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THE NATIONAL CEREALS AND PRODUCE BOARD ACT

CHAPTER 338

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CHAPTER 338**NATIONAL CEREALS AND PRODUCE BOARD ACT**

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SCHEDULES

SCHEDULED AGRICULTURAL PRODUCE

CHAPTER 338**NATIONAL CEREALS AND PRODUCE BOARD ACT***[Date of assent: 8th August, 1985.]**[Date of commencement: 16th August, 1985.]***An Act of Parliament to regulate and control the marketing and processing of maize, wheat and scheduled agricultural produce; to establish a National Cereals and Produce Board; and to provide for connected purposes**

[Act No. 7 of 1985, Act No. 22 of 1987, Act No. 13 of 1988, Legal Notice 74 of 1989, Legal Notice 19 of 1992, Act No. 17 of 2006.]

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

This Act may be cited as the National Cereals and Produce Board Act.

2. Interpretation

In this Act unless the context otherwise requires—

"agent" means an agent appointed under section 12 and includes a sub-agent;

"authorized officer" means a person appointed in writing by the Board to be an authorized officer for the purposes of Part VII;

"Board" means the National Cereals and Produce Board established by section 3;

"flour" means any product of milled wheat, maize or scheduled agricultural produce intended for human consumption but does not include grist;

"grist" means maize, wheat or scheduled agricultural produce which has been converted into flour for the domestic use of the producer;

"maize" means the seed of the plant *zea mays* and includes maize on or off the cob, crushed maize, maize mixed with any other substance, and the siftings, sweepings and rejections of maize;

"maize product" means any part or product of maize whether or not it has been ground, sifted, granulated, kibbled or otherwise treated, and whether or not mixed with any other substance, and includes the siftings, sweepings or rejections of maize;

"mill" means premises in which wheat or maize is converted into flour for the purpose of sale;

"producer" means any person who by himself or his agent has grown maize, wheat or any scheduled agricultural produce;

"railway loading point" means a railway station, halt or siding at which goods are normally accepted for transportation on the railway;

"scheduled agricultural produce" means any of the produce specified in the Schedule and any part or product of that produce;

"wheat" means the grain of the plants *tritium vulgar* and *tritium durum*.

[Act No. 17 of 2006, s. 66.]

PART II – ESTABLISHMENT AND ORGANIZATION OF
THE NATIONAL CEREALS AND PRODUCE BOARD

3. Establishment and constitution of the Board

(1) There is hereby established a Board to be known as the National Cereals and Produce Board.

(2) The Board shall consist of—

- (a) a Chairperson who shall be appointed by the President;
- (b) two persons who are maize growers appointed by the Cabinet Secretary;
- (c) one person who is a wheat grower appointed by the Cabinet Secretary;
- (d) two persons appointed by the Cabinet Secretary of whom one shall represent consumers' interests and the other millers' interests;
- (da) the Principal Secretary of the Ministry for the time being responsible for matters relating to the Board, or a person deputed by him in writing either generally or for a particular purpose or meeting;
- (e) the Principal Secretary of the Ministry for the time being responsible for Agriculture, or a person deputed by him in writing either generally or for a particular purpose or meeting;
- (f) the Principal Secretary of the Ministry for the time being responsible for Finance, or a person deputed by him in writing either generally or for a particular purpose or meeting;
- (g) the Principal Secretary in the Office of the President, or a person deputed by him in writing either generally or for a particular purpose or meeting;
- (h) a person nominated by the Kenya Grain Growers Co-operative Union Limited and appointed by the Cabinet Secretary;
- (i) the managing director appointed under section 8(1).

(3) The Chairperson, or, in his absence, a member elected to act as Chairperson at a particular meeting of the Board, shall preside at each meeting of the Board and the person presiding at a meeting shall have a casting as well as a deliberative vote.

(4) The quorum of the Board shall be five.

(5) An appointed member of the Board shall hold office for three years unless his appointment is earlier revoked by the Cabinet Secretary.

(6) Notwithstanding subsection (5), the office of an appointed member of the Board shall become vacant—

- (a) if he resigns his office;
- (b) on his death;
- (c) if he is certified insane or otherwise adjudged to be of unsound mind under any law in force in Kenya;
- (d) if, in the opinion of the Cabinet Secretary, he becomes physically or otherwise incapable of discharging his functions as a member;
- (e) if he is absent, without the permission of the Board, from three consecutive meetings;

(f) if he is sentenced to imprisonment for a term exceeding six months.

(7) Subject to this Act, and to any general or special directions the Cabinet Secretary may give, the Board shall regulate its own procedure.

[Act No. 22 of 1987, Sch.]

4. Functions of the Board

(1) The functions of the Board shall be—

- (a) to regulate or to control the collection, movement, storage, sale, purchase, transportation, marketing, processing, distribution, importation, exportation, disposal and supply of maize, wheat and scheduled agricultural produce;
- (b) to buy, store, sell, import, export or otherwise acquire and dispose of maize, wheat and scheduled agricultural produce in such manner, such quantities and on such terms as it may, from time to time, deem necessary to fulfil the requirements of producers and consumers in Kenya;
- (c) to advise the Cabinet Secretary on the proper production of maize, wheat and scheduled agricultural produce in relation to the needs of Kenya, and the extent to which control over the exportation and importation of maize, wheat or scheduled agricultural produce is desirable or necessary;
- (d) to do any other act which is connected or incidental to the foregoing.

(2) In fulfilling its functions, the Board shall comply with any general or special directions which the Cabinet Secretary may give.

(3) *Spent.*

5. Powers of the Board

(1) The Board shall be a body corporate with perpetual succession and a common seal.

(2) The Board shall have power—

- (a) to enter into contracts and arrangements which may, in the opinion of the Board, be necessary or expedient for the better carrying out of the objects of this Act;
- (b) to establish and operate in the name of the Board any bank accounts it may deem necessary or convenient;
- (c) to invest and deal with any moneys of the Board not immediately required by the Board, in and upon such investments and securities as are allowed by law for the investment of trust funds or such other securities or investments as may be approved by the National Treasury for the purposes of this paragraph;
- (d) to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, bills of lading and other negotiable or transferable instruments or securities;
- (e) to set up reserve or equalization funds in respect of maize, wheat or scheduled agricultural produce as may, for any year, have generated excess profits which in the opinion of the Board may be used to support subsequent falls in market prices;

- (f) to raise or borrow, with the approval of the Cabinet Secretary, such sums of money as it may require for the provision of working capital, the establishment or acquisition of property or undertakings required by the Board, or any other expenditure properly incurred by the Board for the purposes of this Act.

6. Committees of the Board

The Board may appoint committees, whether of its own members or otherwise, to carry out general or particular functions as may be specified by the Board, and the Board may delegate to any of those committees such of its powers as it may deem fit.

7. Declaration of interest

A member of the Board who is or is likely to be interested in, or who participates or is likely to participate in the profits of, any contract with the Board otherwise than in his capacity as a member of the Board shall, on the matter coming up before the Board for consideration, immediately declare his interest therein and shall withdraw from that particular meeting.

8. Officers and staff of the Board

(1) The Board shall, with the approval of the Cabinet Secretary, appoint a managing director and may employ such other officers and servants as may be necessary or desirable for the efficient conduct and operation of the Board, on such terms and conditions of service as the Board may determine.

(2) The Board may authorize the managing director to exercise on its behalf, at any time when it is not meeting, such of its powers as it may from time to time specify.

(3) An exercise of powers by the managing director under subsection (2) shall, to the extent required by the Board be reported without unreasonable delay to the Board at its next meeting following that exercise of the power.

9. Pension and other funds

The Board may establish and make contributions to a pension, superannuation or provident fund, for the benefit of its officers or servants, and may require its officers and servants to contribute to those funds.

10. Authentication of documents

(1) The common seal of the Board shall be authenticated by the signature of the Chairperson or other member authorised by the Board to act in that behalf, together with the signature of the managing director.

(2) The Board shall keep a register showing the use of the Boards' seal.

(3) All documents made by the Board, other than those required by law to be under seal, shall be executed, and all decisions of the Board shall be signified, under the hand of the Chairperson or a member and an officer or agent of the Board authorised in that behalf.

11. Remuneration and expenses of directors and officers of the Board

(1) The Board shall pay to the directors such remuneration, fees or allowances for expenses as may be determined by the Cabinet Secretary in consultation with the National Treasury; but no remuneration, fees or allowances for expenses shall be paid to a director who is a public officer in receipt of a salary.

(2) The officers and servants of the Board shall be paid out of the funds of the Board such remuneration as the Board may determine.

(3) The Board shall refund travelling and other expenses as may reasonably have been incurred by its members, officers or servants in the performances of their duties under this Act.

PART III – REGULATION AND CONTROL OF MAIZE, WHEAT AND SCHEDULED AGRICULTURAL PRODUCE

12. Appointment and powers of agents

(1) The Board may appoint, at such remuneration as may be mutually agreed and subject to such conditions as the Board may in each case impose, any person to be its agent for the buying, storing and disposal of maize, wheat or scheduled agricultural produce, and every agent shall carry out his functions strictly in accordance with his appointment and having regard to the provisions of this Act.

(2) An agent appointed under subsection (1) may, with the consent of the Board, appoint such subagents as may be necessary or expedient to act on his behalf in the purchase of maize, wheat or scheduled agricultural produce.

(3) An agent who contravenes or fails to comply with the conditions of his appointment imposed under subsection (1) or who permits or allows any of his subagents to contravene or fail to comply with a condition of their appointment imposed under subsection (2) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

(4) The appointment of an agent under this section shall, unless previously revoked, continue for further periods of one year as circumstances require, and the provisions of this section shall apply to the renewal of an appointment.

13. Responsibilities etc., of the Board

The Board shall be responsible for the maintenance of national strategic reserves of maize, wheat and scheduled agricultural produce and shall for that purpose have the power to purchase surplus maize, wheat or scheduled agricultural produce grown in Kenya.

14. Sale or barter by producers

The Board may from time to time direct that maize, wheat or scheduled agricultural produce grown in a specified area be, for such a period as the Board may specify, sold or bartered by producers generally or by a specified producer directly to some person or persons, in such quantities, at such prices and subject to such conditions, including any conditions as to payment of part of the price to the Board, as the Board may declare.

15. Prices to be paid to the producers

(1) The Cabinet Secretary may from time to time, after consultation with the Board and with such bodies or persons as appear to him to represent the interests of producers generally, and after consultation with the Cabinet Secretary for the time being responsible for finance, fix the prices at which the Board may, in accordance with the provisions of this Act purchase maize, wheat or scheduled agricultural produce from producers and in so doing may fix different prices for different qualities, grades, types or varieties of maize, wheat or scheduled agricultural produce.

(2) The Board may, in respect of maize, wheat or scheduled agricultural produce, from time to time prescribe the amount of money which may be deducted from, or added to, the price payable to a producer in respect of transport to a prescribed depot of the Board or in respect of drying or protecting with insecticide.

(3) Where the Board directs a producer under subsection (2) to deliver maize, wheat or scheduled agricultural produce to a place more distant than the nearest Board depot, the Board shall add to the price specified under subsection (1) the increase in transport costs consequential upon that delivery.

(4) An agent who purchases maize, wheat or any scheduled agricultural produce at a price below that payable in accordance with the provisions of this Act or regulations made thereunder shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

16. Publication of buying prices

(1) Unless otherwise directed by the Cabinet Secretary, an agent empowered to purchase maize, wheat or scheduled agricultural produce from producers shall keep prominently displayed at the premises or place at which he makes the purchases a notice in the English or Swahili language or the language most commonly used by persons delivering maize, wheat or scheduled agricultural produce at that place, showing the prices he is required to pay under this Act or regulations made thereunder.

(2) An agent purchasing maize, wheat or scheduled agricultural produce from producers who fails to display a notice in accordance with subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred shillings.

17. Illegal purchase of maize, wheat or scheduled agricultural produce

(1) No person shall have in his possession maize, wheat or scheduled agricultural produce knowing or having reasonable cause to suspect that it has not been dealt with in accordance with the provisions of this Act or any regulations made thereunder.

(2) A person purchasing or otherwise obtaining maize, wheat or scheduled agricultural produce from a producer or his agent shall satisfy himself that the maize, wheat or scheduled agricultural produce has been dealt with in accordance with the provisions of this Act or regulations made thereunder and unless that person proves that he has taken all reasonable steps so to do, he shall be deemed to have had cause to suspect that the maize, wheat or scheduled agricultural produce has not been so dealt with.

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both.

PART IV – IMPORTATION AND EXPORTATION OF MAIZE, WHEAT OR SCHEDULED AGRICULTURAL PRODUCE

18. Control of importation and exportation of maize, etc.

(1) *Deleted by Act No. 17 of 2006, s. 67.*

(2) The Board may with the authority of the Cabinet Secretary, export or authorize the exportation of maize, wheat or scheduled agricultural produce in such quantities as it deems to be surplus to the requirements of Kenya.

(3) No maize, wheat or scheduled agricultural produce shall be imported into or exported from Kenya otherwise than through a customs port of entry.

(4) A person who imports or exports maize, wheat or scheduled agricultural produce in contravention of subsection (3) shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both.

[Act No. 17 of 2006, s. 67.]

PART V – REGISTRATION AND LICENSING OF MILLERS

19.

[Repealed by Act No. 17 of 2006, s. 68.]

20.

[Repealed by Act No. 17 of 2006, s. 69.]

21.

[Repealed by Act No. 17 of 2006, s. 70.]

22.

[Repealed by Act No. 17 of 2006, s. 71.]

23.

[Repealed by Act No. 17 of 2006, s. 72.]

24. Prices to be paid by millers for maize, etc.

(1) The sale of maize, wheat or scheduled agricultural produce by the Board to a miller shall be made at such prices as the Cabinet Secretary may from time to time specify by notice in the *Gazette*, and the grading of that maize, wheat or scheduled agricultural produce shall be determined by the Board in accordance with regulations made under this Act.

(2) In the event of a dispute over the grading of maize, wheat or scheduled agricultural produce, a miller may appeal to the Board for an amended grade and if dissatisfied may appeal to the Cabinet Secretary.

PART VI – ACCOUNTS AND AUDIT

25. Accounts and annual report

(1) The Board shall keep proper books of accounts and records in relation to all its undertakings, funds, activities and property and shall prepare in respect of each financial year—

- (a) a trading, profit and loss account and, where appropriate, import and export trading accounts;
- (b) a balance sheet; and
- (c) such other documents as the Cabinet Secretary may require.

(2) The Board shall produce and lay before the Auditor-General all books of accounts of the Board, 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 all members, officers, agents and employees of the Board such information and explanation as may be necessary.

(3) The Board shall, as soon as possible after the end of its financial year, submit a report of its operations during the year to the Cabinet Secretary who shall lay the report before the National Assembly without undue delay.

[Act No. 13 of 1988, Sch.]

PART VII – POWERS OF INSPECTION

26. Power to enter land or premises

(1) An authorized officer, on production of his authority, or a police officer of the rank of inspector or above, may enter without warrant and inspect the land or premises occupied by a producer, trader or miller of maize, wheat or scheduled agricultural produce, or into land or premises in which he has reason to believe an offence under this Act or regulations made thereunder has been or is about to be committed, and—

- (a) examine all stock of maize, wheat or scheduled agricultural produce and all books of accounts and documents relating thereto;
- (b) take samples of the maize, wheat or scheduled agricultural produce and of any other produce or article which may appear to him to comprise or contain maize, wheat or scheduled agricultural produce and take copies of any books, or accounts, documents or part thereof;
- (c) seize, remove and detain any maize, wheat or scheduled agricultural produce of which he has evidence of an offence having been committed under this Act or regulations made thereunder, and for like cause seize, remove and detain or take charge of any building, plant, machinery, container or receptacle, and any books of accounts or document;
- (d) require the owner or occupier of the land or premises to render an explanation and give information relating to the maize, wheat or scheduled agricultural produce as may be reasonably required by that officer in the performance of his duties.

(2) The power to act under subsection (1) shall only be exercised without a warrant if the officer so acting has reasonable cause to believe that the delay which may be occasioned in obtaining a search warrant would seriously hinder him in the performance of his duties, or would tend to defeat the purposes of this section.

(3) A person who obstructs or hinders an officer acting in pursuance of the provisions of this section, or who wilfully withholds any information or gives any information knowing or having reason to believe it to be false or misleading, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

(4) Before removing an article under paragraph (b) or (c) of subsection (1), the officer removing it shall furnish the person in whose custody or possession the article is at the time of removal with a written receipt.

(5) Every seizure under this section shall be reported without undue delay to a magistrate.

27. Power to stop and search a vehicle, vessel or pack animal

(1) If an authorized officer or a police officer has reasonable cause to suspect that evidence of an offence committed under this Act or under regulations made thereunder is to be found in a vehicle, aircraft, vessel or on a pack animal, he may stop or detain that vehicle, aircraft, vessel or pack animal; and after notification of

his authority and purpose may examine the goods carried thereon, and may require the person in charge of that vehicle, aircraft, vessel or pack animal to inform him of the source and destination of the maize, wheat or scheduled agricultural produce found thereon.

(2) An authorized officer stopping or detaining a vehicle, aircraft, vessel or pack animal in pursuance of the provisions of this section may, if it appears to him after that stoppage or detention that there is evidence of an offence having been committed under this Act or regulations made thereunder, seize the vehicle, aircraft, vessel or pack animal and may take it, or order the person having charge thereof or any other person to take it to a place of security as that officer may deem convenient.

(3) The provisions of subsections (3), (4) and (5) of section 29 shall apply, *mutatis mutandis*, in relation to a stoppage or search under this section.

28. Powers of managing director of Kenya Railways Corporation

(1) The managing director of the Kenya Railways Corporation may, if it appears to him that evidence of an offence committed under this Act or regulations made thereunder is to be found in a train or vehicle under the control or management of the Kenya Railways Corporation, without warrant, detain that train or vehicle, whether in transit or not, and may seize the contents thereof which appear to him to afford that evidence.

(2) A detention and seizure under subsection (1) shall be reported without unnecessary delay to the Board, which shall forthwith inquire into the matter and shall either authorize the release of the train, vehicle or the contents thereof or shall without delay report the detention or seizure to a magistrate.

(3) No liability shall attach to the managing director, nor shall any action lie against him in any court in respect of an act or omission done or made in good faith and without negligence in the exercise or intended exercise of his powers under this section.

(4) For the purposes of this section, a reference to the managing director of the Kenya Railways Corporation shall include the servants and agents of the Kenya Railways Corporation.

29. Powers of arrest without warrant

Where a person is reasonably suspected of committing or having committed an offence under this Act or any regulations made thereunder, an authorized officer or a police officer of the rank of inspector or above may demand his name and address and, if he refuses or fails to give that information to the satisfaction of that officer or if that officer has reasonable grounds for believing that unless arrested that person may escape or cause an unreasonable delay, trouble or expense in being made answerable to justice, he may without warrant, arrest him and hand him over to a police officer or in the absence of a police officer take him to the nearest police station without unnecessary delay.

PART VIII – MISCELLANEOUS PROVISIONS

30. Power to make regulations, etc.

(1) The Cabinet Secretary may, after consultation with the Board, make regulations for the better carrying out of the provisions of this Act, and, without prejudice to the generality of the foregoing, those regulations may—

- (a) provide for the fees to be charged under this Act;

- (b) *deleted by Act No. 17 of 2006, s. 73;*
- (c) direct or prohibit the movement of maize, wheat or scheduled agricultural produce within Kenya or any part of Kenya or from any place in Kenya to another place in either case, either generally or in specified circumstances and subject to any conditions which may be specified;
- (d) provide for the standards to which maize, wheat or scheduled agricultural produce acceptable for delivery to the Board shall conform and the grading and classification of maize, wheat or scheduled agricultural produce;
- (e) prescribe any forms to be used in connection with this Act;
- (f) prescribe anything required by this Act to be prescribed.

(2) Any regulations made under this section may provide for such penalty for the breach of any provision thereof, not exceeding a fine of twenty thousand shillings or imprisonment for two years, as the Cabinet Secretary may think fit.

(3) The Cabinet Secretary may, by order published in the *Gazette*, amend the Schedule.

[Act No. 17 of 2006, s. 73.]

30A. Forfeiture

On any conviction for an offence under this Act or any regulations made thereunder, the Court may, in addition to any penalty otherwise imposed—

- (a) order that any maize, wheat or scheduled agricultural produce in respect of which the offence is committed be forfeited to the Board, or where the maize, wheat or scheduled agricultural produce has been disposed of so as to be unavailable for such forfeiture, that the person guilty of an offence pay to the Board an amount not exceeding the value of the maize, wheat or scheduled agricultural produce; and
- (b) order that anything seized, removed or detained or taken into charge under any of the provisions of this Act other than the maize, wheat or scheduled agricultural produce shall be forfeited:

Provided that a vehicle, aircraft, pack animal or vessel shall not be so forfeited if the owner thereof satisfies the Court that it was used in connection with the offence without his consent or acquiescence.

[Act No. 22 of 1987, Sch.]

31.

[Spent]

32.

[Spent]

33.

[Spent]

34.

[Spent]

SCHEDULE

[s. 2]

SCHEDULED AGRICULTURAL PRODUCE

[L.N. 74/1989, L.N. 509/1990, L.N. 19/1992.]

Bixa annatts.

Cashew-nuts.

Rice paddy.
