



LAWS OF KENYA

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## **CEREALS AND SUGAR FINANCE CORPORATION ACT**

CHAPETR 329

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**CHAPTER 329**

**CEREALS AND SUGAR FINANCE CORPORATION ACT**

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## CHAPTER 329

## CEREAL AND SUGAR FINANCE CORPORATION ACT

[Date of commencement: 22nd November, 1955.]

**An Act to establish a Corporation empowered to finance transactions entered into by the Government or by Government agencies in connection with the sale and purchase of cereals or sugar; to make provision as to the constitution and functions of, and as to the guarantee by the Government of loans raised by, such Corporation; and for purposes connected with the matters aforesaid**

[Act No. 50 of 1955, Act No. 6 of 1959, Act No. 33 of 1959, L.N. 2/1964, Act No. 21 of 1966, Act No. 50 of 1968, Act No. 16 of 1977, Act No. 12 of 1985.]

**1. Short title**

This Act may be cited as the Cereals and Sugar Finance Corporation Act.

[Act No. 33 of 1959, s. 2.]

**2. Interpretation**

In this Act, except where the context otherwise requires—

“**bank**” means a bank within the meaning of the Banking Act (Cap. 448);

“**cereals**” means any crop for the time being specified in the First Schedule to the Agriculture Act (Cap. 318), and includes maize;

“**Corporation**” means the Cereals and Sugar Finance Corporation established by section 3 of this Act;

“**financial year**” means the twelve months ending on the 30th June or such other day as the Minister may from time to time direct; and whenever the Minister gives any direction under this provision he may give such direction as to treating a part of a year as a financial year and such incidental or supplemental directions as he may think fit;

“**Government agency**” means—

- (a) in relation to cereals the marketing of which is regulated by the Wheat Industry Act (Cap. 344), any agency within the meaning of that Act;
- (b) in relation to maize, the Board established by section 3 of the Maize Marketing Act (Cap. 338), or any person appointed by the Board in that behalf;
- (c) in relation to any other cereals the marketing of which is for the time being controlled by Part II of the Agriculture Act (Cap. 318), any agent constituted or appointed by or under that Act;

“**guaranteed minimum return**” has the same meaning as in the Agriculture Act (Cap. 318);

“**maize**” has the meaning assigned to that word in the Maize Marketing Act (Cap. 338).

[Act No. 6 of 1959, Sch., Act No. 33 of 1959, s. 3, L.N. 2 of 1964.]

**3. Cereals and Sugar Finance Corporation**

(1) There shall be a Corporation, to be called the Cereals and Sugar Finance Corporation, whose functions shall be to raise by borrowing, from overseas or local sources, and to lend at such rate of interest as the Corporation may in any particular case agree to charge, to the Government and to Government agencies any capital, means or resources required by the Government or such agencies for or towards all or any of the following purposes—

- (a) the purchase of any cereals or sugar;
- (b) advance payments, instalments or other payments of moneys due on account of the purchase price of any cereals or sugar;
- (c) advance payments, instalments or other payments of moneys due on account of guaranteed minimum returns relating to cereals;
- (d) advances of moneys against, and pending the receipts of, moneys due to the Government or Government agencies on account of the sale by the Government or any such agency of cereals or sugar;
- (e) the expenses of making of sugar from all sources available to the public at a uniform price.

(2) The Corporation shall be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued, and, for and in connection with the purposes of this Act, may purchase, hold, manage and dispose of movable and immovable property and enter into such contracts as may be, in the opinion of the Corporation, necessary or expedient.

(3) The Corporation shall consist of such persons as may from time to time be appointed by the Minister, and the Minister may from time to time nominate one of the members of the Corporation to be chairman thereof.

(4) Every member of the Corporation shall hold and vacate his office in accordance with the terms of his appointment, and shall, on ceasing to be a member, be eligible for reappointment:

Provided that any member may at any time by notice in writing to the Minister resign his office.

(5) If the chairman of the Corporation ceases to be a member of the Corporation, he shall also cease to be chairman.

(6) A member of the Corporation who ceases to be a member or ceases to be chairman shall be eligible for re-appointment.

(7) No member of the Corporation shall be entitled to any remuneration in respect of his office as such.

(8) The quorum of the Corporation and the arrangements relating to its meetings shall, subject to any directions given by the Minister, be such as the Corporation may determine.

(9) The validity of the proceedings of the Corporation shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

(10) The common seal of the Corporation shall be of such device as may be approved by the Minister, and the application of such seal to any contract or

instrument shall be authenticated by the signature of the chairman or some other member of the Corporation authorized by the Corporation to authenticate the application of the seal thereof, and of some other member or officer of the Corporation authorized by the Corporation to act in that behalf.

(11) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Corporation by any two members, or by any one member and one officer, of the Corporation authorized either generally or specially by the Corporation to act for that purpose.

(12) Any document purporting to be a document duly executed under the common seal of the Corporation shall be received in evidence and shall, unless the contrary is proved, be deemed to be so executed.

[Act No. 33 of 1959, s. 4 and Sch.]

#### **4. Powers of Corporation**

(1) The Corporation shall, subject to the provisions of this Act, have power to do all such things and to enter into all such transactions as appear to the Corporation to be necessary for, or conducive or incidental to, the proper discharge of the functions described in subsection (1) of section 3 of this Act; and, without prejudice to the generality of the foregoing or to the provisions of subsection (1) of section 3 of this Act, the Corporation shall for the purpose of discharging its functions have power—

- (a) to borrow or obtain moneys or credit by any means or in any form with or without security or to guarantee or become liable by way of suretyship or indemnity for the payment of money;
- (b) to create, make, draw, accept, endorse, execute, issue, discount, buy, sell, negotiate and deal in bills, notes, bills of lading, warrants, coupons, stock, debentures and other negotiable or transferable instruments;
- (c) subject to the provisions of this Act, to secure the payment of moneys borrowed by the Corporation or for which the Corporation may be or become liable by the issue of or upon debentures, perpetual, terminable or otherwise, or bonds, or other obligations charged or not charged upon, or by mortgage, charge, hypothecation, lien or pledge of the whole or any part of the property, assets and rights of the Corporation, both present and future, and generally in such other manner and on such terms as may seem expedient, and to issue any of the Corporation's obligations or securities for such consideration and on such terms as may be thought fit; and also by a similar mortgage, charge, hypothecation, lien or pledge, to secure and guarantee the performance by the Corporation of any obligation or liability it may undertake and to redeem or pay off any such securities.

(2) Nothing in this Act—

- (a) shall be construed as authorizing the Corporation to disregard any enactment or rule of law; or

- (b) shall authorize the Corporation to incur an indebtedness (present or contingent) exceeding at any one time the sum of five million pounds, or such larger amount as the National Assembly may from time to time by resolution approve.

(3) No person lending money or affording credit to the Corporation shall be concerned to see or inquire whether a case has arisen to authorize the borrowing of such money or the obtaining of such credit by the Corporation, or whether the Corporation is otherwise properly exercising its powers under this Act, nor shall any such person be answerable for any loss, misapplication or misappropriation of any moneys obtained by the Corporation under any such loan or credit as aforesaid.

(4) Without prejudice to any provision of this Act requiring the approval or direction of the Minister to be obtained or given for anything to be done by the Corporation, the Minister may give directions to the Corporation for restricting the exercise by it of any of its powers under this Act, or for requiring the Corporation to exercise those powers in any manner specified in the directions:

Provided that—

- (i) any transaction between any person and the Corporation acting in purported exercise of its powers under this Act shall not be void by reason only that it was carried out in contravention of such directions unless that person had actual knowledge of the directions; and
- (ii) nothing contained in this subsection shall affect the provisions of subsections (2) and (3) of this section.

(5) The Corporation may, with the approval of the Minister in each case and in such manner and subject to such directions as the Minister may generally or in any particular case give, invest any moneys not immediately required by the Corporation for the discharge of its functions under this Act.

[Act No. 21 of 1966, First Sch., Act No. 16 of 1977, Sch.]

## **5. Charge on cereals or sugar the subject of transactions financed by Corporation**

(1) Upon any, or any part of any, advance, loan or charge other financial assistance made or given by the Corporation to the Government or to any Government agency being expended by the Government or by such agency in or towards the purchase of any cereals or sugar, or the payment of the guaranteed minimum return in respect of any cereals, the Corporation shall be entitled to a fixed charge upon such cereals or sugar in the amount of such expenditure.

(2) A fixed charge created by virtue of this section shall have effect notwithstanding anything in the Chattels Transfer Act (Cap. 28), and shall not be deemed to be the subject of an instrument within the meaning of that Act.

(3) A fixed charge created by virtue of this section shall continue in force until the expenditure giving rise thereto is repaid to the Corporation or otherwise liquidated, or until the Corporation releases the specific cereals or sugar the subject thereof from the charge, whichever is the earlier.



(4) (a) A fixed charge created by virtue of this section shall, so long as the charge continues in force—

- (i) confer on the Corporation a right, at any time, to take possession of the specific cereals or sugar the subject of the charge;
- (ii) confer on the Corporation, where possession of any cereals or sugar has been so taken, a right to sell such cereals or sugar either by auction or by private treaty and either for a lump sum payment or payment by instalments, and otherwise upon such terms and conditions as the Corporation may think fit:

Provided that, if the sale or the price of any such cereals or sugar is controlled or regulated in any way by any law for the time being in force, then the Corporation shall sell such cereals or sugar in accordance with the provisions of such law;

- (iii) impose on the Corporation an obligation, in the event of such power of sale being exercised, to apply the proceeds of sale in or towards the discharge of the charge, and the cost of seizure and sale, and to pay the surplus (if any) of the proceeds to the person properly entitled thereto.

(b) A fixed charge created by virtue of this section shall, so long as the charge continues in force, impose on the Government or, as the case may be, the Government agency—

- (i) an obligation whenever the Government or the Government agency sells any of the specific cereals or sugar, or receives any money in respect thereof, forthwith to pay to the Corporation the amount of the proceeds of the sale or the moneys so received, except to such extent as may be otherwise agreed; the sums so paid to be applied, except so far as otherwise agreed, by the Corporation in or towards the discharge of the charge;
- (ii) an obligation in the event of the Government or the Government agency receiving any money under any policy of insurance on any of the specific cereals or sugar comprised in the charge, or otherwise in respect of such cereals or sugar, forthwith to pay the amount of the sums so received to the Corporation, except to such extent as may be otherwise agreed; the sums so paid to be applied, except so far as otherwise agreed, in or towards the discharge of the charge.

(c) Subject to compliance with the obligations so imposed, the charge shall not prevent the Government or the Government agency selling any of the specific cereals or sugar the subject of the charge, and neither the purchaser nor any other person shall be concerned to see that such obligations are complied with, notwithstanding that he may be aware of the existence of the charge.

[Act No. 33 of 1959, Sch.]

## **6. Advances to corporations**

(1) For the purpose of enabling the Corporation to discharge its functions under this Act, the Minister may, subject to the provisions of paragraph (b) of subsection (2) of section 4 of this Act, make advances to the Corporation on such terms as to interest and repayment as he may determine such advances shall be issued out of the consolidated fund without further appropriation.

(2) Without prejudice to the provisions of section 4 of this Act respecting its borrowing powers, the Corporation may, with the approval of the Minister, borrow temporarily by way of overdraft or otherwise such sums as the Corporation may consider necessary for carrying on its current operations.

[L.N. 2/1964, Act No. 50 of 1968, s. 2.]

## **7. Banking accounts**

(1) The Corporation shall open and maintain an account or accounts in the name of the Corporation at a bank or banks to be approved by the Minister, into which account shall be paid—

- (a) all moneys received by the Corporation on account of any advance, grant or loan under section 6 of this Act.
- (b) all other moneys received by the Corporation in, or in connexion with, the discharge of its functions under this Act.

(2) No payment shall be made by or on behalf of the Corporation except through a bank account to be opened and maintained as aforesaid.

(3) Nothing contained in this section shall affect the provisions respecting the establishment and maintenance of sinking funds, reserve fund, and stabilization funds contained in section 8 of this Act:

Provided that all payments to or from any such fund shall be made through a bank account to be opened and maintained as aforesaid.

[L.N. 2/1964.]

## **8. Sinking funds, etc.**

(1) The Corporation may, and shall whenever so directed by the Minister, establish and maintain such sinking funds reserve funds or stabilization fund's as may be necessary or desirable for the efficient discharge of the functions of the Corporation.

(2) The management of every such fund, the sums to be carried from time to time to the credit thereof and the application thereof shall be as the Corporation may determine:

Provided that the Minister may from time to time give to the Corporation such general or particular directions as he thinks fit as to any matter relating to the establishment, investment or management of any such fund, the carrying of sums to the credit thereof or the application thereof, and the Corporation shall comply with such directions.

## **9. Application of revenues**

(1) Any excess of the revenues of the Corporation for any financial year over the total sums properly chargeable by the Corporation to revenue account for that year, including in such sums (without prejudice to the generality of that expression) sums credited under section 8 of this Act to any sinking fund, reserve fund or stabilization fund, shall be applied by the Corporation in such manner as the Minister, after consultation with the chairman of the Corporation, may direct.

(2) Any direction given under subsection (1) of this section may require the whole or any part of any such excess as aforesaid to be paid into the consolidated fund.

**10. Guarantee of loans raised by Corporations, etc.**

(1) The payment of all principal and other moneys borrowed by the Corporation under the authority of this Act and of all other moneys for which the Corporation becomes indebted to any person in the discharge of its functions under this Act, and any interest and other charges thereon, is, to the extent to which such principal moneys and interest and other charges are not paid out of the funds of the Corporation, hereby guaranteed out of, and charged upon, the consolidated fund.

(2) Any sum required to be paid to any creditor of the Corporation for fulfilling the guarantee created by subsection (1) of this section shall be paid by the Treasury out of the consolidated fund, which is hereby appropriated to that purpose, and the Treasury shall remit to such creditor, or to the Crown Agents on his behalf, any such sum; and any sum received by the Treasury by way of the repayment of any sum so paid shall be paid into the consolidated fund.

(3) Whenever by the final judgment, decree, rule or order of any court of competent jurisdiction in the United Kingdom any sum of money is adjudged or declared to be payable to any creditor of the Corporation, then that sum, if not forthwith paid by the Corporation, shall be paid by the Treasury out of the funds of Kenya in the hands of the Crown Agents without other or further appropriation than this Act.

(4) If the sum remitted under subsection (2) of this section is insufficient for the payment of any sum adjudged or declared to be payable in manner referred to in subsection (3) of this section, the amount required to meet such deficiency shall be paid by the Treasury out of the consolidated fund, which is hereby appropriated to that purpose, Treasury shall remit to the Government Agents a sum equal to the amount of the said deficiency; and the sum so remitted shall be applied by the Government Agents in the satisfaction of the amount due under any such final judgment, decree, rule or order as aforesaid.

(5) In order to enable every payment due to be made by the Government Agents under this section to be duly made, a certificate under the hand of the Government Agents, specifying the sums so paid under a judgment, decree, rule or order of any court, shall be sufficient authority to the Controller and Auditor-General, or other officer having the auditing of the accounts of the Government Agents, for passing such sum without other or further appropriation.

[L.N. 2/1964.]

**11. Accounts and reports**

(1) The Corporation shall keep proper accounts, and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of accounts in such form as the Minister may direct.

(2) As soon as may be after the end of every financial year, the Corporation shall prepare a general report of its proceedings during that year, and transmit it to the Minister, who shall consider it and lay copies thereof before the National Assembly.

(3) The said report shall have attached thereto the statement of accounts for the year, and shall also include such information relating to the past and present activities of the Corporation, and the financial position of the Corporation, as the Minister may from time to time direct.

(4) The Corporation shall at all reasonable times, upon demand made by the Minister or by any person authorized by him in that behalf—

- (a) afford to him or them full liberty to examine the accounts of the Corporation; and
- (b) furnish him or them with all estimates, information and documents which he or they may require with respect to the financial transactions and engagements of the Corporation.

## **12. Audit**

The accounts of the Corporation shall be audited by the Auditor-General (Corporations).

[Act No. 12 of 1985, Sch.]

## **13. Exemption from stamp duty and income tax**

(1) No stamp duty shall be chargeable in respect of any instrument executed by, on behalf of or in favour of the Corporation in cases where, but for this exemption, the Corporation would be liable to pay the duty chargeable in respect of such instrument.

(2) The Corporation shall not be liable for the payment of any income or other tax on or in respect of its income, revenues or receipts or any part thereof, imposed under any law in force, in Kenya.

## **14. Corporation not to undertake banking business**

Nothing contained in this Act shall authorize or empower the Corporation to undertake any banking business, and nothing contained in the Banking Act (Cap. 488) shall apply to the Corporation.

## **15. Savings**

(1) Nothing in this Act shall in any way prejudice or affect the rights of the Government or of any body or bodies politic or corporate or other person or persons excepting only such as are mentioned in this Act and those claiming by, from or under them.

(2) *Deleted by Act No. 21 of 1966, 1st Sch.*

[Act No. 21 of 1966, 1st Sch.]

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## CHAPTER 329

## CEREAL AND SUGAR FINANCE CORPORATION ACT

## SUBSIDIARY LEGISLATION

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N. 194/1963.]

IT IS hereby notified for general information that the limit of the amount of indebtedness (present or contingent) at any one time which the Cereals and Sugar Finance Corporation may incur has been increased to six million pounds, by resolution of the Legislative Council dated 19th December, 1962, under section 4(2)(b) of the Cereals and Sugar Finance Corporation Act (Cap. 329).

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N. 66/1967.]

IN PURSUANCE of section 4(2)(b) of the Cereals and Sugar Finance Corporation Act, the National Assembly on the 23rd February 1967 approved the increase of the maximum indebtedness (present or contingent) which the Cereals and Sugar Finance Corporation may incur at any one time to seven million, five hundred thousand pounds.

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N. 6/1968.]

IN PURSUANCE of section 4(2)(b) of the Cereals and Sugar Finance Corporation Act, the National Assembly on the 30th November 1967 approved the increase of the maximum indebtedness (present or contingent) which the Cereals and Sugar Finance Corporation may incur at any one time to ten million pounds.

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N.120/1968.]

IN PURSUANCE of section 4(2)(b) of the Cereals and Sugar Finance Corporation Act, the National Assembly on the 10th April 1968 approved the increase of the maximum indebtedness (present or contingent) which the Cereals and Sugar Finance Corporation may incur at any one time to thirteen million pounds.

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N. 164/1972.]

IN PURSUANCE of section 4(2)(b) of the Cereals and Sugar Finance Corporation Act, the National Assembly on the 6th day July, 1972 approved the increase of the maximum indebtedness (press or contingent) which the Cereals and Sugar Finance Corporation may incur at any one time to twenty million pounds.

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N. 253/1974.]

IN PURSUANCE of section 4(2)(b) of the Cereals and Sugar Finance Corporation Act, the National Assembly on the 31st day of July, 1974 approved the increase of the maximum indebtedness (present or contingent) which the Cereals and Sugar Finance Corporation may incur at any one time to thirty million pounds.

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N. 49/1976.]

IN PURSUANCE of section 4(2)(b) of the Cereals and Sugar Finance Corporation Act, the National Assembly on 29th day of October, 1975, approved the increase of the maximum indebtedness (present or contingent) which the Cereals and Sugar Finance Corporation may incur at any one time to forty-five million pounds.

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N. 170/1977.]

IN PURSUANCE of section 4(2)(b) of the Cereals and Sugar Finance Corporation Act, the National Assembly on the 5th day of May, 1977, approved the increase of the maximum indebtedness (present or contingent) which the Cereals and Sugar Finance Corporation may incur at any one time to ninety million pounds.

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**EXTENSION OF LIMIT OF INDEBTEDNESS OF CORPORATION**

[L.N. 79/1983.]

IN PURSUANCE of section 4(2)(b) of the Cereals and Sugar Finance Corporation Act, the National Assembly on 28th April, 1982, approved the increase of the maximum indebtedness (present or contingent) which the Cereals and Sugar Finance Corporation may incur at any one time to one hundred and twenty million pounds.

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