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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2018**

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#### **SCHEDULE—CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

## THE TEA BILL, 2018

### A Bill for

**AN ACT of Parliament to provide for the regulation, development and promotion of the tea industry, and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

### PART 1—PRELIMINARY

1. This Act may be cited as the Tea Act, 2018.

Short title.

2. In this Act—

Interpretation.

“Authority” means the Tea Regulatory Authority of Kenya established under section 3;

“Board” means the Board of the Authority constituted under section 6;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“dealer” means an exporter, importer or marketer registered under the Act;

“financial year” means the financial year of the Authority as provided for under section 25;

“licence” means a licence granted under section 18;

“processor” means a person registered by the Authority to process tea or tea products;

“tea” means the plant or part of the plant of the species known botanically as *camellia spp* or of any inter-specific hybrid involving this species or of any progeny of such hybrid;

“tea grower” a person who grows or cultivates tea in Kenya, or a person who manages, controls or cultivates land in Kenya upon which tea is grown;

“tea product” means any product, extract or substance obtained or derived from tea by any treatment or process.

### PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUTHORITY

3. (1) There is hereby established an Authority known as the Tea Regulatory Authority of Kenya.

Establishment of the Authority.

(2) The Authority 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 and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. (1) The headquarters of the Authority shall be in Kericho County.

Headquarters

(2) The Authority may establish branches at any place in Kenya.

5. (1) The Authority shall perform the following functions—

Functions of the Authority.

- (a) regulate, develop and promote the tea industry;
  - (b) co-ordinate the activities of individuals and organizations within the tea industry; and
  - (c) facilitate equitable access to the benefits and resources of the tea industry by all interested parties.
- (2) Without prejudice to the generality of subsection (1), the Authority shall—
- (a) in consultation with the Cabinet Secretary, initiate the formulation of policies and make rules to regulate the tea industry;
  - (b) register and regulate the operations of tea growers and processors;
  - (c) licence tea dealers and processors;
  - (d) licence managing factories and their agents;
  - (e) licence tea brokers;
  - (f) provide advisory services on tea production and quality enhancement;

- (g) collect and analyze statistics related to, and maintain a database for the tea industry;
- (h) co-ordinate the prioritization of research and utilization of available funds; and
- (i) arbitrate in any dispute related to the tea industry referred to it under section 26.

6. (1) The management of the Authority shall vest in a Board which shall consist of—

Board of the Authority.

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary for the time being responsible for agriculture or a person deputed by him in writing;
- (c) seven persons nominated by the Council of Governors, representing the top seven tea growing counties as per the records held at the Kenya Bureau of Statistics as at the date of nomination;
- (d) one person nominated by the association representing the largest number of tea growers in the country;
- (e) a Chief Executive Officer appointed in accordance with section 9 who shall be an *ex-officio* member of the Board.

(2) A person shall not be appointed to be a chairperson or member of the Board under subsection 1(c) and 1(d) unless that person holds at least a degree or its equivalent in any discipline from a recognized institution and has demonstrable experience in the tea sector.

(3) The appointment of the chairperson under subsection (1) (a) and members under subsections (1) (c) and 1 (d) shall be by notice in the *Gazette* and such appointment shall be for a term of three years renewable for one further term.

7. A person shall cease to be a member of the Board if such person—

Vacation of office.

- (a) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (b) becomes an officer, agent or member of staff of the Authority;

- (c) resigns in writing, addressed, in the case of the chairperson to the President and in the case of any other member, to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (g) dies.

8. (1) The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

Powers of the Board.

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Authority;
- (c) receive gifts, grants, donations or endowments made to the Authority and make disbursement therefrom in accordance with the provisions of this Act;
- (d) subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Authority funds not immediately required for the purposes of this Act, as it may determine; and
- (e) open a bank account into which all monies received by the Authority shall be paid in the first instance and out of which all payments made by the Authority shall be made.

(2) The Board may, if it considers it necessary, create or take part in the creation of, become a member of, or associated with a body or corporation designed to assist or promote the tea industry.

(3) The Board may establish and make contributions to a pension, superannuation or medical fund for the benefit of employees and may require such employees to contribute to the fund.

(4) The Board may by order authorize a member or an employee to exercise on its behalf such of its powers or the performance of any of the functions of the Authority under this Act as it may from time to time specify.

9. (1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

Committees of the Board.

(2) The Board may co-opt into the membership of committees established under subsection (1), other persons whose knowledge and skills are necessary for the functions of the Board.

10. The Board may by resolution delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

Delegation by the Board.

11. The Remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

Remuneration of members of the Board.

12.(1) The Chief Executive Officer shall be competitively recruited and appointed by the Board.

Chief Executive Officer.

(2) The Chief Executive Officer shall be the secretary to the Board and shall be responsible for the day to day management of the affairs of the Authority.

(3) A person shall not qualify for appointment under subsection (1) unless such person has at least—

- (a) a masters degree from a university recognized in Kenya; and
- (b) five years experience in a position of senior management.

13. The Board may employ such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act and upon such terms and conditions of service as the Board may determine.

Staff of the Authority.

14. (1) The common seal of the Authority shall be kept in the custody of the Chief Executive Officer or such other person as the Board may direct, and shall not be used except by order of the Board.

Common Seal of the Authority

(2) The affixing of the common seal of the Authority shall be authenticated by the signatures of the Chairperson and the Chief Executive Officer:

Provided that the Board shall, in the absence of the Chairperson or the Chief Executive Officer nominate one member of the Board to authenticate the common seal of the Authority on behalf of either the Chairperson or the Chief Executive Officer, as the case may be.

15. All letters and instruments written or made by or on behalf of the Authority, other than those required by law to be under seal, and all decisions of the Board, shall be signed under the hand of the Chairperson and the Chief Executive Officer:

Signing Authority.

Provided that the Board shall, in the absence of the Chairperson or the Chief Executive Officer, nominate one member of the Board to sign the letters and instruments on behalf of either the Chairperson or the Chief Executive Officer, as the case may be.

16. The business and affairs of the Board shall be conducted in accordance with the First Schedule.

Conduct of business of the Board.

### **PART III—REGULATORY PROVISIONS**

17. (1) Every tea grower shall register with a processor.

Registration.

(2) Every processor shall keep or cause to be kept for statistical purposes, a register of all tea growers registered with under subsection (1) specifying—

- (a) the name of the grower;
- (b) the location, size and parcel number of the land on which the tea is grown; and
- (c) the variety of tea grown.

18. (1) A person shall not export, import, market or process tea or tea products unless he has applied for and obtained a licence from the Authority.

Licensing.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or twice the value of the tea or tea products whichever is greater or to imprisonment for a term not exceeding two years or both.

(3) The Authority may revoke a licence issued to a person under subsection (1) if such a person contravenes the conditions upon which the licence is issued.

**19.** A licence issued under this Act shall be in such form as the Authority may prescribe, and shall be renewable annually.

Form of licence.

**20.** The Authority shall carry out market research and disseminate such information to processors and dealers.

Dissemination of market information.

#### **PART IV—FINANCIAL PROVISIONS**

**21.** The funds and assets of the Authority shall comprise of—

Funds of the Authority.

- (a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such monies as may be payable to the Authority pursuant to this Act or any other written law;
- (c) such gifts as may be donated to the Authority; and
- (d) monies from any other source granted, donated or lent to the Authority.

**22.** (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

Annual Estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year concerned.

(3) The annual estimates prepared by the Board under subsection (2) shall be submitted to the Cabinet Secretary for tabling in Parliament.

**23.** (1) The Authority shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the Cabinet Secretary may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the Auditor-General—

Accounts and Audit.

- (a) a balance sheet showing in detail the assets and liabilities of the Authority; and

(b) such other statements of accounts as the Cabinet Secretary may approve.

(2) The accounts of the Authority shall be examined, audited and reported upon annually by the Auditor-General in accordance with the Public Audit Act.

(3) The Authority shall submit to the Auditor-General all books and accounts of the Authority, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Authority such information and explanation as he may consider necessary for the performance of his duties.

(4) The expenses incurred in and incidental to the auditing of the accounts of the Authority shall be met by the Authority.

**24.** (1) The Authority shall, within a period of three months after the end of the financial year or within such longer period as the Cabinet Secretary may approve, submit to the Cabinet Secretary a report of the operations of the Authority during such year, and the yearly balance sheet and such other statements of account as the Cabinet Secretary shall require, together with the Auditor-General's report thereon.

Annual report and publication.

(2) The Authority shall, if the Cabinet Secretary so requires, publish the report, balance sheet and statements submitted to him under subsection (1) in such manner as the Cabinet Secretary may specify.

(3) The Cabinet Secretary shall lay before Parliament the reports, balance sheet and statements submitted under subsection (1), within a period of fourteen days of the receipt of the reports and statements or, if Parliament is not sitting, within fourteen days of the commencement of its next sitting.

**25.** The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each financial year.

Financial year of the Authority.

## **PART V—MISCELLANEOUS PROVISIONS**

**26.** (1) The Authority shall arbitrate disputes arising between any parties under this Act.

Arbitration of disputes.

(2) A party who is not satisfied with the decision of the Authority may, within thirty days, appeal to a Court of competent jurisdiction.

**27.** Liability shall not attach to the Authority or to any of its member, officer, agent or staff for loss or damage incurred by a person as a result of an act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed by or conferred under this Act.

Protection of members and staff from liability.

**28.** (1) A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine of not less than twenty thousand shillings or a fine not exceeding twice the value of the tea or tea products or, to imprisonment for a term not exceeding six months, or to both.

Penalties.

(2) Where an offence under this Act is committed by a partnership, company, association or co-operative society, every person who at the time when the offence was committed—

- (a) was director, partner or officer;
- (b) had knowledge or should have had knowledge of the commission of the offence; and
- (c) did not exercise due diligence to ensure compliance with this Act,

commits an offence and shall be liable for the offence as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance and that he exercised diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions as director, partner or officer concerned as aforesaid and to all the circumstances.

**29.** (1) The Cabinet Secretary may, upon consultation with the Authority, make Regulations—

Regulations.

- (a) prescribing anything that may be prescribed under this Act; and
- (b) generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make Regulations to provide for—

- (a) the regulation of the processing, importation and exportation of tea and tea products;
- (b) the forms to be used in the application for registration, licensing, contracts and related activities;
- (c) the process of application for registration, licensing and related activities;
- (d) any fee which may be charged for anything done under this Act; and
- (e) the regulation of contracts between growers, processors and other players in the tea industry.

**30.** The Crops Act is amended by deleting—

- (a) paragraph (b) of section 14(1); and
- (b) the term “tea” appearing in Part 1 of the First Schedule.

Consequential amendments.

No. 16 of 2013

## **PART VI—TRANSITIONAL PROVISIONS**

**31.** All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on the Agriculture and Food Authority with respect to the tea sector shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Authority as the case may be.

Rights and obligations.

**32.** On or after the appointed day, all actions, suits or legal proceedings pending by or against the Agriculture and Food Authority in relation to the tea sector shall be carried on or prosecuted by or against the Authority, and no such action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

Legal proceedings.

**33.** Any reference to the Agriculture and Food Authority in any written law or in any contract, document or instrument of whatever nature, in relation to tea, shall, on the commencement of this Act, be read and construed as a reference to the Authority.

Reference to written laws.

**34. (1)** All directions, orders and authorizations given, or licenses or permits issued, or registrations made by the

Previous authorizations.

Agriculture and Food Authority in relation to tea, and subsisting or valid immediately before the appointed day, shall be deemed to have been given, issued or made by the Authority as the case may be, under this Act.

**35. (1) In this Part —**

**Interpretation.**

“appointed day” means the day this Act comes into operation

**SCHEDULE****s. 16****CONDUCT OF BUSINESS AND AFFAIRS OF THE  
AUTHORITY**

1. (1) The Board shall meet at least once in every three months to conduct the business of the Board of Authority.

Meetings of the  
Board.

(2) The Chairperson shall convene the ordinary meetings of the Board at the premises of the Authority.

(3) Despite the provisions of sub-paragraph (1), the Chairperson shall, upon a written request by at least five members of the Board, convene a special meeting of the Board at any time where he considers it expedient for the transaction of the business of the Authority.

(4) Unless three quarters of the total number of the members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board by the Secretary.

(5) The quorum for the conduct of the business of the Board shall be five members.

(6) The Chairperson shall preside at every meeting of the Board at which he is present and in his absence, the members of the Board present shall elect one person from their number to preside over the meeting of the Board and he shall have all the powers of the Chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or person presiding over the meeting shall have a casting vote.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy within its membership.

(9) Subject to provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings thereof.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of

Disclosure of  
interest.

consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose his interest in the matter and shall not take part in the deliberations over, or vote on, the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Board for that purpose.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principle object of the Bill is to liberalize the tea industry. This will be done through the reorganization of the tea industry by transitioning of the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority to the Tea Regulatory Authority of Kenya.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

### **Statement of how the Bill concerns county governments**

Agriculture plays a vital role in the economy of most county governments. It is the leading industrial crop in terms of its contribution to the country's GDP. It is therefore important that the tea industry is regulated and supported in terms of policy and law.

This Bill therefore affects the economic growth of most counties and the country as a whole and is as such a Bill concerning county governments.

### **Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 26th October, 2018.

**AARON CHERUIYOT,**  
*Chairperson, Ad-hoc Committee on Tea.*

