

SPECIAL ISSUE

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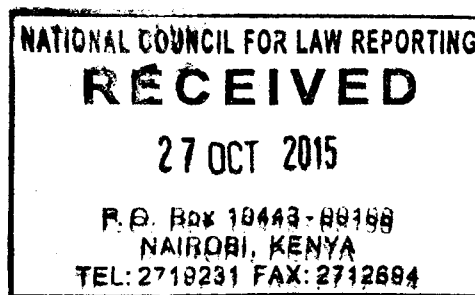
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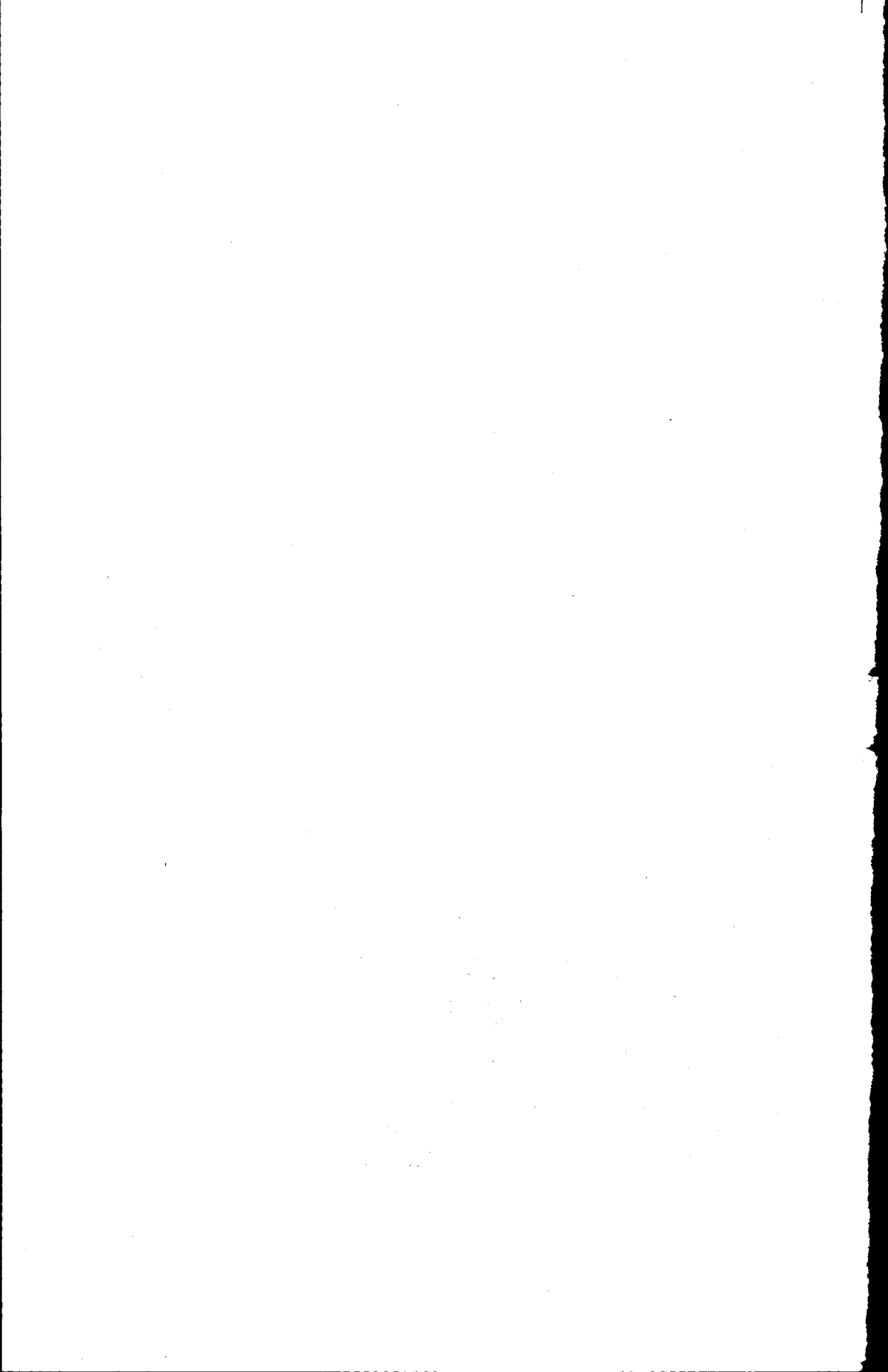
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**THE FERTILIZERS AND ANIMAL FOODSTUFFS
(AMENDMENT) ACT**

No. 20 of 2015

Date of Assent: 8th October, 2015

Date of Commencement: 26th October, 2015

AN ACT of Parliament to amend the Fertilizers and Animal Foodstuffs Act

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Fertilizers and Animal Foodstuffs (Amendment) Act, 2015.

Short title -

2. The Fertilizers and Animal Foodstuffs Act, in this Act referred to as the “principal Act”, is amended in section 2 by—

Amendment of section 2 of Cap 345.

(a) deleting the definition of the word “the Director”; and

(b) inserting the following words in their proper alphabetical sequence—

“Board” means the Fertilizer and Animal Foodstuffs Board of Kenya established by section 2A;

“Cabinet Secretary” means the Cabinet Secretary for the time being in-charge of matters relating to agriculture;

3. The principal Act is amended by inserting the following new sections immediately after section 2—

Insertion of new section 2A into Cap 345.

Establishment of the Board

2A. (1) There is established a body to be known as the Fertilizer and Animal Foodstuffs Board of Kenya.

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

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

- (c) borrowing money or making investments;
- (d) charging fees for services rendered by it and requesting for securities for such fees; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Functions of the Board.

2B. The functions of the Board shall be to—

- (a) regulate the fertilizers and animal foodstuffs industry in Kenya including the production, manufacture, packaging, importation and marketing of fertilizers and animal foodstuffs;
- (b) regulate the importation of raw materials for the manufacture of animal foodstuffs;
- (c) promote the manufacture of fertilizers and animal foodstuffs;
- (d) advise the national and county governments on—
 - (i) the procurement, importation and efficient and timely distribution of subsidized fertilizers and animal foodstuffs;
 - (ii) Establishment of retail outlets of fertilizers and animal foodstuffs in the counties; and
 - (iii) development of policies related to the manufacture and distribution of fertilizer and animal foodstuffs;
- (e) inspect and test fertilizers and animal foodstuffs to ensure their quality and safety;

- (f) license manufacturers, distributors and retailers of fertilizers and animal foodstuffs on the recommendation of the Director of Agriculture and the Director of Veterinary Services;
- (g) promote, in collaboration with stakeholders in the agriculture industry, research on fertilizer and animal foodstuffs;
- (h) ensure that fertilizers and animal food stuffs imported, manufactured or distributed in Kenya meet the standards of quality and safety as prescribed by law.

Membership of the Board.

2C. (1) The Board shall consist of the following persons appointed by the Cabinet Secretary—

- (a) the Chairperson competitively sourced and appointed by the Cabinet Secretary;
- (b) the Principal Secretary in the Ministry for the time being responsible for Agriculture or his designated alternate not being below the level of Deputy Secretary;
- (c) the Principal Secretary in the Ministry responsible for Livestock or a designated alternate not being below the level of Deputy Secretary;
- (d) the Principal Secretary in the Ministry for the time being responsible for finance
- (e) two persons of either gender representing prescribed farmers associations competitively nominated and one person of either gender from the Fertilizers Association of Kenya;

- (f) one person nominated by the Council of Governors;
- (g) the Director of Veterinary Services;
- (h) one person representing research institutions in the agriculture sector competitively sourced and appointed by the Cabinet Secretary;
- (i) the Chief Executive Officer who shall be an ex-officio member and Secretary to the Board.

(2) No person shall be appointed under subsection (1) (a) unless such person is a holder of a degree in a relevant discipline with not less than five years professional experience.

(3) The cabinet Secretary shall ensure that not more than one third of the persons appointed under subsection (1), are of the same gender.

(4) A person appointed under subsection (1) shall hold office for a period of three years and may be reappointed for a further non-renewable term of three years.

(5) Subject to this Act, all acts and things done in the name of, or on behalf of, the Board, by the Board or with the authority of the Board shall be deemed to have been done by the Board.

Conduct of business and affairs of the Board.

2D. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

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

Powers of the Board.

2E. (1) The Board shall have all powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of the subsection (1), the Board shall have power to—

- (a) control, supervise and administer the assets of the Board in such manner as best promotes the purpose for which the Board is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) open such banking accounts for the funds as the Board may deem necessary;
- (e) invest any funds of the Board not immediately required for its purposes in the manner provided in section 2P;
- (f) establish such directorates, departments and regional centres of the Board to deal with such specific matters as may be necessary;
- (g) undertake any activity necessary for the fulfilment of any of the functions of the Board.

Remuneration of Board members.

2F. The Board shall pay its members such allowances as it may determine upon the advice of the body responsible for matters relating to remuneration.

Chief Executive Officer.

2G. (1) There shall be a Chief Executive Officer who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time upon the advice of the Salaries and Remuneration Commission.

(2) No person shall be appointed under this section unless such person has—

- (a) a university degree from a recognized university in a relevant discipline;

- (b) at least five years' post qualification working experience.
- (3) The Chief Executive Officer shall—
 - (a) be the secretary to the Board; and
 - (b) subject to the directions of the Board be responsible for the day to day management of the affairs and staff of the Board.

Staff of the Board.

2H. The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine upon the advice of the Salaries and Remuneration Commission.

Delegation by the Board.

2I. The Board may, by resolution either generally or in any particular case, delegate to any committee 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 or duties of the Board under this Act or under any other written law.

Protection from personal liability.

2J. (1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

Common seal.

2K. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subsection (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

Funds of the Board.

2L. (1) The funds of the Board shall comprise of—

- (a) such sums as may be appropriated by Parliament for that purpose;
- (b) grants, gifts or donations that the Board may receive as a result of public and private appeal from local and; international donors or agencies for the purposes of carrying out its functions.
- (c) such fees, 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 or under any written law; and
- (d) all monies from any other lawful source provided for or donated or lent to the Board.

(2) The funds of the Board and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes for which the Board is established.

Financial year.

2M. The financial year of the Board shall be the period of twelve months ending on the thirtieth June in each year.

Annual report.

2N. (1) The Chief Executive officer shall cause to be prepared an annual report setting out the activities of the Board.

(2) The Chief Executive Officer shall submit the report referred to in subsection (1) to the Cabinet Secretary not later than two months after the end of the financial year.

(3) The Cabinet Secretary shall transmit copies of the report to the Senate and the National Assembly within three months after receipt of the report,

Annual estimates.

2O. (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.

(2) The annual estimates shall make provision for all estimated expenditure of the Board for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the allowances and other charges in respect of members of the Board;
- (b) the payment of salaries, allowances, pensions, gratuities and other charges in respect of staff of the Board;
- (c) the proper maintenance of the buildings and grounds of the Board;
- (d) the maintenance, repair and replacement of the equipment and other property of the Board; and

- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Board shall not increase the annual estimates without the consent of the Cabinet Secretary.

Accounts and audit.

2P. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Board.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Board together with—

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a balance sheet of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the Public Audit Act, 2003.

No.12 of 2003

Investment of funds.

2PQ. The Board may invest any of the funds of the Board in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

4. Section 4 of the principal Act is amended by deleting the words "Director a certificate signed in the

Amendment of
section 4 of Cap

country of origin by a person designated by the Minister” and substituting therefor the words “Board a certificate signed in the country of origin by a person designated by the Cabinet Secretary”.

345

5. Section 5 of the principal Act is amended—

Amendment of
section 5 of Cap
345.

- (a) in subsection (2) by deleting the word “Director” and substituting therefor the word “Board”;
- (b) in subsection (4) by deleting the word “Director” and substituting therefor the word “Board”.

6. Section 6 of the principal Act is amended—

Amendment of
section 6 of Cap
345.

- (a) by deleting the word “Director” wherever it occurs in the section and substituting therefor the word “Board”;
- (b) by deleting the word “Minister” wherever it occurs in the section and substituting therefor the word “Cabinet Secretary”.

7. Section 8 of the principal Act is amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary on the recommendation of the Board”.

Amendment of
section 8 of Cap
345.

8. Section 9 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

Amendment of
section 9 of Cap
345.

(6) The right to privacy under Article 31 of the Constitution and the right to property under Article 40 of the Constitution shall be limited as specified under this section for the purposes of facilitating the safety of the public and the ensuring compliance with the provisions of this Act relating to importation, storage, distribution, sale or possession of fertilizers.

9. Section 10 of the principal Act is amended by deleting the word “Minister” where it occurs and substituting therefor the word “Cabinet Secretary”.

Amendment of
section 10 of Cap
345.

10. Section 16 of the principal Act is amended by deleting the words “one thousand shillings or to imprisonment for a term not exceeding one month, and for a second or subsequent offence to a fine not exceeding three thousand shillings” and substituting therefor the words “five hundred thousand shillings or to imprisonment

Amendment of
section 16 of Cap
345.

for a term not exceeding one month, and for a second or subsequent offence to a fine not exceeding one million shillings”.

11. The principal Act is amended in section 18 by –

Amendment of
section 18 of Cap
345.

- (a) renumbering the existing provision as subsection (1);
- (b) deleting the word “Minister” and substituting therefor the words “Cabinet Secretary on recommendation of the Board”; and
- (c) inserting the following new subsection immediately after the new subsection (1) –
 - (2) The Cabinet Secretary for the time being in charge of the National Treasury shall implement tax policies and where appropriate price policies on imported fertilizers so as to promote local industries.

12. The principal Act is amended in section 19 by deleting—

Amendment of
section 19 of Cap
345.

- (a) the word “Minister” appearing in subsection (1) and substituting therefor the words “Cabinet Secretary on recommendation of the Board”; and
- (b) the words “three thousand shillings” appearing in subsection (2) and substituting therefor the words “one million shillings” and further by deleting the word “three” and substituting therefor the word “six”.

13. The principal Act is amended by deleting section 20.

Deletion of section
20 of Cap 345.

