposes of transacting such other business of which notice shall have been given.

(2) The Board may convene special general meetings in addition to the meetings mentioned in subsection (1) for such purposes and at such times as it may deem fit.

(3) Subject to this Act, and any Rules made under it, the Board may make rules for the regulation of the conduct of business and procedure at general meetings convened by it.

PART III – LICENSING AND REGISTRATION PROVISIONS

17. Prohibition of certain acts without a licence

(1) No person shall—

- (a) buy, sell, mill, warehouse, export or otherwise deal in or transact any business in coffee unless he is a holder of a current licence issued by the Board for that purpose;
- (b) transport or have in his possession any coffee unless he is licensed to do any of the things specified in paragraph (a) and is the holder of a movement permit issued by the Board or is acting in the course of his employment as a servant or agent of a person holding such a permit.

(2) This section shall not apply to—

- (a) any person who purchases coffee for consumption or for planting on his land;
- (b) any grower who mills coffee produced by such grower;
- (c) warehousing of coffee by the Kenya Railways Corporation or by the Kenya Ports Authority;
- (d) an auctioneer of coffee.

(3) Any person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of any licence granted thereunder commits an offence and is liable to a fine of not less than fifty thousand shillings but not exceeding one million shillings or to imprisonment for a term of not less than two years but not exceeding ten years, or to both.

(4) Where a person is convicted of an offence under this section, the court shall order that any coffee and any vehicle, vessel or other conveyance in relation to which the offence has been committed shall be forfeited to the State:

Provided that the court may for reasons to be recorded, direct that such forfeiture shall not apply to any vehicle, vessel or other conveyance in respect of which the offence is committed.

(5) Any coffee or vehicle, vessel, or other conveyance forfeited to the State under subsection (4) shall be sold by public auction and the proceeds accruing from such sale shall be credited to the Board.

[Act No. 17 of 2006, s. 120.]

18. Kinds of licence

Licences under section 17 shall be of the following kinds—

- (a) a coffee dealer's licence, authorizing the holder to—
 - (i) buy or deal in clean coffee produced in Kenya or to import clean coffee from outside Kenya, and to process, in Kenya for local sale or export, coffee of any country of origin; and

- (ii) deal in roasting, blending and packaging coffee for local sale or export;
- (b) a coffee miller's licence authorizing the holder to conduct the business of milling;
- (c) a marketing agent's licence, authorizing the holder to conduct the business of marketing coffee and auctioneering;
- (d) a warehouseman's licence, authorizing the holder to conduct the business of warehousing coffee;
- (e) a pulping station licence, authorizing the holder to operate a pulping station.

[Act No. 17 of 2006, s. 121, Act No. 5 of 2007, s. 82, Act No. 8 of 2009, s. 70.]

19. Issue of licence and licence fees

(1) The Board shall not issue a licence under this Act unless—

- (a) it is of the opinion that the applicant is a fit and proper person to hold such licence and is not indebted to any coffee farmers' organisation; and
- (b) it is satisfied that the applicant has sufficient knowledge, experience and capacity to enable him conduct the business or that he has employed as staff of the business a person with such knowledge, experience and capacity.

(2) Every licence shall specify the premises upon which the business specified in the licence may be carried on.

(3) Licences issued under section 17 as specified under section 18 shall remain in force until the 30th of June next following the date of issue, unless earlier cancelled.

(4) There shall be payable for the issue of licences such fees as the Board, after consultation with the Minister, may prescribe.

(5) The Board shall, at least thirty days before granting a licence under this Act, give notice of the proposed grant in the *Gazette* and in such other manner as the Board may determine.

(6) The Board shall, in the notice referred to in subsection (5)—

- (i) specify the name or other particulars of the person or class of persons to whom the licence is to be granted;
- (ii) state the purpose for the proposed licence and indicate the date such licence is proposed to be issued to the successful applicant; and
- (iii) invite objections to the proposed grant of licence and direct that such objections be lodged with the Board within fourteen days next following the date of the notice.

(7) The Board may after considering the objections, if any, made under this section, grant the licence applied for, subject to such terms and conditions as may be specified therein.

(8) A licence issued under section 17 shall not be transferable.

20. Duties of licence holder

- (1) The holder of a licence issued under section 18 shall—
 - (a) at all times keep on the premises specified therein a register in the English or Kiswahili language of all purchases and sales of coffee made under the authority of his licence, and within forty-eight hours after each purchase or sale, as the case may be, enter in the register the quantity purchased or sold and the date of the transaction;
 - (b) at all times keep exhibited over the outer door of his shop or place of business, in characters not less than three inches in size, his name and the words “Licensed Coffee Dealer” in English or words to the similar effect in the Kiswahili language;
 - (c) submit such returns at such times and to such persons as may be prescribed;
 - (d) on demand by an inspector, allow the inspector to enter upon his premises and inspect all coffee therein and produce for inspection at the inspector’s request his licence and the register kept under this section.

(2) Any person who contravenes any of the provisions of subsection (1) commits an offence.

21. Duty to register with co-operative society or the Board

(1) Every smallholder grower shall register with the co-operative society to which he delivers coffee, and a coffee plantation grower shall register with the Board, by supplying such particulars as the Board may prescribe in Regulations.

(2) Upon the commencement of this Act, every grower licensed by the Board shall be deemed to be a registered grower whether a member of a co-operative society or not:

Provided that where the particulars supplied to the Board by such a grower for purposes of licensing do not meet the requirements of any regulations prescribed under subsection (1), the grower shall comply with such requirements.

(3) Where a person starts growing coffee at any a time after the commencement of this Act, such person shall, within six months register with a co-operative society or the Board in accordance with subsection (1).

(4) Any change in the particulars supplied by a grower for purposes of registration in accordance with subsection (1) shall be notified to the Board or the co-operative society in writing, without undue delay.

(5) The co-operative society and the Board shall each maintain a register for the purpose of this Part and shall record therein the particulars supplied in accordance with this section.

(6) Where a co-operative society or the Board has reasonable cause to believe that a person whose particulars are recorded has ceased to be a grower, it may, after giving that person written notification by registered post of its intention to do so, remove the name of such person from the register.

(7) The registers referred to in subsection (5) shall be *prima facie* proof of the fact that a person is a registered coffee grower and a co-operative society shall furnish the Board with particulars of all registered coffee growers in such manner as the Board may prescribe.

(8) After the commencement of this Act, any grower who carries on business as such without being registered in accordance with subsection (1) or knowingly or recklessly supplies false particulars commits an offence.

(9) For purposes of the keeping of accurate and reliable statistics, any person intending to uproot coffee shall notify the co-operative society, in the case of a smallholder, and the Board, in the case of a plantation grower.

22. Pulping station licences

(1) No person shall construct or operate a pulping station unless he is licensed in respect thereof by the Board and a separate licence shall be required for every pulping station specifying the location of each such pulping station.

(2) Subject to this section, the Board shall maintain a register, in such form as it may determine, of all coffee pulping stations and co-operative societies registering growers under this Part and shall enter therein, in respect of each pulping station—

- (a) the full names of the pulping station and the co-operative society to which it may be affiliated;
- (b) the date of issue of the license;
- (c) the date on which annual returns of registered growers by the co-operative society are received;
- (d) the particulars of numbers of registered growers or variations of such particulars;
- (e) the particulars and sizes of areas planted with coffee or variations of such particulars;
- (f) any other particulars which the Board may deem necessary.

(3) No member of a co-operative society shall pulp his coffee in any pulping station other than a pulping station belonging to a co-operative society of which he is a member:

Provided that where a co-operative society does not own a pulping station, or where the available pulping station is, for any reason, unable to satisfy the pulping requirements of the member, the co-operative society shall make appropriate and expedient arrangements to have the coffee pulped in a pulping station owned by any other co-operative society.

(4) Any person who contravenes the provisions of this section commits an offence.

PART IV – PROVISIONS RELATING TO THE MILLING, MARKETING AND EXPORT OF COFFEE

23. Registration of millers

(1) No person shall conduct the business of a commercial coffee miller unless he is registered as a commercial coffee miller by the Board, and no such business shall be conducted at any premises other than those specified in the register:

Provided that commercial milling shall, in accordance with the regulations made under this Act, provide for security of parchment and clean coffee in the custody of the miller.

(2) Upon registration of a commercial coffee miller, the secretary shall issue a certificate of registration specifying the premises at which milling may be carried on by that miller.

(3) No fee shall be charged in respect of any registration or certificate of registration made or issued under this section.

(4) A commercial miller or a management agent may render extension or other services to a grower for payment or on credit by way of financing coffee or indirectly through a co-operative society and the charges to be made therefor and the contracts shall be registered with the Board in such a manner as may be prescribed.

(5) Every commercial coffee miller registered under this section shall submit such returns at such times and to such persons and do such things as may be prescribed.

(6) Any person who contravenes the provisions of subsection (1) commits an offence.

[Act No. 6 of 2005, s. 51.]

24. Registration of marketing agents

(1) No persons, other than a grower, shall conduct the business of a marketing agent unless—

- (a) he has produced to the Board, and the Board has registered in favour of the grower, a bank guarantee worth between one million United States dollars and twelve million United States dollars, or one and a half times the free on board (f.o.b.) value of the coffee transacted on in each particular case less the transaction cost, whichever is the higher and he is licensed and registered as a coffee marketing agent by the Board:

Provided that where the grower is a co-operative society, co-operative union, growers' association, or plantation grower marketing the grower's own coffee, such grower shall not be required to furnish a bank guarantee;

- (b) he is appointed by a grower as the grower's marketing agent;
- (c) he conducts such business only at the premises specified in the register.

(2) The secretary shall keep a register of all licensed marketing agents.

(2A) The Board shall register a grower as a marketing agent.

(3) Upon registration of a marketing agent, the secretary shall issue to such agent a certificate of registration specifying the premises at which marketing of coffee and warehousing may be carried on.

(4) *Deleted by Act No. 6 of 2005, s. 52(d).*

(5) A marketing agent may render advisory services to growers in matters relating to his area of operation as may be prescribed but every marketing agent, in selling the grower's coffee, may do so at a price agreed upon between the grower and the marketing agent with the concurrence of the grower's financier.

(6) Every marketing agent registered under this section shall submit such returns at such times and to such persons and do such things as may be prescribed.

(7) Any person who contravenes any of the provisions of subsection (1) commits an offence.

[Act No. 6 of 2005, s. 52.]

25. Registration of distinguishing marks

(1) No person offering for sale or exporting coffee shall use any distinguishing mark to mark and identify it as coffee grown by him or by a member of a co-operative society to which such member belongs unless the mark is registered as the distinguishing mark of such person or such society by the secretary in a register to be kept for that purpose.

(2) A person who desires to use, or a co-operative society which desires its members to be able to use, such a mark as referred to in subsection (1) shall make an application for registration thereof to the secretary who may register the same, or may require the applicant to submit another mark to him for his consideration, or may, for reasons to be stated, refuse to register the mark.

(3) Where the secretary registers a mark under this section, he shall issue a certificate of registration thereof to the applicant.

(4) Any person who contravenes any of the provisions of subsection (1) commits an offence.

26. Application for renewal of dealer's licence

An application for the renewal of a licence under section 18 shall be made to the Board not later than the first day of the month of June in which the current licence is due to expire:

Provided that a late application may be made upon payment of a late application fee of one thousand shillings.

27. Restriction of purchase and sale of coffee

(1) Subject to the provisions of this Act—

- (a) no grower shall roast coffee for sale, sell to any other person or purchase coffee from any other person;
- (b) no person shall purchase coffee from any grower;
- (c) no person, other than a grower shall market clean coffee at the auction unless he is the holder of a marketing agent's licence issued by the Board under section 17 and he is appointed so to do by a grower through a specific agreement.

(2) A commercial miller wishing to operate as a marketing agent shall be required to incorporate a separate company for the purpose of marketing coffee:

Provided that where a commercial miller is a company, no director of such company may be a director of the company incorporated pursuant to this subsection.

(3) Any person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of any written authority or licence granted thereunder commits an offence and is liable to a fine of not less than fifty thousand shillings but not exceeding one million shillings or to imprisonment for a term of not less than two years and not exceeding ten years or to both.

(4) Where a person is convicted of an offence under this section the court shall order that any coffee and any vehicle, vessel or other conveyance, in relation to which the offence has been committed shall be forfeited to the State:

Provided that the court may, for reasons to be recorded, direct that such forfeiture shall not apply to any vehicle, vessel or other conveyance.

(5) Where a person is convicted of an offence under this section and the coffee and any vehicle, vessel or other conveyance have been forfeited to the State under subsection (4) such items shall be sold by public auction and the proceeds thereof shall be credited to the Board.

28. Purchase of coffee produced outside Kenya

A marketing agent may purchase any coffee which has been produced outside Kenya and may sell it at the auction provided the marketing agent is a holder of a licence, and for that purpose may make such contracts as may be approved by the Board.

29. Board may require grower to mill coffee

(1) The Board may by order in the *Gazette*, require a grower within a specified time to mill the whole or any part of coffee which is in the grower's possession or to send it to a coffee miller registered under section 23 for milling.

(2) Any grower who fails to comply with an order made under subsection (1) commits an offence.

30. Certain duties of millers

(1) Every miller to whom any coffee is sent for milling, and every grower who mills any coffee, shall, within forty-eight hours of the coffee being milled send to—

- (a) the Board, a statement in the prescribed form of the coffee milled;
- (b) the marketing agent, a statement in the prescribed form and a sample of 200 grams of each grade of the milled coffee.

(2) The Board shall appoint marketing agents to collect statutory deductions and remit the amounts to the respective institutions entitled to receive such deductions.

(3) Any person who contravenes the provisions of subsection (1) commits an offence.

31. Classification of coffee

(1) Where a sample of coffee has been sent to a marketing agent under section 30, the marketing agent shall classify the coffee of which it is a sample in accordance with the sample, and shall, within seven days after such classification, notify the grower to whom the sample belongs, or his agent, of the class in which the coffee has been classified.

(2) Any grower who is aggrieved by classification of his coffee under subsection (1) may, within twenty-one days of the notification under the said subsection, appeal in writing against such classification to the Board.

32. Marketing of coffee

Subject to the provisions of this Act, a marketing agent shall market all coffee which has been classified by him under section 31 on terms agreed between the grower or the grower in consultation with his financier and the marketing agent from time to time, and such coffee shall be delivered to the marketing agent in such manner as may be prescribed by the Board.

32A. Rules

The Minister shall make rules on the conduct of direct sales of coffee in order to promote competition and to ensure security of the growers' sales proceeds prior to export or transfer to the buyer.

[Act No. 6 of 2005, s. 53.]

PART V – FINANCE**33. Growers *ad valorem* levy**

(1) The Minister may from time to time, on the recommendation of the Board, by order published in the *Gazette*, impose a levy, hereafter referred to as a grower's *ad valorem* levy, on all coffee sold by the marketing agents under the provisions of this Act provided that the amount of such *ad valorem* levy not exceeding the percentages specified herein shall be deducted and remitted directly as follows—

- (a) one per centum of the gross sales of all clean coffee sold by a marketing agent shall be remitted to the Board;
- (b) two per centum of the gross sales of all clean coffee sold by the marketing agent shall be remitted to the Coffee Research Foundation.

(2) Every marketing agent appointed under the provisions of this Act shall remit the amount of the levy deducted by him as specified in subsection (1) to the Board and the Foundation respectively within seven days from the date the coffee sale proceeds are received by the marketing agent from the dealers as specified in the sales catalogue.

(3) All moneys due on account of a grower's *ad valorem* levy shall be a debt due to the Board or the Foundation, as the case may be, from the grower concerned or his marketing agent.

(4) Any person who contravenes the provisions of subsection (2) commits an offence and is liable to a fine of not less than fifty thousand shillings or imprisonment for a term of not less than six months or to both, in addition to the recovery of the amount due to the Board or the Foundation, and such amount due shall attract interest at the prevailing commercial bank rates.

34. Coffee Development Fund

(1) There is established a Fund to be known as the Coffee Development Fund.

(2) The Fund shall consist of—

- (a) the coffee development levy;
- (b) any funds provided by bilateral or multilateral donors, for the purpose of the Fund;
- (c) moneys provided by Parliament specifically for the purpose of the Fund;
- (d) any interest from loans and advances; and
- (e) funds from any other source approved by the Trustees.

(3) The Fund shall be managed by a Board of Trustees which shall consist of—

- (a) the Permanent Secretary to the Treasury;
- (b) the Permanent Secretary of the Ministry for the time being responsible for matters relating to Agriculture;
- (c) five members elected by members of coffee co-operative societies;
- (d) three members elected by plantation coffee growers;
- (e) the Managing Trustee who shall be the Secretary.

(4) The purpose for which the Fund is established is to provide sustainable affordable credit and advances to coffee farmers for all or any of the following purposes—

- (a) farm development;
- (b) farm inputs;
- (c) farming operations; and
- (d) price stabilization.

(5) The Trustees shall, from time to time, make rules for the better management of the Fund in the best interest of coffee farmers, and may in such rules prescribe the terms and conditions, the rate of interest, the period of repayment, the form of security or guarantee, on which the loans and advances are to be made, and the manner of recovery thereof from coffee farmers.

34A. Sources of the Fund

The Fund shall consist of—

- (a) any funds provided by bilateral or multilateral development partners, for the purpose of the Fund;
- (b) interest on loans and advances made by the Fund; and

- (c) money provided by Parliament for the purpose of the Fund;
- (d) funds from any other source approved by the Trustees.

[Act No. 6 of 2005, s. 54.]

34B. Board of Trustees

(1) The Fund shall be managed by a board of trustees to be known as the Coffee Development Fund Board of Trustees.

(2) The Board of Trustees shall be a body corporate having perpetual succession and a common seal and may, in its corporate name—

- (a) sue or be sued;
- (b) purchase, hold, manage and dispose of movable and immovable property;
- (c) lend or borrow money;
- (d) do or perform all such other things or acts necessary for the proper performance of its functions under this Act which may be lawfully performed by a body corporate.

(3) The Board of Trustees shall consist of—

- (a) the Permanent Secretary to the Treasury;
- (b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to Agriculture;
- (c) the Permanent Secretary in the Ministry for the time being responsible to matters relating to Co-operative Development;
- (d) six members appointed by the Minister on the basis of their interest and expertise in financial management from—
 - (i) coffee co-operative societies;
 - (ii) plantation coffee growers; and
 - (iii) other coffee experts,and approved by the relevant Parliamentary Committee;
- (e) the Managing Trustee, who shall be the secretary to the Board of Trustees.

(4) The trustees shall elect the chairman from amongst the members appointed under subsection (3)(d).

(5) The trustees appointed under subsection (3)(d) shall hold office for a term of three years which shall be renewable for one further term of not more than three years.

(6) The office of a trustee appointed under subsection (3)(d) shall become vacant—

- (a) if he resigns his office by notice in writing addressed to the Minister;
- (b) if he dies;
- (c) if he is adjudged bankrupt;
- (d) if he is sentenced to a term of imprisonment by any court;

- (e) if the Minister is satisfied that the trustee is physically or mentally incapable of fulfilling the functions of his office, and terminates the appointment of the trustees; or
- (f) if he conducts himself in a manner deemed by the Minister to be inconsistent with membership of the Board.

[Act No. 6 of 2005, s. 54.]

34C. Managing Trustee and other staff

(1) The Board of Trustees shall, through a competitive process, appoint a Managing Trustee who shall be the chief executive of the Board and responsible for the day to day running of the affairs of the Board.

(2) The Managing Trustee shall possess a post-graduate qualification in management.

(3) The Managing Trustee shall hold office for a term of four years which shall be renewable for one further term of not more than four years.

(4) The Board of Trustees may hire such officers and other staff as may be necessary for the proper discharge of the Board's functions under this Act, on such terms and conditions of services as it may determine.

[Act No. 6 of 2005, s. 54.]

34D. Board of Trustees may make rules, etc.

(1) The Board of Trustees may, from time to time, in consultation with the Minister, make rules for the better management of the Fund.

(2) In making the rules referred to in subsection (1), the Board of Trustees shall take into account the best interests of growers.

(3) Without prejudice to the generality of subsections (1) and (2), the rules may prescribe the terms and conditions, rate of interest, the period of repayment, the form of security or guarantee on which the loans and advances are to be made by the Board, and the manner of recovery thereof from the persons to whom such loans or advances are made.

[Act No. 6 of 2005, s. 54.]

35. Agent to pay grower directly

A marketing agent shall pay the grower directly after the sale of coffee by such agent and on making statutory deductions within seven days of receipt of the coffee sales proceeds from the dealer as specified in the sales catalogue and there shall be no coffee pool in the custody of any marketing agent.

PART VI – AUDIT AND REPORT

36. Accounts and audit

(1) The Board and the Foundation shall respectively cause to be kept such books of account and other books in relation thereto and to all its undertakings, funds, activities and property as the Minister may from time to time require;

and shall within a period of four months after the end of its financial year, or within such longer period as the Minister may approve, cause to be prepared, signed and transmitted to the auditor—

- (a) a balance sheet showing in detail the assets and liabilities of the Board or the Foundation; and
- (b) such other statements of account as the Minister may require.

(2) The accounts of the Board and those of the Foundation shall be examined, audited and reported upon annually by the Auditor-General (Corporations) in accordance with Part VII of the Exchequer and Audit Act (Cap. 412).

37. Annual report and publication thereof

(1) The Board shall, within a period of seven months after the end of its financial year or within such longer period as the Minister may approve, submit to the Minister a report of its operations during such year, and the yearly balance sheet and such other statements of account as the Minister shall require together with the report of the Auditor-General (Corporations) thereon; and the Board or the Foundation, as the case may be, shall, if the Minister so requires, publish them in such a manner as the Minister may specify.

(2) The Minister shall lay the Board's and the Foundation's report and the report of the Auditor-General (Corporations), together with the balance sheet and such other statements of account as the Minister may have required, before the National Assembly within fourteen days of receipt of the reports and statements by him, or, if the National Assembly is not then sitting, within fourteen days of the next sitting.

(3) The Board and the Foundation shall each submit its report and the report of the Auditor-General (Corporations), together with the balance sheet and such other statements of account as the Minister may have required, to the annual general meeting next convened after the same have been submitted to the Minister.

PART VII – GENERAL

38. Appeals

Any person aggrieved by the refusal of the Board, or of any person authorized by the Board in that behalf, to issue any licence or registration certificate, or by any decision of the Board may within thirty days after being notified of such refusal, cancellation, suspension or decision, appeal to the Agricultural Appeals Tribunal established under Part XV of the Agriculture Act (Cap. 318), and the provisions of that Part shall, *mutatis mutandis*, apply in relation to every such appeal.

39. Service of notices

Where any notice is required by or under this Act or any Rules made thereunder to be served on any person, service thereof may be effected either personally on such person or by registered post; and, where the person to be served is a body corporate or a co-operative society or other body of persons, service of any such notice may be effected by serving it personally on any secretary, director or other officer thereof, or by leaving or sending it by

registered post addressed to the body corporate, co-operative society or body of persons at its registered office, or, where there is no registered office, at any place where it carries on business.

40. Powers of inspectors

(1) An inspector may require the person in charge, or appearing to be in charge, of the premises of a grower or retail seller of provisions to allow him free ingress to the premises and to produce to him for his inspection any licence issued, and any register kept, in relation thereto under this Act.

(2) Any person who refuses entry to an inspector acting under this section or obstructs him in entering or in making an inspection thereunder, or who, without reasonable excuse, fails to produce any licence or register production of which is required of him under this section, commits an offence.

(3) The Attorney-General may appoint any person to institute and conduct proceedings in a court of law in respect of any offence committed under this Act.

41. Offences by corporations, co-operative societies, etc.

Where any offence under this Act or under any Rules made thereunder is committed by any company or other body corporate, or by any co-operative society, association or body of persons, every person charged with, or concerned, or acting in, the control or management of the affairs or activities of such company, body corporate or co-operative society, association or body of persons, shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed or that he took all reasonable steps to prevent its commission.

42. General penalty

Any person who is guilty of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

43. Additional penalty for certain offences

(1) Where the holder of a licence under section 17, or any person registered under section 23 or 24, of this Act is convicted of an offence under Chapter XXXI of the Penal Code (Cap. 63) in respect of coffee, the court convicting him may, in addition to imposing any other penalty, order that the licence or certificate of registration, as the case may be, of such person, be cancelled with effect from such date as the court considers will enable the person to dispose of his existing stock of coffee, and that the person be debarred there-after from obtaining such a licence or from being so registered for such a period as the court may think fit.

(2) A person whose licence or certificate of registration has been ordered, under subsection (1), to be cancelled may, notwithstanding the provisions of section 348 of the Criminal Procedure Code (Cap. 75), appeal against the order to the High Court in accordance with the provisions of Part XI of that Code.

44. Rules

(1) The Minister may, after consultation with the Board, make Rules for prescribing anything which by this Act is required to be prescribed, and generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1) Rules thereunder may provide for all or any of the following matters—

- (a) Prescribing the manner of electing the members of the Board, who are required by this Act to be elected to represent respective coffee areas and interests, and the manner in which the lists of candidates for election shall be published;
- (b) prescribing the manner in which persons to represent growers for the purposes of section 16 shall be elected;
- (c) prescribing the manner of registration and licensing or de-registration of buyers, auctioneers, packers, marketing agents, management agents, millers, growers and any other persons dealing in coffee;
- (d) requiring the rules and regulations of any organization dealing or involved in coffee trade and all rules and regulations relating to conditions of trading in coffee at the Nairobi Coffee Exchange or matters relating to the sale of coffee, made by any such organization to be in conformity with the provisions of this Act;
- (e) prescribing the forms and manner of application for registration under sections 23, 24 or 25;
- (f) prescribing the forms of certificate to be issued under this Act;
- (g) prescribing the returns, and the forms thereof, to be made by persons holding licenses under section 18, millers registered under section 23 and marketing agents registered under section 24;
- (h) prescribing the manner in which coffee may be traded and stored, and regulating and controlling the blending and packing of parchment coffee, clean coffee, roasted seeds and ground coffee with a view to maintaining or enhancing the quality of coffee;
- (i) prescribing the forms of registers required by this Act to be kept, and the matters to be entered therein;
- (j) controlling and regulating the milling and sale of coffee by the millers and marketing agents respectively, including accountability and sale of coffee sweepings and monitoring milling recovery ratios;
- (k) providing for and regulating deliveries of coffee from the millers to the marketing agents including the retention schemes that may be applied;
- (l) prescribing the services which the millers and marketing agents may render to growers for payment, and the charges to be made therefor;
- (m) providing for the submission of returns to the Board relating to the acreage of coffee which is under cultivation, and the quantities of coffee available for sale by the marketing agents;

- (n) prescribing the forms and procedure for appeals under this Act;
- (o) providing for the manner of grading and classification of coffee under this Act;
- (p) prescribing the fees, which may be charged for anything to be done under this Act;
- (q) prescribing anything, which under this Act may be prescribed.

PART VIII – REPEAL AND TRANSITIONAL PROVISIONS

45. Repeal of Cap. 333

(1) In this Part—

“**appointed day**” means the day the Act comes into operation;

“**the former Board**” means the Coffee Board of Kenya provided for by the provision of the Coffee Act (Cap. 333) prior to the “appointed day”;

“**the new Board**” means the Coffee Board of Kenya established by section 3 of the Coffee Act (Cap. 333) as amended by this Act.

(2) The Coffee Act (Cap. 333) is hereby repealed.

(3) Notwithstanding the repeal of the Coffee Act (Cap. 333), all rights, obligations, liabilities and contracts which immediately before the commencement of this Act were vested in or imposed on the former Board shall from the commencement of this Act be deemed to be the rights, obligations, liabilities and contracts of the new Board.

(4) The Minister may, by order—

- (a) provide that from a specified date, subject to such exceptions as may be contained in the order, all persons who immediately before the commencement of this Act are officers or employees of the former Board shall be officers or employees, as the case may be, of the new Board;
- (b) make provisions consequent on the transfer or exceptions referred to in paragraph (a);
- (c) make provision with respect to pensions or provident fund benefits of the new Board and with respect to the pension scheme and provident fund of the former Board.

(5) (a) On the appointed day, all the funds, assets and other property, moveable and immovable, which, immediately before such day, were vested in the former Board shall, by virtue of this paragraph and without further assurance, vest in the new Board.

(b) Every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of fee or other charge and upon request made by or on behalf of the new Board, do all such things as are by law necessary to give final effect to the transfer of property mentioned in paragraph (a).

(c) On the appointed day, all rights, powers, liabilities and duties whether arising under any written law or otherwise howsoever, which immediately before the appointed day were vested in, imposed on or enforceable by or against the former Board shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the new Board.

(6) On and after the appointed day, all actions, suits or legal proceedings whatsoever pending by or against the former Board shall be carried on or prosecuted by or against the new Board, and no such action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

(7) Any reference to the former Board in any written law or in any contract, document or instrument of whatever nature shall, on and after the appointed day, be read and construed as a reference to the new Board.

(8) All directions, orders and authorizations given, or licences or permits issued, or registrations made by the former Board, and subsisting or valid immediately before the appointed day, shall be deemed to have been given, issued or made, as the case may be, by the new Board.

(9) Every person who, immediately before the appointed day was an officer or servant of the former Board (not being then under notice of dismissal or resignation) shall on that day become an officer or servant of the new Board upon the terms and conditions of service applicable to him immediately before such day:

Provided that any such person who, within two weeks after the appointed day, gives notice in writing to the new Board that he does not wish to become an officer or servant of the new Board shall be deemed not to have become such officer or servant but to have retired from the service of the former Board on the day preceding the appointed day.

SCHEDULE

[Section 8.]

CONDUCT OF MEETINGS OF THE BOARD

1. The Chairman shall convene and chair all meetings of the Board.
2. In the absence of the Chairman and the vice-chairman from any meeting, a chairman for that meeting shall be chosen by the members from among those present.
3. The quorum for conduct of the business of the Board shall be nine members including the chairman or the person presiding:

Provided that at least five of the members elected under section 4(b) and 4(c) shall be present.

4. The chairman of a meeting shall have a deliberative vote, and, in case of equality of votes, also a casting vote.

5. The Board shall meet at least once in every three months.
 6. The chairman, or, in his absence the vice-chairman, may, in his discretion, at any time convene a special meeting of the Board, and shall upon receipt of a written request signed by not less than three members of the Board, convene a special meeting of the Board within two weeks after such request.
 7. The minutes in proper form of each meeting shall be kept by the secretary and shall be confirmed by the chairman or the person presiding at the next succeeding meeting.
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