

SPECIAL ISSUE

Kenya Gazette Supplement No. 26 (Senate Bills No. 10)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 10 March, 2023

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

**SECOND SCHEDULE—LICENCE, PERMIT
OR CERTIFICATE**

THE COFFEE BILL, 2023

A Bill for

AN ACT of Parliament to provide for the establishment of the Coffee Board of Kenya, and the Coffee Research Institute; to provide for the role of the National and the county governments; provide for the regulation, development and promotion of coffee industry; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Coffee Act, 2023.

Short title.

2. In this Act—

Interpretation.

“agent” means a person registered by the Board who may be appointed by a grower for purposes of facilitation of overseas direct sales with regard to logistics;

“association” means a registered group comprised of smallholder growers, co-operative societies, societies, estates, unions, millers, buyers, roasters or brokers, licensed by a relevant licensing authority;

“auction” means the auction system under which clean coffee is offered for sale at a coffee exchange and includes the place at which, or a facility by means of which, whether electronic or otherwise, offers or invitations to sell, buy or exchange coffee contracts are regularly made on a centralized basis, but does not include—

- (a) the office or facilities of a coffee buyer or service provider; or
- (b) the office or facilities of a clearing house;

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

“broker” means a person cleared by the exchange and licensed by the Capital Markets Authority, who may be appointed by a grower or an association of growers in accordance with the Capital Markets Act, to sell their coffee on their behalf through the Exchange;

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“buyer” means an incorporated company licensed by the Board to buy clean coffee at an exchange for export,

local sale or value addition or to import clean coffee for secondary processing in Kenya;

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

“clean coffee” means coffee bean or dried seed of the coffee plant separated from non-food tissues of the coffee fruit where the silver skin is reduced to the maximum possible extent;

“clearing house” means an entity approved by the Authority, and recognized as a clearing institution on behalf of a coffee exchange, providing the services of clearing and settlement of transactions and guaranteeing settlement on behalf of the exchange;

“clearing and settlement” means the procedure by which a clearing house acts as an intermediary between a buyer and seller for exchange traded transactions in order to reconcile orders between transacting parties and ensure the physical or financial settlement of the transaction;

“coffee” means the plant botanically known as *coffea* species (L.) and includes the fruit, whether on the plant or detached therefrom, the seed in form of either buni, parchment coffee, clean coffee, roasted beans or ground coffee;

“coffee dealer” means a person registered by the Board, a county government or the Authority to deal in coffee as provided under this Act;

“coffee grower” a person who cultivates coffee in Kenya and may for purposes of licensing, include a co-operative society, coffee union, association and estate;

“coffee milling” means mechanical hulling or de-husking of coffee and includes grading of clean coffee;

“coffee product” means any product, extract or substance obtained or derived from coffee by any treatment or process;

“coffee sales proceeds” means monetary consideration received at the direct settlement system in exchange for clean coffee sold at an exchange or, where applicable, through direct sales;

“coffee standards” means the Kenya Coffee Standards issued by the Kenya Bureau of Standards;

“coffee warrant” means an instrument prepared by the warehouseman of which the person named therein, or the last endorsee thereof, shall for all purposes be deemed to be the owner of the coffee to which it relates;

“county executive committee member” means the county executive committee member for the time being responsible for matters relating to agriculture;

“direct sale” means a contractual arrangement between a grower, a co-operative society, society, union, grower-miller, estate or an association of coffee growers and an overseas buyer or local roaster for the sale of own clean coffee based on mutually accepted terms and conditions enforceable in law and includes settlement coffee sales proceeds through the direct settlement system on boarded by a coffee exchange;

“direct settlement system” means a banking facility provided by commercial banks regulated by the Central Bank of Kenya for clearing and settlement of coffee sales proceeds;

“estate” means an area of land or group of parcels of land under coffee not being less than five acres in size in aggregate or land under coffee which has been issued with a pulping station licence;

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“exchange” means a company incorporated under the Companies Act and licensed by the Capital Markets Authority as an exchange for trading in clean coffee;

“Institute” means the Coffee Research Institute established under section 63.

“licensing authority” means the Board, the county government or the Capital Market Authority as the case may be;

“liquoring” means analysis of clean coffee to determine the attributes and quality of coffee for purposes of trade;

“out-turn number” means an identifying number issued by a miller in respect of coffee delivered to a mill for purposes of traceability;

“primary processing” means the process of removal of coffee pulp from cherry, fermentation, washing and drying to the coffee standard moisture content to obtain parchment;

“prompt date” means a date specified in the sales catalogue, not being more than five working days from the date of the sale, for the payment of coffee sales proceeds by a buyer or a roaster;

“pulping station” means a specified place where primary coffee processing is undertaken;

“sales catalogue” means a standard document prepared by a coffee miller, or an appointed broker in consultation with an exchange and growers, for sale of clean coffee at the exchange;

“secondary processing” means parchment de-husking, polishing, grading and may include roasting, grinding and packaging of clean coffee beans;

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

“sweepings” means the balance of coffee samples in an exchange sample room and spillages collected from millers’ milling activities for sale at the exchange, the proceeds of which are paid to the respective growers on pro-rata basis;

No. 17 of 2015.

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“warehouse” means a facility registered by the Board and licensed by a county government for the storage of coffee, and which is specifically designed to guarantee the quality and safety of the coffee;

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“warehouse operator” means any person registered and licensed by the Board who owns, leases or is in charge of a warehouse where coffee is handled and stored for reward or profit;

3. The objects of this Act are to —

Objects.

- (a) promote a globally competitive coffee industry;
- (b) provide a framework for the registration and licensing of various players within the coffee sector;

- (c) delineate the roles of the National and County Governments in the regulation, development and promotion of the coffee sector;
- (d) promote the vertical integration of the coffee value chain for the purpose of achieving economies of scale and managing risk;
- (e) promote evidence based coffee research and the delivery of extension services for the development of the coffee sector;
- (f) provide a framework for –
 - (i) the establishment of a coffee development levy; and
 - (ii) the sustainable funding of the coffee sector; and
- (g) provide a mechanism for dispute resolution within the coffee sector.

PART II—THE COFFEE BOARD OF KENYA

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

Establishment of Board.

(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 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.

5. (1) The headquarters of the Board shall be in Nairobi City County.

Headquarters.

(2) The Board may establish such branches in Kenya as it may consider necessary for the efficient performance of its functions.

6. (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 Board;
- (c) receive gifts, grants, donations or endowments made to the Board 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 Board's funds not immediately required for the purposes of this Act, as it may determine; and
- (e) operate a bank account into which all monies received by the Board shall be paid in the first instance and out of which all payments made by the Board 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 associate with a body or corporation designed to assist or promote the coffee industry.

7. (1) The management of the Board shall vest in a board of directors consisting of—

Board of directors.

- (a) a chairperson appointed by the President by notice in the *Gazette*;
- (b) the Principal Secretary responsible for agriculture or a representative nominated by the Principal Secretary in writing;
- (c) the Principal Secretary for the time being responsible for trade or a representative nominated by the Principal Secretary in writing;
- (d) two persons of the opposite gender, representing smallholder coffee growers nominated by the Council of County Governors;

- (e) two persons of the opposite gender representing plantation coffee growers nominated by the Council of County Governors;
- (f) one person nominated by the Institute;
- (g) one person representing an association of coffee farmers nominated by the Cabinet Secretary;
- (h) one person nominated by the cooperative society representing the largest number of small-scale coffee associations in Kenya; and
- (i) a chief executive officer appointed under section 15 who shall be an *ex-officio* member of the Board.

(2) The Cabinet Secretary shall appoint the members under subsection (1)(d), (e), (f) and (g) by notice in the *Gazette*.

8. A person shall be qualified for appointment as a member of the board of directors if that person – Qualification for appointment.

- (a) holds a degree from a university recognised in Kenya
- (b) has three years' experience in the coffee sector; and
- (c) meets the requirements of Chapter Six of the Constitution.

9. The persons appointed under section 6(1)(d), (e), (f) and (g) shall serve for a term of three years renewable for one further term. Term of appointment.

10. (1) A person ceases to be a member of the board of directors if that 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 board;
- (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 at least six months; and
- (e) is declared bankrupt;
- (f) is unable to perform the functions of office by reason of mental or physical infirmity; or
- (g) dies.

11. (1) The board of directors shall—

Functions of the Board.

- (a) regulate and promote the development of the coffee industry;
- (b) consider applications for the issuance of permits and licences under the second schedule to this Act;
- (c) register coffee dealers;
- (d) make recommendations to the Cabinet Secretary for, and oversee the implementation of strategies, funding models, plans and policy for the coffee sector;
- (e) collect, collate and maintain a data base and disseminate information on the coffee industry;
- (f) conduct national and international coffee market intelligence and surveys to inform promotional and branding strategies including the application of the Kenya Coffee Mark of Origin;
- (g) establish linkages with various government agencies, the Institute and other research institutions for the development of the coffee industry;
- (h) develop and implement a framework for the capacity building of players in the coffee industry;
- (i) promote the development of regional appellations for Kenyan coffee;
- (j) develop and enforce the coffee industry standards and industry code of practice in collaboration with the Kenya Bureau of Standards;
- (k) maintain and cause to be published an up to date register of coffee dealers, coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in the country;

- (l) undertake technology transfer and provide technical assistance to county governments on matters relating to coffee;
- (m) conduct surveillance and enforce compliance with relevant policies, standards and legislation on the coffee sector;
- (n) co-ordinate inter-agency representation in international coffee fora to promote increased market share of Kenyan coffee;
- (o) arbitrate over disputes arising between parties registered or licensed by the Board under this Act; and
- (p) carry out such other functions as may be assigned by the Cabinet Secretary or conferred under any other law.

(2) The board of directors shall, in the performance of its functions under this Act, consult and collaborate with the Council of County Governors.

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

Committees of the board of directors.

(2) The board of directors may co-opt to sit in the committees established under subsection (1) such other persons whose knowledge and skills are necessary for the performance of the functions of the Board.

13. The board of directors may, by resolution, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, 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 of directors.

14. The members of the board of directors shall be paid such remuneration or allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission, determine.

Remuneration of members of the board of directors.

15. (1) There shall be a chief executive officer of the Board who shall be competitively recruited and appointed by the board of directors on such terms and conditions as the board of directors shall determine.

Chief executive officer.

(2) A person is qualified for appointment under subsection (1) if the person—

- (a) holds a degree in agriculture, business, law, administration or other relevant degree from a university recognized in Kenya;
- (b) has at least five years' experience in a position of management; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The chief executive officer shall serve for a term of three years and shall be eligible for appointment for one further term of three years.

16. The chief executive officer shall be the secretary to the Board and shall, subject to the direction of the board of directors—

Functions of the chief executive officer.

- (a) be responsible for the day to day management of the affairs of the Board;
- (b) manage the funds, property and affairs of the Board;
- (c) be responsible for the management of the staff of the Board;
- (d) oversee and coordinate the implementation of the policies, programmes and objectives of the Board;
- (e) cause to be prepared for the approval of the board of directors—
 - (i) the strategic plan and annual plan of the Board; and
 - (ii) the annual budget and audited accounts of the Board; and
- (f) perform such other duties as may be assigned to him or her by the board of directors.

17. The chief executive officer shall cease to hold office if the person—

Removal of Chief Executive Officer.

- (a) resigns in writing, addressed to the board of directors;

- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is found liable for gross misconduct or abuse of office in contravention of the Public Officers Ethics Act or any other relevant law;
- (d) is declared bankrupt;
- (e) is unable to perform the functions of office by reason of mental or physical infirmity; or
- (f) dies.

No. 4 of 2003.

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

Staff of the Board.

19. Liability shall not attach to the Board or to any of its members, officers, agents 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.

20. The affixing of the common seal of the Board shall be authenticated by the signature of the chairperson and the chief executive officer or a person designated by the board of directors.

Common seal of the Board.

21. All letters and instruments written or made by or on behalf of the board of directors, other than those required by law to be under seal, and all decisions of the board of directors, shall be signed under the hand of the chief executive officer or in the absence of the chief executive officer, a person authorized by the Board.

Signing Authority.

22. The business and affairs of the board of directors shall be conducted in accordance with the First Schedule.

Conduct of business of the Board.

PART III – ROLE OF COUNTY GOVERNMENTS

23. (1) A county government shall—

Role of county governments.

- (a) implement the National Government policy relating to coffee;

- (b) maintain an up to date register of coffee growers, nursery operators, coffee cooperative societies, coffee associations, and coffee estates in that county;
- (c) consider applications for the certificates, permits and licenses enumerated under the second schedule to this Act;
- (d) enforce national and county legislation on coffee industry code of practice, policies and guidelines on corporate governance in coffee growers' institutions;
- (e) offer and co-ordinate the delivery of extension services on sustainable production, primary processing of coffee and climate smart agriculture;
- (f) inspect nurseries, pulping stations, warehouses, millers and roasters located within their respective counties;
- (g) regulate the movement of coffee through the issuance of movement permits for *buni*, parchment and clean coffee within the county and from the county to warehouses situated outside the county;
- (h) in collaboration with law enforcement agencies, enhance security in coffee growing areas; and
- (i) monitor and report incidences of pests and disease outbreaks to the Board and take action in collaboration with the Board and other relevant government agencies.

(2) A county executive committee member may impose such levies and fees as may be necessary for the registration and issuance of licences or the provision of services in accordance with the respective county legislation and such standards as may be prescribed by the Cabinet Secretary under this Act.

(3) The Cabinet Secretary shall, in consultation with the Board and the county executive committee members prescribe standards and guidelines for the setting of levies and fees by county executive committee members under subsection (2).

24. Each county government may enact county specific legislation setting out the –

Enactment of county specific legislation.

- (a) criteria for registration under section 26;
- (b) criteria for the issuance of permits and licences by an applicant within the respective county;
- (c) information required to be submitted by an applicant for a permit or licence;
- (d) process of determination of an application for a permit or licence;
- (e) conditions for the issuance or renewal of a licence under this Act;
- (f) grounds for the rejection of an application or cancellation of a licence issued under this Act;
- (g) process of issuance of a licence to an applicant for a permit or licence; and
- (h) process of application for the renewal of permits or licences and revocation of a licence issued to an applicant under this Act.

25. (1) A person shall not operate a –

Licensing of coffee operations.

- (a) pulping station or carry out hulling activities;
- (b) coffee growers' mill; or
- (c) coffee roaster

unless the person has applied for, and obtained a licence from the respective county government in which the operation is to be undertaken.

(2) An applicant for a licence under subsection (1) shall submit an application in the prescribed form together with the prescribed fees to the respective county executive committee member for consideration.

(3) The county executive committee member shall consider the application and may issue to the applicant a licence in accordance with the respective county legislation.

PART IV—REGULATORY PROVISIONS

26. (1) A person or entity shall not carry out the business of a coffee grower, nursery operator, miller, coffee

Registration.

roaster, cooperative society, coffee association or coffee estate unless such person is registered by the respective county government in which the business is to be undertaken.

(2) A county government shall not charge any fees for the registration of an applicant under subsection (1).

(3) Each county government shall keep and maintain the register under subsection (1) for statistical purposes.

(4) A register under subsection (3), shall include—

- (a) the name of the coffee grower, nursery operator, miller, coffee roaster, cooperative society, coffee association or coffee estate;
- (b) the location, size and parcel number of the land on which the business is located; and
- (c) such other information as the Board may prescribe.

(5) Each county government shall submit to the Board a copy of the register under subsection (3).

27. (1) A person who intends to perform any function under this Act for which a licence or a permit is required shall submit to the relevant licencing authority specified in the Second Schedule –

Licensing.

- (a) an application for a licence or permit, in the prescribed form;
- (b) such information as may be prescribed; and
- (c) the prescribed fees.

(2) A licencing authority shall consider an application within such period, not exceeding fourteen days, as may be prescribed in the respective legislation, and may –

- (a) grant an application for a licence or permit unconditionally;
- (b) grant the application subject to conditions specified in the respective licensing legislation; or
- (c) refuse the application.

(3) A licensing authority shall inform the applicant of its decision under subsection (2) within fourteen days of the decision.

(4) Where a licensing authority refuses to grant an application, the licensing authority shall, in its notification under subsection (3), specify the reasons for the refusal.

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

(6) The licensing authority shall, in issuing the notice under subsection (5)—

- (a) specify the name or other particulars of the person or class of persons to whom the licence is to be granted;
- (b) state the purpose and the date for which the licence is proposed to be issued; and
- (c) invite objections to the proposed grant of licence and direct that such objections be lodged with the licensing authority within fourteen days from the date of the notice.

(7) The licensing authority shall consider any objection submitted to it under subsection (6) and may grant the licence applied for subject to such terms and conditions as the licencing authority shall consider appropriate.

(8) A licence issued under this Act shall not be transferable.

(9) The holder of a coffee buyer's licence or an entity associated with a holder of the licence shall not carry on the business of a commercial miller, broker, roaster, agent or warehouse operator.

(10) A buyer's licence shall not be construed as authorizing a person to engage in direct sale of coffee or coffee products.

(11) A holder of a commercial miller's licence or any other entity associated with such holder shall not carry on the business of a buyer, broker, roaster, or agent .

(12) A licensing authority shall not issue a licence to a person whose effect would result in in the contravention of subsection (9), (10) or (11).

(13) 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 coffee or coffee product, whichever is greater, or to imprisonment for a term not exceeding two years or both.

28. The following licences shall be issued by the Authority under the Capital Markets Act—

Licences issued by the Authority Cap. 485A.

- (a) coffee exchange licence authorising a person to conduct the business of a coffee exchange;
- (b) a broker’s licence authorising a person to offer clean coffee for sale at an exchange on behalf of the grower.

29.(1) A person shall not operate as a cupping laboratory, liquorer, coffee buyer, coffee importer, agent or warehouse operator unless the person is licensed or issued a registration certificate or a permit by the Board upon satisfaction of the prescribed conditions.

Requirements for certificates, licenses and permits.

Cap. 485A

(2) A person shall not conduct the business of a coffee exchange or offer brokerage services at the exchange unless that person is licensed by the Authority in accordance with the provisions of the Capital Markets Act.

(3) A person who contravenes the provision of this section commits an offence and be liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or both.

30. A licence holder shall act in the best interest of coffee growers and adhere to prescribed conditions for the issuance of a licence and contractual obligations.

Obligations of license holders.

31. A licence holder provider shall submit monthly returns to the relevant licensing authority in the prescribed form.

Returns.

32. (1) A person shall not transport clean coffee unless such person –

Movement permits.

- (a) holds a licence issued pursuant to section 27 of this Act; and
- (b) has applied for, and obtained a movement permit issued, in the case of—

- (i) buni and parchment, by the respective county of origin;
- (ii) movement of clean coffee from the coffee mills to the warehouses, by the respective county government; and
- (iii) movement of clean coffee by buyers upon purchase, movement of purchased clean coffee to warehouses by millers, or movement of clean coffee for export or import, by the Board.

(2) A coffee movement permit issued under subsection (1) shall be in the prescribed form.

(3) Subsection (1)(b)(i) shall not apply to a smallholder moving cherry coffee produced by the smallholder between the farm and the pulping station where he or she is registered.

(4) A person transporting coffee under subsection (1) shall –

- (a) have, in his or her possession at the time of transporting the coffee, the original movement permit issued by the respective licensing authority; and
- (b) ensure that the vessel used to transport the coffee conforms to the prescribed coffee standards.

(5) The respective county executive committee member shall monitor the movement of cherry and parchment coffee between farms and stores and the movement of clean coffee and hulled buni to the market and shall, for this purpose –

- (a) prescribe, in county legislation, guidelines for the safe movement of cherry and parchment coffee; and
- (b) put in place measures to curb illegal dealings in coffee or coffee products.

(6) A person who moves coffee contrary to this Act commits an offence.

33. A licence or permit issued under this Act shall be in the prescribed form.

Form of licence,
or permit.

34. (1) A licence or permit issued by the licensing authority shall expire on 30th June of every year and a license holder wishing to renew the licence may apply by 1st June preceding the expiry of the licence.

Duration of licence.

(2) Notwithstanding the provisions of sub-regulation (1), a late application may be made upon payment of a late application fee as may be prescribed.

35. (1) A licensing authority may cancel a licence or permit if the licensee –

Cancellation of licence or permit

- (a) fails to meet any condition imposed by the licencing authority;
- (b) fails to comply with the provisions of the licencing legislation; or
- (c) surrenders the licence or permit to the relevant licensing authority together with a notice setting out a request that the licence be cancelled.

36. (1) Each county executive committee member shall submit to the Board, at the end of each month or within such timelines as may be agreed upon with the Board, a report on the registered and licensed coffee growers and dealers within the respective county.

Submission of reports.

(2) The Board shall submit to the respective county executive committee member a report on the registered and licensed dealers and other service providers within the respective county at the end of each month or within such timelines as may be agreed upon with the respective county executive committee member.

37. Where an applicant is dissatisfied with the decision of the Cabinet Secretary or the county executive committee member not to issue a licence under this Act, the applicant may make an application for judicial review to the court within thirty days of the decision.

Appeals.

PART V – PRODUCTION AND PROCESSING

38. (1) The Institute shall –

Coffee production.

- (a) disseminate, in collaboration with the county governments, coffee production and processing technologies;
- (b) undertake the propagation of coffee planting materials;

- (c) supervise, in collaboration with the county governments, nursery operators undertaking the business of propagating planting materials;
- (d) issue certified coffee seeds or seedlings for multiplication in coffee nurseries to coffee growers or for export;
- (e) map out areas suitable for coffee production in Kenya; and
- (f) undertake capacity building for the county governments and other players on coffee production and processing.

(2) The respective county executive committee members shall undertake soil mapping and analysis to determine nutritional requirements for coffee production.

39.(1) A person shall not import coffee planting materials unless such a person been registered by the Board.

Importation of coffee planting materials.

(2) The Board may, upon application and in collaboration with the Kenya Plant Health inspectorate Service and any other relevant agency, register a person to import coffee planting material for nursery establishment subject to the prescribed conditions.

40.(1) The Institute shall, in collaboration with the respective county executive committee member, undertake analysis of the farm inputs to ascertain compliance with the prescribed standards.

Farm inputs.

(2) The respective county executive committee member shall establish such farm inputs schemes as may be necessary to enhance coffee production.

(3) The National Government, in collaboration council of county governors, may put in place the infrastructure necessary for the production and availability of quality farm inputs for coffee production;

(4) The county executive committee members shall monitor and oversee the implementation and compliance with standards by farm input stockists.

41.(1) A co-operative society comprising coffee growers shall keep and maintain a register of coffee growers and the number of coffee trees planted or uprooted by each of its members in the prescribed form.

Notification after planting, uprooting coffee or change of details of farm or estate.

(2) A co-operative society shall submit to the respective county executive committee member, annually, a record of the information maintained by the society under subsection (1).

(3) Each county executive committee member shall keep and maintain a record, in the prescribed form, of the area under coffee cultivation and information regarding uprooted coffee in the county.

(4) The county executive committee member shall submit to the Board, annually, the record kept under subsection (3).

42. (1) The Board shall register certification schemes to monitor compliance with the coffee standards.

Certification of
Kenya Coffee.

(2) A coffee grower, miller or any other player in the coffee value chain may seek certification by the respective licencing authority to ensure the quality of coffee, the quality of service and secure market confidence.

(3) The Board shall keep and maintain a register of certification scheme operators in each county.

(4) The Board shall, for the purpose of subsection (2),

(a) keep and maintain a register of certified scheme operators; and

(b) submit, a copy of the register to the respective county executive committee member.

(5) Each county executive committee member shall monitor the operations of certification schemes and periodically advise the coffee growers within the respective county and the Board on best practice and performance of a scheme.

(6) A certification scheme under subsection (1) shall provide the particulars of certification services, competencies of their scheme operators and the benefits of the certification schemes to coffee growers.

(7) Certified coffee shall be identified and labelled according to the respective certification scheme for traceability and marketing.

(8) A miller shall, in the case of certified coffee, specify information relating to the certified coffee in the sales catalogue maintained by the miller.

(9) A coffee miller shall, before offering the coffee for sale in the exchange, provide proof of certification.

43. The processing of coffee shall be carried out at designated, standard approved facilities and in accordance with the National Standards and Industry Code of Practice.

Requirements relating to coffee processing.

44. (1) The Board shall establish a coffee traceability system in the prescribed form.

Requirements relating to coffee traceability and disclosures

(2) A person who operates a pulping station or coffee mill shall comply with prescribed traceability system established by the Board under subsection (1).

(3) A cooperative society shall, in imposing a fee to its growers, adhere to the society's budget and not exceed ten percent of the gross earnings from the coffee sales.

(4) Every contract for milling of coffee shall be in writing and shall contain such information as may be prescribed.

(5) A commercial miller shall –

- (a) ensure that the grower or grower's representative is given reasonable notice to be present during the milling process;
- (b) take out comprehensive insurance cover against fire, theft, and other risks for all coffee in its possession and custody;
- (c) account for mill spillage or sweepings and all other coffee by-products to the growers and the Board;
- (d) digitize its operations to ensure weight precision, timely dissemination of information and protection of growers' data;
- (e) submit returns on coffee received and milled to the Board and the respective county government; and
- (f) comply with the prescribed standard coffee grades.

45. (1) A coffee miller may bulk parchment or *buni* coffee of the same quality and characteristics in order to attain millable quantities.

Bulking of coffee.

(2) A coffee miller who bulks coffee shall avail information, in the prescribed form, to an exchange and the

direct settlement system provider on the proportions of the bulked coffees for purposes of processing payments.

(3) The Board and the respective county executive committee member shall, separately or jointly undertake regular inspections to ensure compliance with this Act by the coffee millers.

(4) A coffee grower may deliver coffee samples not exceeding five hundred grams of parchment or *buni* for independent quality analysis by a laboratory before delivery to a commercial coffee miller.

(5) A laboratory to which a sample is submitted under subsection (4) shall issue to the coffee grower a report on quality compliance in the prescribed form.

(6) A coffee miller shall remit two hundred grams samples for each grade of an out-turn to the Board for quality analysis and assessment of conformity with coffee standards.

(7) A co-operative society or association comprising smallholder growers that intends to obtain milling services shall competitively procure the services of a miller or other service providers to whom the coffee is intended to be delivered for milling.

(8) Any charges imposed for the delivery of services to a coffee grower shall be communicated in the prescribed form to the direct settlement system provider before the sale of coffee for the purpose of settlement after the sale has been conducted.

PART VI— COFFEE TRADING AND MARKETING.

46.(1) Kenya Coffee may be offered for sale through—

Coffee trading.

- (a) auction in the Exchange;
- (b) direct sales; or
- (c) such other method as the Cabinet Secretary may prescribe.

(2) A buyer, a roaster, or a grower miller licensed by the relevant licensing authority, or a broker appointed by the grower, may trade at an exchange in accordance with this Act and any other law governing trade in an exchange.

47. (1) A licensed coffee grower may undertake, in the prescribed manner, a direct sale in coffee and may, for this purpose, sell own clean coffee to a licensed roaster for local value addition and sale.

International and local direct coffee sales.

(2) The price at which a licensed coffee grower offers coffee for sale under subsection (1) shall bear a favorable comparison to the price at an exchange.

(3) A licensed coffee grower and a licensed roaster shall submit monthly returns to the Board, in the prescribed form, on sales undertaken under subsection (1) including —

- (a) a copy of the contract;
- (b) the coffee grade;
- (c) the coffee quantity;
- (d) the coffee price;
- (e) details of a certification scheme, where applicable;
- (f) quality report;
- (g) mode of payment; and
- (h) a dispute resolution clause.

48. (1) There is established a body to be known as Coffee Exchange for purposes of coffee trading.

Establishment and functions of coffee Exchange.

(2) The Coffee Exchange shall be a body corporate, registered under the Companies Act.

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(3) The functions of the Exchange shall be to —

- (a) manage the auction floor, the central sample room, the information registry and the direct settlement system;
- (b) maintain records relating to coffee sales, coffee samples and sweepings;
- (c) avail sales catalogues to interested parties in accordance with the Capital Markets Act; and
- (d) carry out such other function as the Cabinet Secretary may prescribe.

(4) The proceeds of the sale of coffee at the Exchange shall be deposited in a direct settlement system established in accordance with the Capital Markets Act.

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49. (1) A broker or agent appointed by growers and other service providers shall not receive coffee sale proceeds on behalf of the growers.

Management of the exchange and settlement of coffee sales proceeds

(2) A coffee warrant or a warehouse receipt issued by a warehouse operator to a depositor of coffee shall be transferable to a new holder who has purchased the coffee and is entitled to take its delivery upon presentation of the coffee warrant or the warehouse receipt endorsed by the exchange to the warehouse operator.

(3) The Exchange shall disseminate market information for every auction and an analysis of performance on, weekly and monthly basis.

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

50. (1) A commercial miller or a broker appointed in consultation with the commercial miller, shall prepare a sales catalogue in consultation with the Exchange and growers, for all the coffee in a licensed warehouse in accordance to this Act.

Sales Catalogue

(2) A sales catalogue shall contain information on the prompt date and such other particulars as may be prescribed under this Act.

51. (1) All coffee shall be stored in warehouses licensed by the respective county governments.

Coffee warehousing in designated warehouses.

(2) A county executive committee member shall not designate premises as a coffee warehouse unless the premises have been inspected, approved and licensed in accordance with this Act and the respective county legislation.

(3) A licensed warehouse shall conform to the standards prescribed by the Kenya Bureau of Standards.

(4) The Board and county governments shall inspect warehouses and monitor warehousing activities on a regular basis.

(5) A warehouse operator shall—

(a) insure all coffee in his or her warehouse or under his or her custody against fire, theft and other insurable risk;

(b) not remove or cause to be removed from a warehouse, coffee unless the operator has applied for, and obtained an endorsed coffee warrant or warehouse receipt as the case may be; and

(c) account for any weight or quality loss to the respective grower, agent, buyer or roaster.

(6) A person who operates a warehouse contrary to this Act commits an offence.

52. (1) A person shall not export coffee or cause any coffee to be exported unless such person has —

Export and import of coffee.

(a) applied for, and obtained, a phytosanitary certificate from the Kenya Plant Health Inspectorate Service; and

(b) been issued with a coffee buyer's licence, notification and registration of direct sales contracts, certificate of origin and certificate of quality by the Board.

(2) The Board shall authorize the importation of coffee through the issuance of import permits or a buyer's licence.

(3) Clean coffee imports shall be accompanied by the certificate of origin and a phytosanitary certificate issued by the country of origin and adhere to the coffee standards.

(4) Clean coffee which consists only of a sample or a parcel not exceeding twenty kilograms in weight and which meets the relevant licensing and certification requirements shall not require a buyer's license from the Board.

53. (1) A person who blends any or various grades of coffee produced in Kenya with any other coffees produced outside Kenya shall declare the percentage of Kenyan coffee in the blend.

Prohibition against blending

(2) A person who contravenes subsection (1) commits an offence.

54. The trading activities at an exchange shall be compliant with relevant laws that deter unfair trading and anti-competitive practices.

Anti-competitive practices.

PART VII—QUALITY ASSURANCE.

55. (1) The Board and the respective county executive committee members shall collaborate in the enforcement of coffee industry standards along the value chain for purposes of quality assurance.

Quality assurance for coffee industry.

(2) The Board, in consultation with an accredited university of higher learning and industry stakeholders may develop a training curriculum, conduct examinations and jointly issue certificates for coffee liquorers.

(3) The Board may enter into a memorandum of understanding with an accredited university for the training and administration of liquorers' examinations.

(4) A person shall not offer liquoring services unless such person is certified as a liquorer has applied for, and obtained a practicing licence from the Board.

(5) The Board shall, in collaboration with the respective county executive committee members establish cupping centers in the counties for the purpose of conducting coffee quality analysis and capacity building.

(6) The Board shall carry out assessments on coffee quality maintenance at any premises in which the processing of coffee is carried out along the value chain.

(7) The Board may sample coffee at any stage of the value chain to ascertain permissible pesticides residue levels for compliance with set national and international standards.

(8) The Board, in collaboration with the respective county executive committee member shall –

- (a) monitor maintenance of pesticide spraying records by coffee growers to enforce compliance with the permissible pesticides residue levels in coffee beans; and
- (b) inspect coffee storage bags to check against potential contamination and monitor wholesalers, suppliers, manufacturers and importers to ensure compliance with safety standards.

(9) The Institute shall conduct periodic surveillance on the application of pesticides to ensure compliance with set standards and best practices.

56. (1) The Board and the respective county executive committee members shall, by notice in the Gazette, appoint inspectors for the enforcement of the provisions of this Act.

Inspections

(2) The Board and the respective county executive committee members may, separately or jointly, conduct inspection of coffee farms, coffee nurseries, pulping stations, coffee mills, warehouses, cupping laboratories, roasters or coffee buyers' vessels transporting coffee to monitor compliance with the requirements of this Act.

(3) A smallholder, a grower, a pulping station operator, a transporter, a miller, a warehouse operator or a buyer shall accord an inspector access and necessary assistance for effective inspection.

(4) A person who fails to accord an inspector access to premises and information commits an offence.

57. (1) A person importing coffee into the country shall –

Coffee imports to conform to standards.

- (a) ensure that the coffee complies with the coffee standards and such other quality standards as may be prescribed under this Act or any other law; and
- (b) adhere to the safety and health standards prescribed under this Act or any other law.

(2) The Board shall destroy coffee which does not conform to the coffee standards.

(3) The Board shall not destroy coffee under subsection (2) unless –

- (a) it has issued to the importer of the coffee, notice, in the prescribed form, of intention to destroy the coffee;
- (b) given the importer an opportunity to be heard; and
- (c) obtained an order of a Court of competent jurisdiction for the destruction of that coffee.

(4) The Board may, in addition to the action taken under subsection (3), suspend or cancel any licence issued to the importer under this Act.

PART VIII—FINANCIAL PROVISIONS

58. The funds and assets of the Board shall comprise of— Funds of the Board.

- (a) such monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) monies received from the levy imposed on coffee sales pursuant to section 59;
- (c) such monies as may be payable to the Board pursuant to this Act or any other written law;
- (d) such gifts as may be donated to the Board; and
- (e) monies from any other source granted, donated or lent to the Board.

59. (1) The Cabinet Secretary shall, in consultation with the Board and the Institute and by notice in the Gazette, impose a levy of two percent on the export import value remitted by coffee buyers to the Board for the development of the coffee industry. Coffee development Levy

(2) The levy imposed under subsection (1) shall be apportioned as follows—

- (a) one percent to the Institute;
- (b) zero-point five percent to the Board for regulatory and coffee promotion purposes; and
- (c) zero-point five percent to the coffee growing County Governments for coffee development as a conditional grant.

60. (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 Board for that year. Annual Estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Board 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 the National Assembly and the Senate.

61. (1) The Board 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 Board;
- (b) monies received from the levy imposed on coffee sales pursuant to section 58; and
- (c) such other statements of accounts as the Cabinet Secretary may approve.

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

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(3) The Board shall submit to the Auditor-General all books and accounts of the Board, 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 Board such information and explanation as he may consider necessary for the performance of his duties.

62. (1) The Board shall, within a period of three months after the end of each 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 Board 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.

Annual report and
publication.

(2) The Board 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 submit to the National Assembly and the Senate the reports, balance sheet and statements under subsection (1), within a period of fourteen days of the receipt of the reports and statements or, if a

House of Parliament is not sitting, within fourteen days of the commencement of its next sitting.

63. The financial year of the Board shall be the period of twelve months ending on the thirty first of March in each financial year.

Financial year of the Board.

PART IX—COFFEE RESEARCH INSTITUTE OF KENYA

64. (1) There is established an Institute to be known as the Coffee Research Institute.

Establishment of the Institute.

(2) The Institute 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.

65. (1) The headquarters of the Institute shall be in Kiambu County.

Headquarters.

(2) The Institute may establish such branches in Kenya as it may consider necessary for the efficient performance of its functions.

66. (1) The Institute 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 Institute shall have power to—

Powers of the Institute.

- (a) enter into contracts;
- (b) manage, control and administer the assets of the Institute;
- (c) receive gifts, grants, donations or endowments made to the Institute 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 Institute's funds not immediately required for the purposes of this Act, as it may determine; and
- (e) operate a bank account into which all monies received by the Institute shall be paid in the first instance and out of which all payments made by the Institute shall be made.

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

67. (1) The management of the Institute shall vest in a board consisting of—

Membership of
Board of the
Institute.

- (a) a chairperson of the board appointed by the President by notice in the *Gazette*;
- (b) the chairperson of the Board appointed by the President under section 6 (1) (a);
- (c) the Principal Secretary responsible for matters relating to agriculture or a representative nominated by the Principal Secretary in writing;
- (d) the Principal Secretary for matters relating to finance or a representative nominated by the Principal Secretary in writing;
- (e) the Secretary to the Science Commission appointed under paragraph 6 of the Second Schedule to the Science and Technology Act or a representative nominated by the Secretary in writing;
- (f) one person representing estate coffee growers nominated by the Cabinet Secretary;
- (g) one person representing small scale coffee growers nominated by the Council of County Governors;
- (h) one person nominated by Commission on University Education representing the universities nominated by the Cabinet Secretary; and

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2013

- (i) a chief executive officer appointed in accordance with section 47 who shall be an *ex-officio* member of the board.

(2) The Cabinet Secretary shall appoint the members under subsection (1) (f), (g) and (h) by notice in the *Gazette*.

(3) A person is qualified for appointment as a chairperson of the board of the Institute if that person holds a degree in any discipline from an institution recognized in Kenya and has three years' experience in the coffee sector.

68. The persons appointed under section 40 (1) (f) (g) and (h) shall serve for a term of four years renewable for one further term.

Term of appointment.

69. (1) A person shall cease to be a member of the board of the Institute if that person—

Vacation of office.

- (a) is absent from three consecutive meetings of the board of the Institute without the permission of the chairperson;
- (b) becomes an officer, agent or member of staff of the Institute;
- (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; and
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (g) dies.

70. (1) The Institute shall—

Functions of the Institute.

- (a) advise the National and county governments on the resource requirements for coffee research;
- (b) prioritise areas for, and co-ordinate, coffee research including research in coffee diseases and new coffee varieties;

- (c) develop appropriate systems to promote balanced, diversified and sustained coffee development and to optimise coffee production through adaptive and investigative research;
- (d) disseminate, in collaboration with the Board, the Kenya Agricultural and Livestock Research Organisation established under the Kenya Agricultural and Livestock Research Organisation Act and other organizations, knowledge, information and application of research findings in relation to coffee; and
- (e) facilitate the use of improved production technology and establish adequate feedback systems from agricultural producers in order to achieve and maintain national self-sufficiency and export capacities in agricultural products.

No. 17 of 2013.

(2) For the purpose of carrying out its functions under subsection (1), the Institute shall—

- (a) make policy recommendations to the Cabinet Secretary on coffee research;
- (b) identify production, policy, market, processing and utilisation constraints in the coffee industry and prepare short and long-term demand driven participatory research programmes within the framework of the national agricultural research system;
- (c) identify and disseminate, in collaboration with other relevant agencies, appropriate systems of mechanisation and technology options to improve coffee production and provide answers to foreseeable problems facing coffee;
- (d) collaborate with the extension and education services and other organisations, agencies and institutions including schools, technical institutions and universities, public or private, to disseminate research results and technologies;
- (e) undertake the propagation of quality coffee planting materials and supervision of registered nursery operators;

- (f) provide competitive grants to research institutes and persons desirous of carrying out research and training programs which address value chain priorities and are consistent with the national research priorities and plans of the institute;
- (g) organize, design and carry out on-station and on-farm research for coffee;
- (h) support and promote the training and capacity building in relation to agricultural research;
- (i) establish and maintain regular contact with regional and international agricultural research centres to ensure the rapid introduction, evaluation and use of coffee improved technology;
- (j) establish platforms for the purposes of sharing research information, advancing research and transfer of technology and dissemination of information relating to advancements made in coffee research;
- (k) conduct annual reviews of research results and ensure performance improvement in the field of agricultural research;
- (l) make available to the Science Commission annual reports on research and development activities carried out by or under the auspices of the Institute;
- (m) be the lead scientific agency in coffee breeding for the development of a climate resilient coffee crop and coffee that is resistant to diseases and pests;
- (n) develop technologies and practices for adoption along the production, processing and value chain that contribute towards climate change adaptation, resilience and mitigation;
- (o) be the custodian of the Kenyan Coffee Genome and the primary instrument for making modern genomics resources available to researchers working across the coffee production chain;

- (p) provide and facilitate access to timely scientific information in a useable format and advisory services to actors in the coffee production chain;
- (q) conduct market research and analysis and disseminate information on its findings to relevant stakeholders; and
- (r) perform such other functions as the Board of the institute shall determine.

71. The board of the Institute may co-opt two persons with knowledge and experience in matters relating to coffee for the better carrying out of the functions of the board.

Power to co-opt.

72. The business and affairs of the board of the Institute shall be conducted in accordance with the First Schedule.

Conduct of business of the Board of the Institute.

73. The members of the board of the Institute shall be paid such remuneration or allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission determine.

Remuneration of members of the Board of the Institute.

74. (1) There shall be a chief executive officer of the Institute who shall be competitively recruited and appointed by the board of the Institute on such terms and conditions as the board shall determine.

Chief executive officer of the Institute.

(2) The chief executive officer shall be responsible for the day to day management of the affairs of the Institute.

(3) A person is qualified for appointment under subsection (1) if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in agriculture, crops science or business administration from a university recognized in Kenya;
- (c) holds a postgraduate degree or its equivalent from a university recognised in Kenya; and
- (d) has at least five years' experience at senior management level in agricultural science; policy formulation; policy-oriented research and analysis; and management of human resource and finance.

(4) The chief executive officer shall serve for a term of five years renewable for a further term of five years.

75. The board of the Institute may remove the chief executive officer in accordance with the terms and conditions of service for—

Removal of chief executive officer of the Institute.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

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

Staff of the Institute.

77. Liability shall not attach to the Institute or to any of its members, officers, agents 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.

78. The affixing of the common seal of the Institute shall be authenticated by the signature of the chairperson and the chief executive officer or a person designated by the board of the Institute.

Common seal of the Institute.

79. All letters and instruments written or made by or on behalf of the board of the Institute, other than those required by law to be under seal, and all decisions of the board of the Institute, shall be signed under the hand of the chief executive officer or in the absence of the chief executive officer, a person authorised by the board of the Institute.

Signing Authority.

PART X—FINANCIAL PROVISIONS OF THE INSTITUTE

80. The funds and assets of the Institute shall comprise of—

Funds of the Institute

- (a) such monies or assets as may accrue to or vest in the Institute in the course of the exercise of its powers or the performance of its functions under this Act including proceeds from patents;
- (b) one percent of monies collected from the sale of coffee pursuant to section 58 of this Act.
- (c) such monies as may be payable to the Institute pursuant to this Act or any other written law;
- (d) such gifts as may be donated to the Institute; and
- (e) monies from any other source granted, donated or lent to the Institute.

81. The board of the Institute may, upon consultation with the Cabinet Secretary and from time to time, raise or borrow, either by way of mortgage, charge or overdraft from a bank or in such other ways as may be appropriate, such sums of money as it may consider necessary for or in connection with the exercise of its powers or performance of its functions and duties under this Act.

Powers to raise or borrow money.

82. The board of the Institute may, from time to time and, subject to the provisions of this Act, invest any sums standing to the credit of the Institute in securities or property as may be approved for the purpose by the Cabinet Secretary for the time being responsible for finance.

Power to invest.

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

Annual Estimates.

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

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

84. (1) The Institute 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,

Accounts and Audit.

cause to be prepared, signed and forwarded to the Auditor-General—

- (a) a balance sheet showing in detail the assets and liabilities of the Institute; and
- (b) such other statements of accounts as the Cabinet Secretary may approve.

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

(5) The Institute shall submit to the Auditor-General all books and accounts of the Institute, 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 Institute such information and explanation as he may consider necessary for the performance of his duties.

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85. (1) The Institute shall, within a period of seven months after the end of each 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 Institute 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.

Annual report and publication.

(2) The Institute 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 submit to 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.

86. The financial year of the Institute shall be the period of twelve months ending on the thirty first of March in each financial year.

Financial year of the Institute.

PART XI—MISCELLANEOUS PROVISIONS

87. (1) The Board 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 Board may, within thirty days, appeal to the High Court.

88. (1) The Board and each county executive committee member shall automate their operations for the efficient delivery of services and dissemination of information within the coffee sector. Digitization.

(2) In automating its processes, the Board and the county executive committee member shall ensure that—

- (a) multiple parties can access a common system;
- (b) flow of data takes place seamlessly across the value-chain without interruption;
- (c) the system is safe and secured and protected against unauthorized access;
- (d) there is in place, a mechanism that ensures access to the system is properly regulated and monitored with adequate mechanisms for continued integrity; and
- (e) the records are not lost, destroyed or tampered with, and in the event of any loss or destruction, sufficient back-up is available in a secure place.

89. (1) The chief executive officer of the Institute may, in writing, request any person to furnish the Institute with such information or to produce such documents or records as the chief executive officer deems necessary and relevant for the performance of the functions of the Organization. Request for information.

(2) A person who—

- (a) refuses or fails, without reasonable cause, to comply with a request under subsection (1) to furnish any information or to produce any documents or records; or
- (b) in furnishing such information, makes a statement which they know to be false, commits an offence

and shall be liable, on conviction, to a fine not exceeding thirty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

90. (1) Pursuant to Article 24 of the Constitution, the right of access to information under Article 35 of the Constitution shall be limited with respect to information whose disclosure is, in the opinion of the board of the Institute, likely to prejudice the integrity of research or any intellectual property rights held by the Institute.

Limitation of the right to access information.

(2) An officer, member of staff, or agent of the Institute shall not disclose information acquired under this Act except with the written consent of the board of the Institute.

(3) A person who receives information in contravention of subsection (2) shall not disclose or publish the information.

(4) A person who contravenes subsection (2) or (3) commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

91. The Board shall carry out market research and analysis and disseminate information on its findings to all stakeholders.

Dissemination of market information.

92. (1) A person who commits an offence under this Act for which no penalty is provided is liable, on conviction, to a fine of not less than twenty thousand shillings or a fine not exceeding twice the value of the coffee or coffee 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 is liable for the offence as if they had committed the offence, unless they prove that the act or omission constituting the offence took place without their knowledge, consent or connivance and that they exercised diligence to prevent the commission of the offence as they ought to have exercised having regard to the nature of their functions as director, partner or officer concerned as aforesaid and to all the circumstances.

93. Subject to other applicable laws, the Institute shall be exempted from such taxes, duties, fees, levy, cess or other charges as the Cabinet Secretary for the time being responsible for finance may by, notice in the *Gazette*, specify. Exemptions.

94. (1) The Cabinet Secretary may, in consultation with the Board, 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 coffee and coffee products;

(b) the forms to be used in the application for registration, licensing, permits, the notification of direct settlement system provider, contracts and related activities;

(c) the process of application for registration, licensing and related activities;

(d) any fee or levy which may be charged for anything done under this Act;

(e) the regulation and enforcement of contracts between growers, processors and other players in the coffee industry.

- (f) the process of nomination of members to the Board;
- (g) the conditions for the issuance of certificates, licenses and permits under this Act;
- (h) the trade, storage, bulking, packing and roasting of coffee;
- (i) the regulation of nursery operations, pulping, milling, warehousing and transportation of coffee;
- (j) the grading and classification of coffee; and
- (k) the imposition of costs charged by service providers along the value chain and payment of coffee sales proceeds to growers and their service providers.

PART XII—TRANSITIONAL PROVISIONS

95. (1) 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 coffee sector shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Board as the case may be.

Rights and obligations.

(2) All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on the Kenya Agricultural and Livestock Research Organisation with respect to the Coffee Research Institute shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Institute as the case may be.

96. All funds, assets, and other property, moveable and immovable which were immediately before the appointed day vested in Agriculture and Food Authority for the carrying out of and Kenya Agricultural and Livestock Research Organisation for the carrying out of functions relating to coffee, shall, by virtue of this paragraph, vest in the Board or the Institute as the Cabinet Secretary may, by order, determine.

Assets.

97. (1) 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 coffee sector shall be

Legal proceedings.

carried on or prosecuted by or against the Board, and no action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

(2) On or after the appointed day, all actions, suits or legal proceedings pending by or against the Kenya Agricultural and Livestock Research Organisation in relation to the coffee research institute shall be carried on or prosecuted by or against the Institute, and no action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

98. (1) 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 coffee, shall, on the appointed day, be read and construed as a reference to the Board.

Reference to
written laws.

(2) Any reference to the Kenya Agricultural and Livestock Research Organisation in any written law or in any contract, document or instrument of whatever nature, in relation to coffee, shall, on the appointed day Act, be read and construed as a reference to the Institute.

99. (1) All directions, orders and authorizations given, or licenses or permits issued, or registrations made by the Agriculture and Food Authority in relation to coffee, 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.

Previous
authorizations.

100. (1) Any person who, at the commencement of this Act, is a member of staff of the Agriculture and Food Authority dealing with the coffee sector shall, on the appointed day, become a member of staff of the Board on the same or improved terms and conditions of service as may be specified by the Cabinet Secretary.

Staff.

(2) Any person who, at the commencement of this Act, is a member of staff of the Kenya Agricultural and Livestock Research Organisation working with the coffee research institute shall, on the appointed day, become a member of staff of the Institute on the same or improved terms and conditions of service as may be specified by the Cabinet Secretary.

101. (1) In this Part—

Interpretation.

“appointed day” means the day this Act comes into force.

102. (1) The Crops Act is amended—

Consequential amendments.

(a) in section 14 (1) by deleting paragraph (a); and

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(b) in the First Schedule by deleting the term “coffee” appearing in Part 1.

FIRST SCHEDULE. s. 22 and s. 71**CONDUCT OF BUSINESS AND AFFAIRS OF THE
BOARD OF DIRECTORS OR THE BOARD OF THE
INSTITUTE**

1. (1) The board of directors or the board of the Institute shall meet at least once in every three months to conduct the business of the respective board.

Meetings of the Board.

(2) The chairperson shall convene the ordinary meetings of the board of directors or the board of the Institute at the premises of the respective board.

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

(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 of directors or the board of the Institute shall be given to every member of the respective board by the Secretary.

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

(6) The respective chairperson shall preside at every meeting of the board at which the chairperson is present and in the absence of the chairperson, the members of the board present shall elect one person from their number to preside over the meeting of the board of directors or the board of the Institute and that person shall have all the powers of the chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the board of directors or the board of the Institute 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 of directors or the board of the Institute shall not be invalidated by reason of a vacancy within its membership.

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

2. (1) If a member of the board of directors or the board of the Institute is directly or indirectly interested in any contract, proposed contract or other matter before the board of directors or the board of the Institute and is present at a meeting of the board of directors or the board of the Institute at which the contract, proposed contract or other matter is the subject of consideration, the member shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the interest of the member in the matter and shall not take part in the deliberations over, or vote on, the matter.

Disclosure of
interest.

(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 board of directors or the board of the Institute by any person generally or specially authorized by the board of directors or the board of the Institute for that purpose.

SECOND SCHEDULE.**s.11, s.23****LICENCE, PERMIT OR CERTIFICATE**

No.	Type of Licence/ Permit or Certificate	Issuing Authority
1.	Coffee buyer's licence	Board
2.	Independent cupping laboratory licence	Board
3.	Warehouseman's licence	Board
4.	Coffee liqueur's licence;	Board
5.	Processed coffee import permit	Board
6.	Clean coffee movement permit for exports	Board
7.	Coffee nursery certificate	County government
8.	Commercial coffee miller's licence	Board
9.	Warehouse licence	County government
10.	Coffee nursery certificates	County government
11.	Pulping station licence	County government
12.	Grower's milling licence	County government
13.	Coffee roaster's licence	County government
14.	Parchment permit from the county of origin	County government
15.	Clean coffee movement permit from the county of origin	County government
16.	Coffee exchange licence	Capital Markets Authority
17.	Brokers licence	Capital Markets Authority

MEMORANDUM OF OBJECTS AND REASONS

The principle object of the Bill is to provide for the development and regulation of the Coffee industry in Kenya. The Bill proposes to reorganize the coffee industry by transitioning the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority to the Coffee Board of Kenya.

The Bill further seeks to transition the research of coffee currently undertaken by the Coffee Research Institute under the Kenya Agricultural and Livestock Research Organisation to the Coffee Research Institute.

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

Paragraph 1 of Part 2 of the Fourth Schedule to the Constitution designates agriculture as a function of county governments. Further, the Bill delineates the roles of the National government vis a vis that of the county governments in relation to the coffee industry in Kenya.

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.

JAMES K. MURANGO,
*Chairperson, Committee on
Agriculture, Livestock and Fisheries.*

