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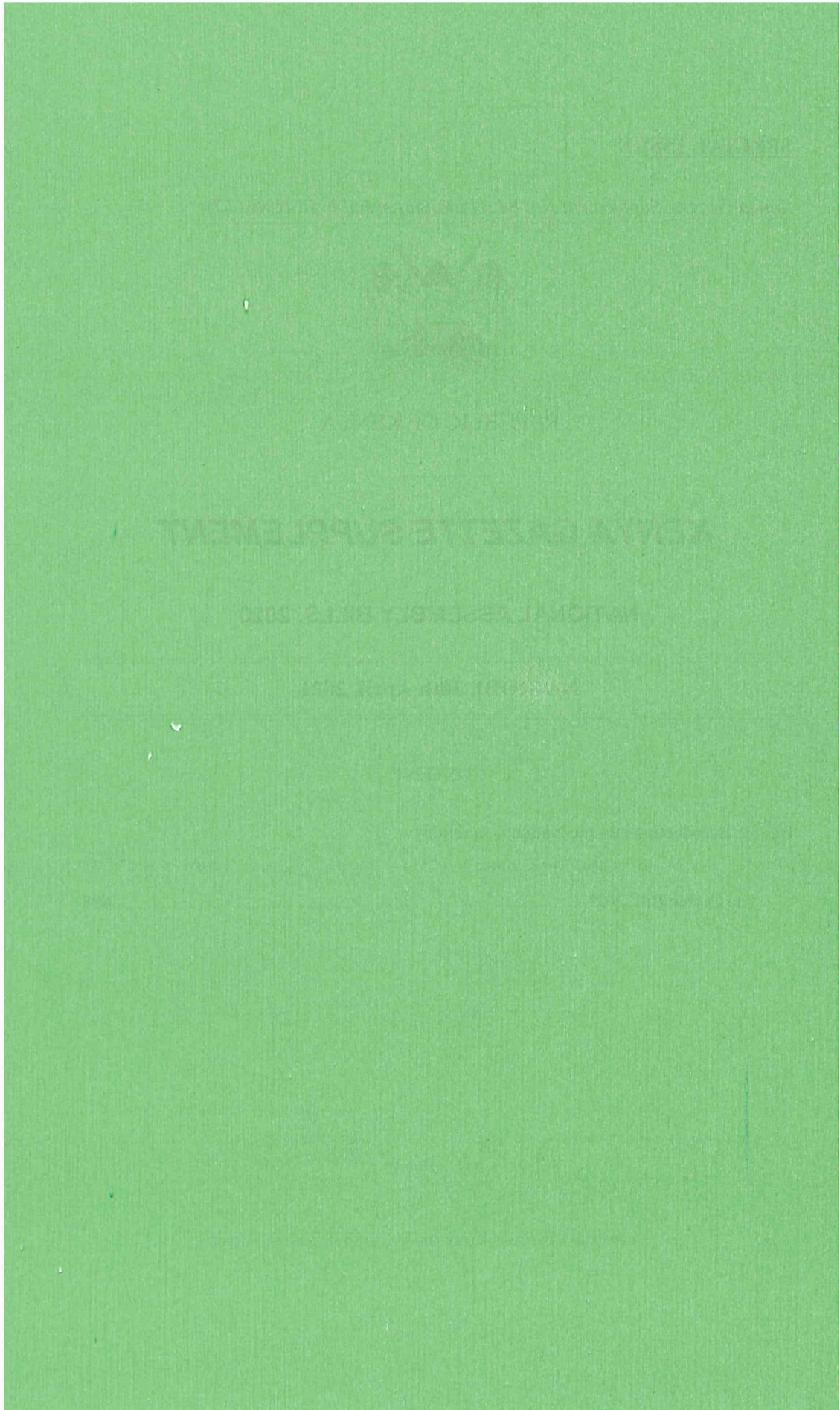
NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 30th April, 2021

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THE COFFEE BILL, 2021

A Bill for

AN ACT of Parliament, to provide for the development, regulation and promotion of the coffee industry, to provide for establishment, powers and functions of the Coffee Board of Kenya, and for connected purposes

ENACTED by Parliament of Kenya as follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Coffee Act, 2021.

Short title.
Interpretation.

2. In this Act, unless the context otherwise requires—

“auction” means the auction system under which coffee is offered for sale at the Nairobi Coffee Exchange;

“auction levy” means such fee per sixty-kilogram bag of coffee sold at the Exchange as shall be determined by the Cabinet Secretary payable by growers to the Exchange

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

“buni” means coffee dried in the fruit or cherry but does not include hulled buni, also referred to as clean coffee, heavy buni or light buni;

“buyer” means an incorporated company licensed by the Board to buy clean coffee at the exchange for export, local sale or value addition or to import clean coffee for blending in Kenya;

“buyer’s levy” means a fee payable as a per centum of proceeds from coffee exports;

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

“coffee miller” means any person who, every crop year, mills parchment coffee on wholesale basis and offers it sale for the purpose of providing service for profit;

“coffee plantation” means any large area of land or group of contiguous areas of land under the same management on which coffee is grown and produced for sale;

“coffee trade” means the business of dealing in the coffee as a commodity and includes associated processes such as milling, warehousing, selling, buying, roasting, grinding and packaging of roasted seed or ground coffee for reward or profit but does not include cultivation or production of coffee;

“coffee” means the plant botanically known as *Coffea* species (L.) and includes the fruit, whether on the plant or detached therefrom, the seed known as buni, parchment coffee, clean coffee, roasted seeds and ground coffee;

“co-operative society” means a co-operative society registered under the Co-operative Societies Act, Cap 490;

“crop year” means the period from 1st October to 30th September of the following year;

“dealer” means a person registered by a county governments or the Board to trade in or deal with coffee;

“dealing in coffee” means acquiring, holding, selling, or exporting coffee for purposes of trade but does not include distributing or moving coffee from one area to another;

“Direct Settlement System” means a receipts and disbursements facility provided by a commercial bank regulated as such under the Central Bank Act for the receipt from buyers of all proceeds from the purchase of coffee and from which all claims on the coffee so purchased, including payments to growers, marketing agents and millers, will be directly settled;

“grower” means any person who cultivates coffee in Kenya and may for purposes of licensing, include co-operative societies, unions, associations and estates;

“grower marketer” means a grower licensed by the Board to mill and market clean coffee produced by such grower;

“grower miller” means a grower who mills own parchment or buni or its members’ coffee and includes an individual farmer, cooperative society, union, association, estate or any other legal entity;

“import levy” means a fee payable as a per centum of the value of imported coffee;

“Institute” means the Coffee Research Institute established under Part III of this Act;

“management agent” means any person registered by the Board, and appointed through a specific agreement by a grower as that grower’s agent for the management of such grower’s coffee farm or pulping station;

“marketing of coffee” means the offering for sale of clean coffee;

“miller agent” means a person who, for a fee, provides the services of secondary processing or milling of coffee and is contracted to act as a miller by a grower;

“miller’s license” means a miller’s license issued under Section 30;

“milling” means mechanical hulling or dehusking of coffee and includes grading of clean coffee;

“miller marketer” means a miller licensed to mill and sell coffee;

“Nairobi Coffee Exchange” means the Nairobi Coffee Exchange established in section 48 at which coffee is traded;

“packer” means any person who roasts and packs roasted seed or ground coffee into packets or containers intended for sale in the local or export market;

“person” includes a company or association or body of persons, whether incorporate or not;

“pulping station” means any coffee factory where coffee is pulped, fermented or otherwise treated for the preparation of parchment coffee which, may, for purposes of this Act be registered as a grower, estate or cooperative society under the Cooperative Societies Act acting singly or in a group of two or more;

“roaster” means a person, licensed by the Board to purchase clean coffee at the Nairobi Coffee Exchange or from the secondary market or a licensed grower marketer for local sale;

“sales catalogue” means a standard document prepared by a marketing agent in consultation with the Nairobi Coffee Exchange and growers for sale of clean coffee at the exchange;

“secondary market” means a post-auction transaction of clean coffee between a licensed buyer or roaster and any other party for the purpose of local sale or export;

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

“Secretary” means the Corporations Secretary of the Board provided for under Section 14;

“sell” includes offering coffee for sale but does not include sale of cherry, buni and parchment coffee;

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

“warehouse” means a designated storage facility for coffee, specifically designed to guarantee the quality and safety of coffee;

“warehouseman” means any person who or which manages his or its own or a leased warehouse where coffee is handled and stored.

PART II—ESTABLISHMENT OF THE COFFEE BOARD

3. (1) There is established a board to be known as the Coffee

Establishment of
the Board.

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) purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;

- (c) borrowing and lending money; and
- (d) doing or performing all such other acts or things necessary for the proper performance of its functions under this Act as may be lawfully done or performed by a body corporate.

4. (1) The Board shall consist of-

Composition of
the Board.

- (a) a chairman appointed by the President;
- (b) three members representing the cooperative societies where coffee is grown;
- (c) two members, representing the plantation coffee growers of registered coffee estates' associations;
- (d) two members representing coffee trade organizations registered under any written law to represent the members of the coffee trade;
- (e) the Principal Secretary in the Ministry for the time being responsible for agriculture or his representative or a designated representative;
- (f) the Principal Secretary responsible for the time being for finance or a designated representative;
- (g) the Principal Secretary in the Ministry responsible for co-operative development or a designated representative;
- (h) a representative from the council of governors who should have relevant knowledge in the coffee subsector;
- (i) the members nominated under clauses (b), (c) and (d) shall be appointed by the Cabinet Secretary;
- (j) the managing director appointed under section 12 who shall be an ex-officio member of the Board.

(2) The Board may from time to time coopt professional experts in financial management, international commodity trade or in any other area they need support.

(3) A person shall be qualified for appointment under subsection

- (1) (a) if that person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity outlined in Chapter 6 of the Constitution;
- (c) holds a degree from a university recognized in Kenya; and
- (d) has experience of at least 15 years in senior management in the private or the public sector.

(4) The Chairman and other nominated members of the Board shall hold office for a term of three years but shall be eligible for re-appointment for one further term.

(5) No person shall be nominated as a member of the Board unless he satisfies the requirements of Chapter Six of the Constitution of Kenya.

(6) The Cabinet Secretary shall make rules for nomination of the members of the Board under (b)(c) and (d).

(7) The rules made under sub section (6) shall provide for mechanisms and criteria to ensure that not more than two thirds of members nominated are of the same gender.

5. A member of the Board other than the Managing Director shall cease to be a member of the Board if that person—

Cessation of membership of Board.

- (a) dies; or
- (b) resigns by a written notice of three months addressed to the Board; or
- (c) is absent from three consecutive meetings of the Board without prior notification to the chairman; or
- (d) is adjudged bankrupt; or
- (e) is incapacitated on medical grounds; or
- (f) ceases to represent the interest in respect of which he was appointed or nominated to the Board; or
- (g) contravenes the provisions of Chapter Six of the Constitution of Kenya; or

- (h) is convicted of a criminal offense and sentenced to a term of imprisonment exceeding six months or a fine exceeding one million shillings.

6. If the office of a member of the Board becomes vacant, the Board shall notify the interested group or organization which nominated that member to the Board which shall nominate a replacement.

Replacement of Board member.

7. (1) The object and purpose for which the Board is established is to, in consultation with the county governments, promote competition in the coffee industry, production, processing and branding of Kenya coffee locally and internationally, and generally to regulate the coffee industry in the public interest.

Functions of the Board.

(2) Without prejudice to the generality of subsection (1), the Board shall-

- (a) ensure the proper and effective performance of the functions of the Council.
- (b) participate in formulation of policies in the coffee industry;
- (c) carry out registration of and regulate the operations of millers, marketing agents, buyers, roasters, packers, management agents and warehousemen;
- (d) license millers, marketing agents, buyers, roasters, warehousemen and importers of value-added coffee;
- (e) undertake capacity building, technology transfer and technical assistance to the counties on matters relating to coffee and provide advisory services related to coffee production, promotion, quality enhancement and compliance with standards and regulations;
- (f) collect, collate and analyze data, maintain a database on coffee, and document and monitor coffee through registration of any person dealing with coffee under this Act;
- (g) partner and collaborate with the Coffee Research Institute and other institutions of higher learning

in determining the research agenda for the coffee industry;

- (h) represent the country in national and international fora on coffee related matters;
- (i) collaborate with national and international trade bodies on coffee related matters;
- (j) establish standards on production, processing, transportation, packaging, blending, storage, preservation of coffee and coffee products;
- (k) conduct surveillance and enforce compliance to policies, coffee standards, the Coffee Act and any regulations made under the Act;
- (l) advise the Cabinet Secretary on levies, fees and import or export duties on coffee;
- (m) carry out market research and analysis and disseminate information on its findings to all stakeholders;
- (n) conduct local and international coffee market intelligence and promotional activities including the application of the Kenya coffee mark of origin; and
- (o) carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments.

(3) The Board shall, subject to the directions of the Cabinet Secretary, be the agent of the Government in respect of all matters pertaining to international agreements made or to be made in relation to coffee.

8. The Board shall have all the powers necessary for the proper performance of its functions under this Act, including the power to—

- (a) impose a levy or levies upon growers, importers and buyers for the purposes of giving effect to the provisions of this Act;
- (b) control, supervise and administer the assets of the Board in such manner and for such purpose as

Powers of the Board.

best promotes the purpose for which the Board was established;

- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (e) lay down policy guidelines for the operations and management of all the funds collected by the Board;
- (f) access all such relevant information as may be necessary for the efficient administration of the industry;
- (g) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate in furtherance of the purpose for which the Board is established;
- (h) open a banking account or banking accounts for the funds of the Board; and
- (i) invest any funds of the Board not immediately required for its purposes.

9. The Cabinet Secretary, after consultation with the Cabinet Secretary responsible for finance, may authorize the Board to raise or borrow such sums of money to finance its operations as it may think fit and the Board may secure the repayment of such sums.

Authority to raise or borrow money.

10. The Board may, upon such terms and conditions of service as it may determine employ management staff of the institute as may be necessary for the proper performance of its functions taking into account the need for ethnic and regional balance and gender parity.

Power to employ officers and servants.

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

Conduct of business of the Board.

(2) without prejudice to subclause (1) the Board may regulate its own procedure.

12. (1) There shall be a Managing Director of the Council appointed by the Cabinet Secretary from a shortlist of three names submitted by the Board.

Managing Director.

(2) The Managing Director will be the chief executive officer and shall serve on such terms and conditions determined by the Board.

13. A person shall qualify not be appointed to the position of a Managing Director unless that person—

Qualifications of the Managing Director.

- (a) possesses a university in a relevant field from a university recognized in Kenya.
- (b) has knowledge and experience of not less than ten years in any of the following fields—
 - (i) economics;
 - (ii) finance;
 - (iii) law;
 - (iv) engineering; and
 - (v) business administration.
- (c) meets the requirements of Chapter Six of the Constitution.

14. (1) The Managing Director shall be responsible for the day to day management of the affairs of the Council and shall be answerable to the Board in the performance of his functions under this Act.

Functions of the Managing Director.

(2) The Managing Director shall perform any other functions determined by the Board or as provided for under this Act.

15. (1) There shall be a Corporation Secretary who shall be the Secretary to the Board.

Corporation Secretary.

(2) The terms and conditions of service of the Corporation Secretary shall be determined by the Board.

16. The Board may appoint and employ, on such terms and conditions as it may determine, agents to carry out any of its functions under this Act.

Employment of agents of the Board.

17. The Board may, by resolution either generally or in any particular case delegate any of the powers conferred on it by this Act to any of its members, officers or servants

Delegation of powers of the Board.

or to any committee, whether constituted wholly of members of the Board or jointly with members of anybody established in any other country and having responsibilities similar to those of the Board.

18. The Board shall pay to its members, such remuneration, fees or allowances for expenses as determined by the Cabinet Secretary on the advice of the Salaries and Remuneration Commission.

Remuneration.

19. No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith and without negligence in the course of the operations of the Board;

Personal liability of Board members.

Provided that in the conduct of the affairs of the Board, members of the Board shall exercise due prudence and diligence and shall be held jointly and severally responsible for any losses incurred due to any act done by them and which is contrary to this Act or the regulations of the Board or to the direction of any general meeting.

20. 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 the Board may determine.

Staff of the Board.

21. An officer, employee or agent of the Board shall not be held personally liable to any action, claim or demand for a matter or thing done bona fide for the purpose of executing the functions, powers or duties of the Board.

Personal liability of employees.

PART III—THE COFFEE RESEARCH INSTITUTE

22. (1) There is established an Institute to be known as the Kenya Coffee Research Institute which shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of—

Coffee Research Institute.

- (a) suing and being sued;
 - (b) purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- borrowing and lending money; and
- (c) doing or performing all such other acts or things necessary for the proper performance of its

functions under this Act as may be lawfully done or performed by a body corporate.

23. (1) The Coffee Research Institute shall be autonomous in its operations, implementation of its programs and the allocation and management of its resources.

Status and funding of the Institute.

(2) The annual programmes and budget of the institute shall be approved by the Council of the Coffee Research Institute established under section 27.

(3) The Council may co-opt experts to strengthen its research capabilities and enhance the Institute's scientific visibility.

24. The Coffee Research Institute shall—

Functions of the Coffee Research Institute.

(1) Develop a climate resilient coffee crop and in lead the scientific effort to strengthen Kenya coffee's resistance to diseases and pests;

(2) 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.

(3) Provide knowledge and advisory services to farmers and coffee value chain actors on soil quality, testing and mapping of coffee varieties to ecological zones.

(4) Be the national and regional institute in research into and development of new coffee varieties and improvement of existing varieties;

(5) Facilitate the use of improved production and processing technologies and to establish adequate feedback systems from coffee farmers and processors in order to achieve the highest possible quality of coffee in Kenya;

(6) Provide an accessible form timely and usable form scientific information and advisory services to actors in the whole coffee production chain through field visits, radio programmes, demonstration farms, publications and modern technology tools such as social media.

25. (1) For the purpose of carrying out its functions, the Coffee Research Institute shall—

Operations of the Institute.

- (a) organize, design and carry out on-station and on-farm research in accordance with the policies and priorities determined by Institute's Research Council;
- (b) identify research needs and constraints in the uptake of research information and knowledge and to prepare short and long-term research programmes to meet those needs and overcome the constraints;
- (c) 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;
- (d) establish and maintain regular contact with other regional and international coffee research institutes to ensure the rapid introduction, evaluation and use of improved technology of potential benefit to Kenya; and
- (e) promote stakeholder responsive as well as demand-driven participatory research.

(2) The regulation and conduct of the business and affairs of the Institute shall be as provided for in the Second Schedule.

26. (1) The management of the Coffee Research Institute shall vest in the Council of the Coffee Research Institute which shall comprise of seven competitively recruited multi-disciplinary experts knowledgeable on matters of coffee appointed on the principle of diversity and subject to the rule that no more than two thirds of them may be from one gender.

(2) Members of the Council shall hold office for a term of three years but shall be eligible for re-appointment for a further term of a three years.

(3) The Council shall competitively recruit and appoint as staff such number of persons with knowledge, experience through technical and scientific criteria as it shall consider necessary for the performance of the functions of the Coffee Research Institute.

Council of the
Coffee Research
Institute.

(4) The staff of the Coffee Research Institute shall be appointed on such terms and conditions as the Council with approval of the Cabinet Secretary shall set.

(5) The Coffee Board of Kenya shall be responsible for the nomination of candidates for appointment to the Council of the Coffee Research Institute.

(6) Members of the Council shall be appointed by the Cabinet Secretary from on the advise of the Coffee Board.

27. The Council of the Coffee Research Institute shall provide managerial and intellectual leadership to the Coffee Research Institute and it shall —

Role of the Council.

- (a) identify the strategic and policy issues related to coffee research and develop the Institute's research program infrastructure;
- (b) oversee the implementation of policies and programs of the Coffee Research Institute and regularly conduct performance reviews;
- (c) advice the management on on-going programs and projects and make recommendations on any needed improvements;
- (d) make recommendations on mechanisms for partnering and integrating research programs and for the adoption of research findings within the coffee sub-sector;
- (e) identify areas of strategic investment and collaboration with other research institutes, research centres, organisations or individuals undertaking coffee research; and
- (f) annually review the operations, administrative organisation and budgets of the Coffee research institute in relation to the programs and initiatives undertaken by the Institute.

28. (1) There shall be a Director General, of the Coffee Research Institute appointed by the Cabinet Secretary on the advise of the Council.

Director General of the Institute.

(2) The Director General shall be the Chief Executive Officer of the Council.

(3) The Director General shall be responsible for the day to day management of the affairs of the Institute and shall be answerable to the Council in the performance of his functions under this Act.

PART IV—ROLE OF COUNTY GOVERNMENTS

Role of county governments.

29. (1) Pursuant to the Fourth schedule of the Constitution, the County Governments shall implement the national government policies to the extent that the policies relate to the County and in particular shall be responsible for the—

- (a) development of coffee grown within the county;
- (a) development and regulation of coffee marketing within the county;
- (b) registration of nursery operators, coffee growers and pulping station licence holders;
- (c) issuance of coffee movement permits;
- (d) issuance of pulping station, warehousing and coffee roasting licences;
- (e) offering and coordination of extension services on coffee production and primary processing;
- (f) inspection of nurseries, pulping stations, roasters and warehouses located within their respective counties;
- (g) enforcement of county and national legislation on coffee, industry code of practice and other industry standards;
- (h) in collaboration with law enforcement agencies, enforcement of regulations and enhancement of security of coffee in the county;
- (i) enforcement of policies and guidelines on corporate governance in coffee growers' institutions; and
- (j) monitoring and report of incidences of pests and disease outbreaks and taking appropriate action in collaboration with the Board and other relevant government agencies.

(2) The county government shall consult and cooperate with the Board in the development, promotion

and regulation of the coffee industry in accordance with Article 6 (2) of the Constitution.

(3) The County may, in accordance with regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers—

- (a) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (b) technical support including research and extension services;
- (c) infrastructural support including physical infrastructure development, financial and market information.

(4) In execution of the roles provided for in subsection (1), the county governments may establish a County Coffee Committee to provide technical guidance in coffee matters.

PART V—LICENSING PROVISIONS

30. (1) The following licences shall be issued by the Board—

Licenses issued by
the Board.

- (a) a coffee buyer's licence, authorizing the holder to—
 - (i) buy or deal in clean coffee produced in Kenya or to import clean coffee from outside Kenya, and to process, in Kenya for local sale or export, coffee of any country of origin; and
 - (ii) deal in roasting, blending and packaging coffee for the local market or for export.
- (b) a commercial coffee miller's licence authorizing the holder to conduct the business of milling and marketing of coffee;
- (c) a grower miller's license, authorizing the grower to mill and market his own coffee;
- (d) a warehouseman's licence, authorizing the holder to conduct the business of warehousing coffee;
- (e) independent cupping laboratory license, authorizing the holder to offer coffee quality analysis services;

- (f) coffee management agency certificate authorizing the holder to offer management services to coffee farmers; and
- (g) a coffee roaster's licence authorizing the holder to buy at the auction or secondary market, roast or grind and package clean coffee for local sale or export and for importing clean coffee for value addition either for local sale or for export.

31. The following licences shall be issued by the respective County Government—

Licences issued by County Governments.

- (a) pulping station licence authorizing the holder to operate a pulping station and may undertake hulling; and
- (b) a warehouse licence authorizing the holder to warehouse coffee;

32. An application for the renewal of a licence shall be made to the Board not later than the first day of the month of September in which the current licence is due to expire:

Application for renewal of dealer's licence.

Provided that a late application may be made upon payment of an additional late application fee of ten per cent of the ordinarily applicable fee.

33. (1) The Board shall not issue a licence under this Act unless an applicant has met the requirements prescribed in the Regulations under this Act.

Licensing provisions.

(2) Each licence shall specify the location or premises upon which the business specified in the licence may be carried on.

(3) Licences issued under this section as specified shall remain in force until the 30th day of September following the date of issue, unless earlier cancelled.

(4) There shall be payable for the issue of licences such fees as the Cabinet Secretary, may prescribe in regulations.

(5) The Board shall, at least fifteen days before granting a licence under this Act, give notice of the proposed grant in the Gazette and invite comments and objections, if any, framed in such form as the Board may determine.

(6) The Board may, after considering the objections, if any, made under this section, grant the licence applied for, subject to such terms and conditions as may be specified therein.

(7) A licence issued under this section shall not be transferable.

34. The Board or the County Government issuing a license, as the case may be, may suspend or revoke a license, if the holder of the license has breached the conditions specified in any of the provisions of this Act or the conditions of the license as may be prescribed in the Regulations under this Act.

Suspension and revocation.

35. (1) No person shall buy, sell, mill, warehouse, export or otherwise deal in or transact any business in coffee unless he is a holder of a current licence issued by the Board or the county government for that purpose.

Prohibition of certain acts without a licence.

(2) This section shall not apply to—

- (a) any person who purchases coffee for consumption or for planting on his land;
- (b) any grower who mills coffee produced by such grower;

(3) Any person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of any licence granted thereunder commits an offence and is liable to a fine of five hundred thousand shillings or to imprisonment for a term of two years or to both.

(4) Where a person is convicted of an offence under this section, the court may order that any licence issued to such person be suspended for the subsequent coffee year or for such period as the Cabinet Secretary may, by regulations, determine.

PART VI—REGISTRATION PROVISIONS

36. (1) A person shall not conduct any coffee business unless that person is registered by the Board in accordance with this Act.

Registration by the Board.

(2) The Board shall register all warehousemen, warehouses, coffee millers, coffee buyers, roasters, brokers,

grower marketers, marketing agents, importers, coffee bags suppliers, coffee liquorers and certification companies.

(3) The Board shall issue a certificate of registration upon registration of the applicants.

(4) No fee shall be charged in respect of any registration or certificate of registration made or issued under this section.

(5) Registration of the players under this Part shall only be done once.

(6) The Board shall maintain an up-to date register of all registered players, and share the register with the respective county government;

(7) All registered players shall complete and submit to the Board, annual returns as shall be specified in regulations under this Act;

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

37. (1) A small holder coffee grower may register with the co-operative society, association or company to which he delivers coffee.

Registration by
Co-operative
Societies.

(2) The directors of a coffee co-operative shall serve for a period of two three-year term.

(3) In appointing directors under this section, a co-operative society shall ensure that not more than two thirds of the members are of one gender and that nominees for the board meet the requirements of Chapter Six of the Constitution.

(4) Notwithstanding the provisions of any other law, every Coffee factory may, by resolution of its members in the Annual General Meeting, apply for registration as a cooperative society under the Co-operative Societies' Act.

(5) Every producer cooperative society, association or company, coffee plantation and nursery operator shall register with the County government by supplying such particulars as shall be prescribed in Regulations under this Act.

(6) Where a person starts growing coffee at any time after the commencement of this Act, such person shall, within six months register with—

- (a) a co-operative society, association or company in accordance with subsection (1) if such a person is a small scale grower; or
- (b) his respective County Government in accordance with provisions of this Act if such a person is a plantation grower or a cooperative society.

(7) The co-operative society, association, company and the county government shall each maintain a register for the purpose of this Part and shall record therein the particulars supplied in accordance with this section.

(8) The county government shall share the data captured in this section with the Board on annual basis.

(9) Where a co-operative society, association, company or the county government has reasonable cause to believe that a person whose particulars are recorded has ceased to be a grower, it may, after giving that person written notice by registered post of its intention to do so, remove the name of such person from the register.

(10) The registers referred to in subsection (7) shall be proof of the fact that a person is a registered coffee grower and a co-operative society shall furnish the county government with particulars of all registered coffee growers in such manner as the county government may prescribe.

38. (1) For purposes of keeping of accurate and reliable statistics, any person intending to uproot coffee shall notify the co-operative society, in the case of a smallholder, and the county government in the case of a plantation grower.

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

(2) Any change in the particulars supplied by a grower for purposes of registration shall be notified to the county government or the co-operative society, association or company in writing.

(3) Data on area of coffee planted or uprooted within a county shall be maintained by the respective county government.

39. (1) A County Government may, in consultation with the Board register distinguishing mark of a grower as prescribed in the regulations under this Act.

Registration of distinguishing marks.

(2) No person offering for sale or exporting coffee shall use any distinguishing mark to market and identify it as coffee grown by him or by a member of a co-operative society to which such member belongs unless the mark is registered as the distinguishing mark of such person or such society by the Board in a register to be kept for that purpose.

(3) Any person who contravenes this section commits an offence.

PART VII—PRODUCTION AND PROCESSING

40. All the coffee produced and processed in the country shall conform to the Kenya Coffee Production Standards as prescribed under this Act.

Coffee Industry Standards.

41. The Board shall register and monitor the certification schemes for compliance with protocols for Kenyan coffee in accordance with the international market requirements.

Certification of Kenyan coffee.

42. The Board shall promote and register all coffees produced in Kenya in accordance with geographical or regional markers styled as 'Authentic Mark of Origin.'

Branding and geographical indications.

43. (1) The Cabinet Secretary may, on the advice of the Board, make policies and take steps to ensure that coffee farmers receive appropriate technologies, credit, farm inputs and marketing support.

Coffee development.

(2) The Board shall conduct training programs aimed at strengthening the capacities of county officers in terms of knowledge and skills in coffee production, processing technologies and marketing for different types of coffee.

(3) The Board shall, in consultation with the relevant standards bodies, coffee stakeholders, county governments and research institutions, develop the Kenya Coffee Production Standards and formulate therefrom a binding Code of Good Coffee Practice.

(4) Where a farmer has entered into an agreement with an organization representing the interest of such farmer, the Board and every dealer in coffee shall respect and enable the carrying out of the terms of such agreement, including the remission to such organization of any contributions that may, pursuant to such agreement, be deductible from the farmer.

44. (1) The primary processing of coffee—

Primary
processing of
coffee.

- (a) shall be carried out at a pulping station or by a grower's co-operative society or other association of growers under a pulping station licence.
- (b) the pulping station licence may include authority to undertake hulling of own parchment or buni.
- (c) the huller shall be registered with the County Government and such registration information shared with the Board.

(2) The licence holder shall allow free access to the processing premises by inspectors authorized by the respective licensing authorities for inspection visits to ensure compliance with this Act.

(3) The licence holder shall submit returns on the coffee received and processed to the board and the relevant county government.

45. (1) Coffee milling shall only be conducted at premises that are specified under the license issued by the Board.

Appointment of
millers.

(2) All coffee millers shall comply with the requirements stipulated in the license and the Regulations under this Act.

(3) Every coffee factory shall, by annual resolution of its members in Annual General Meeting, designate a registered miller for its parchment coffee.

(4) The manager of every coffee factory shall, within two months of the end of the crop year, call a meeting of outgrowers to choose the registered miller referred to in subsection (4) from amongst at least three millers invited to make representations to the outgrowers.

(5) The county executive committee member responsible for coffee shall attend or designate a

representative to attend the meeting referred to subsection (4).

(2) Each registered miller participating in the meeting to choose a miller shall make all disclosures necessary to enable farmers make an informed decision.

(3) All millers licensed under this part shall be authorized to act as marketing agents of all the coffee milled by them and may charge up to one per centum of the value of the coffee sold as marketing fees.

(4) A miller is a bailee of all parchment received for milling and shall as such be responsible for any loss or damage to the coffee in his or her custody.

(5) Any person involved in the management of a coffee factory who disobeys the provisions of this part commits an offence and shall be subject to penalties determined in regulations under this Act.

(6) The milling losses allowable under this part shall be capped at nineteen percent of coffee milled.

(7) The Cabinet Secretary may, by regulations, vary the milling losses allowable under subsection (9).

(12) Every resolution made under this section shall, within fourteen days, be filed with the Board and copied to the relevant department of the County government and to the Commissioner of Cooperatives.

(13) For the better carrying out of the provisions of this section, the Cabinet Secretary may by regulations, prescribe the manner for the appointment and remuneration of millers and for composition and attendance at the annual general meetings at which such millers are appointed.

46. (1) Every contract for milling of coffee under this Act shall make full disclosures of all the expenses associated with milling and itemize the costs of the milling, that includes, the actual cost of milling, the cost of handling, sorting, grading, packaging and warehousing, which shall in any case not exceed four thousand shillings per tonne of coffee milled or such other fee as the Cabinet Secretary may, by regulations prescribe.

Milling terms and conditions.

(2) All milling shall be done in the presence of the grower of the coffee being milled or such grower's appointed representative.

(3) Every miller to whom coffee is sent for milling, and every grower who mills any coffee, shall, within forty-eight hours of the coffee being milled send to grower and a copy to the Board, the relevant county government and the commissioner of co-operatives, a milling statement of the coffee milled.

(4) Every milling statement shall furnish the details of costs, yield and losses of the milling process itemizing actual milling loss, output per grade, milling charges, fees and any other matter prescribed in the regulations.

(5) A person who contravenes the provisions of this part commits an offence.

PART VIII—COFFEE TRADING AND MARKETING

47. (1) Kenyan coffee shall be offered for sale through auction or direct sale.

Coffee trading.

(2) All direct coffee sales shall be subject to price competition at the Coffee Exchange whereby the direct sale price shall serve as the reserve price.

(3) Where the coffee referred to in subsection (2) fetches a higher price at the Coffee Exchange than the direct sale price offered, the prospective direct sale buyer shall have the right of first refusal to buy the coffee at the Coffee Exchange price.

Provided that if the prospective direct sales buyer refuses to buy the coffee at the Coffee Exchange price, the coffee shall be sold to the person who makes the best offer above the reserve price at the Coffee Exchange.

(4) Where coffee is sold by auction—

- (a) a coffee miller, a grower marketer or a grower miller licensed by the Board may offer coffee for sale at the Nairobi Coffee Exchange.
- (b) a buyer licensed by the Board shall trade at the Nairobi coffee exchange in accordance with this Act and any other laws that may govern the Nairobi coffee exchange.

- (c) coffee trade shall be conducted at the Nairobi Coffee Exchange in accordance with the Coffee Trading Regulations made under this Act.

(5) It shall be an offence for a holder of a miller's marketing licence to participate by himself or by his agent in the buying of coffee.

(6) The Cabinet Secretary shall make rules for the conduct of direct sales of coffee.

48. (1) There is established a body to be known as the Nairobi Coffee Exchange for the purpose of conducting coffee auctions.

Establishment of the Nairobi Coffee Exchange.

(2) The Nairobi Coffee Exchange shall be a body corporate, limited by guarantee and registered under the Companies Act, 2015.

(3) The operations of the company shall be prescribed in Regulations made under this Act.

(4) The functions of the Nairobi Coffee Exchange shall be to—

- (a) manage the trading floor, central sample room and the information registry;
- (b) maintain records relating to coffee sales, coffee samples and sweepings;
- (c) avail sales catalogues to interested parties; and
- (d) any other function as may be prescribed by the Cabinet Secretary.

(5) The Nairobi Coffee Exchange may, subject to conditions established by law, trade in other commodities.

(6) The funds of the Nairobi Coffee Exchange shall consist of—

- (a) auction levy;
- (b) registration fees payable by commercial marketing agents and coffee buyers;
- (c) government grants and donations made to the Nairobi Coffee Exchange;
- (d) any interest from fixed deposits;

- (e) monies from a source approved by the Nairobi Coffee Exchange; and
- (f) sample fee.

(7) The Cabinet Secretary shall make regulations to provide for the management of the Nairobi Coffee Exchange and the development of the trading rules.

49. (1) The Nairobi Coffee Exchange shall be a not-for-profit- organization whose operations shall be funded by charges, fees and levies on auction activities or by official grants or appropriations by Parliament.

Funding
of the
Nairobi
Coffee
Exchange.

(2) Any residual revenues shall be invested to improve the operations of the Nairobi Coffee Exchange and, where necessary, to widen the coverage of the Nairobi Coffee Exchange to include other agricultural commodities.

50. (1) The Nairobi Coffee Exchange shall operate transparently and consistently with the principles of a fair and competitive market within the meaning of the laws for time being governing competition in Kenya.

Operation
s of the
Nairobi
Coffee
Exchange.

(2) In order to give effect to subsection (1) coffee sellers, buyers, agents, traders and other players in the coffee market shall be established, formed and organized in a manner that avoids anti-competitive practices.

(3) Parallel directorships and cross ownership of shares in commercial milling companies; marketing agents; coffee brokerages and coffee buying companies is prohibited.

51. (1) For the avoidance of doubt and for the purposes of this Act, anti-competitive conduct shall mean any act, conduct, practice or behavior by the Nairobi Coffee Exchange organizer or any other licensee operating at the Exchange, individually or in concert that directly or indirectly impedes, frustrates, undermines, or reduces competition at the Nairobi Coffee Exchange.

Anti-
competiti
ve acts.

(2) For the purpose of subsection (1), anti-competitive conduct shall include but is not limited to margin squeeze, market sharing, transfer pricing, abuse of dominance, preferential contracts that give advantageous terms to affiliates and partners relative to competitors, imposition of unfair purchase or selling conditions or other, predatory

practices, application of dissimilar conditions to equivalent transactions with other trading parties and other conduct that undermine competitive operations of the Nairobi Coffee Exchange.

(3) The Cabinet Secretary may, for the better carrying out of the provisions of subsection (2) make regulations to encourage secondary trading and regulate the size of lots tradeable at the auction.

(4) The provisions of this Part as relates to the Nairobi Coffee Exchange shall prevail anything in any other law to the contrary notwithstanding.

(5) The Board may, on a finding that a licensee is in breach of the provisions of this Part suspend such licensee from the Nairobi Coffee Exchange for a term not exceeding six months.

(6) A licensee who is in subsequent breach of these provisions commits an offence and is liable on conviction to a fine of two million shillings in addition to having their licence cancelled or suspended for such term as the Cabinet Secretary may, by regulations prescribe.

(7) The penalties prescribed under this Act are without prejudice to other legal sanctions that may be prescribed in the any other law.

(8) The Cabinet Secretary may make regulations for the implementation of this part.

52. (1) Where the miller draws a sample of coffee for the purpose of grading the coffee, he shall within seven days of such grading notify the grower to whom the coffee belongs of the classification of the coffee.

Classificat
ion of
coffee.

(2) Any grower who is aggrieved by classification of his coffee under subsection (1) may, within fourteen days of the notification, appeal against such classification to the Board.

53. (1) Subject to the provisions of this Act, a miller acting as a marketing agent shall offer for sale all coffee which has been classified by him on terms agreed between the grower or the grower in consultation with his financier and the marketing agent.

Conduct
of coffee
Marketing

(2) Every miller marketer shall offer coffee for sale at the auction through a catalogue detailing the quantities of the sellable lots.

(3) Coffee noted prices shall be disclosed at the end of the auction to enable the preparation of transaction listing of the market report.

54. (1) Only licensed coffee buyers shall trade at the Nairobi Coffee Exchange.

Payments
for Coffee
sold.

(2) All payments for coffee whether through direct sales or at the Nairobi Coffee Exchange shall be made through the direct settlement system, within seven days of purchase.

(2) A buyer who fails to remit payments to the direct settlement system, within seven days for the bidden coffee at the auction commits an offence and shall liable to such penalties as the Cabinet Secretary shall by regulation.

(4) All payments to farmers for coffee sold and for services rendered for such coffee whether by millers, marketing agents, warehousemen, auction organisers, coffee societies and factories shall be paid into their individual accounts from the direct settlement system.

(5) Every coffee factory shall receive direct payment for its operations and is prohibited from receiving money on behalf of coffee farmers.

(6) Payments to factories or societies from the direct settlement system for operations and maintenance shall be five percentum of the value of coffee sold net of the milling, warehousing and marketing costs.

(7) Notwithstanding subsection (6) above the growers may through a resolution authorize a deduction of more money for capital development.

Provided that such deduction is approved by the Coffee Board with the concurrence of the Cabinet Secretary.

(8) In order to facilitate direct payment but subject to the privacy guarantees of the Constitution each Coffee Factory shall maintain and regularly update its members'

records, that is to say, their names and identity card numbers and details of bank accounts.

(9) Every coffee factory shall furnish the marketing agent with bank details or mobile wallets of its individual famers and a payment schedule.

(10) The Cabinet Secretary shall make regulations for the management and operations of the direct settlement system.

55. (1) A licensed coffee roaster or grower marketer shall be allowed to purchase clean coffee from the Nairobi Coffee Exchange or the secondary market for local sale.

Coffee
Roaster.

(2) A roaster shall not be allowed to offer clean coffee for sale to a buyer for export.

56. (1) Subject to the provisions of this Act—

Restriction
on
purchase
and sale
of coffee.

(a) no person shall purchase coffee from any grower;

(b) no person, other than a grower miller shall market clean coffee at the Nairobi Coffee Exchange unless he is a holder of a miller's licence that specifically authorizes such miller to act as a marketing agent and is appointed so to do by a grower through a specific agreement.

(2) Any person who contravenes the provisions of this section or acts in contravention of the conditions of any written authority or licence granted thereunder commits an offence and shall be liable, if convicted, to a fine of not less than five hundred thousand shillings or to imprisonment for a term of two years or to both.

(3) The Cabinet Secretary may cancel the licence of any miller or marketing agent convicted of an offence under this section.

57. (1) A person shall not export coffee or cause any coffee to be exported unless a phytosanitary certificate has been issued for the consignment by the Kenya Plant Health Inspectorate Service.

Export
and
import of
coffee.

(2) The Board shall authorize all coffee exports through issuance of the coffee buyer's licence, notification and registration of direct sales contracts, certificates of origin and certificates of quality.

(3) The Board shall authorize coffee imports through issuance of import permits or a buyer's licence.

Provided that clean coffee imports shall be accompanied by the certificate of origin and a phytosanitary certificate issued by the country of origin.

58. (1) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, put in place programmes for the establishment of special economic zones in the coffee sub-sector.

Promotion
of Coffee.

(2) The Board may co-ordinate coffee stakeholders, including county governments, growers and buyers at national and international events for the purpose of promoting Kenya coffee.

(3) A county government in the coffee growing areas may, separately or in unison with the Board, support coffee growers' participation in local and international coffee promotion and marketing events.

59. (1) It shall be illegal for coffee millers and marketing agents to lend to farmers on interest.

No
lending
by millers
and
marketing
agents.

(2) A miller or marketing agent who violates the provision of subsection (1) commits an offence.

(3) Any miller or marketing agent convicted of an offence under subclause (2) shall have his licence revoked or suspended for such duration as the Cabinet secretary may, by regulations, determine.

60. (1) The interest rate on borrowing by factory management against growers' assets held in trust by the coffee factories and coffee co-operative societies such as land, machinery, equipment, shall be capped at five per cent per annum.

Loans
against
growers'
assets.

(2) No factory or society shall contract any loans or advances under subsection (1) except with the support of a resolution passed by a majority of the growers to that effect.

(3) Any factory or society that violates the provisions subsection (1) commits an offence and any loans borrowed in breach of this provision shall be statutorily converted into personal loans of the officials of the offending factory or society.

(4) Nothing in this section shall be interpreted as prohibiting coffee farmers from directly borrowing money from banks or any government established funds against their deliveries of cherry, parchment and clean coffee.

PART IX—QUALITY ASSURANCE

61. (1) The Board shall ensure quality control of Kenyan coffee in accordance with prescriptions in Regulations under this Act.

Quality, safety and health control measures.

(2) The Board shall, in collaboration with county governments, enforce coffee industry standards along the value chain.

(3) The Board may, in consultation with an accredited institution of higher learning and industry stakeholders, develop training curricula, conduct examinations and provide for certification of coffee liquorers, cuppers, roasters and other technical professionals in coffee.

(4) The Board may sample coffee at any stage from factories to mills, warehouses, roasting facilities, export consignments and coffee exchange to ascertain pesticide and mycotic residue levels and ensure compliance with the maximum permissible residue levels at Kenya's coffee market destinations whether these are local and international.

(5) The Board shall receive samples from marketing agents for purposes of quality analysis, archiving and arbitration. The sample weight shall be two hundred and fifty grams of clean coffee per lot.

(6) Coffee produced locally or imported into the country shall comply with the prevailing—

- (a) quality standards as set under this Act;
- (b) safety and health standards as set by the body for the time being responsible for public health;
- (c) environmental impact standards as defined by the body for the time being responsible for environmental matters.

(7) Any coffee imported into the country that does not conform to the Kenyan Coffee Standard shall be destroyed by order of court obtained in proceedings instituted by the

Board with due notice to the importer, and the import permit of the owner may be cancelled.

PART X—FINANCIAL PROVISIONS

62. (1) There shall be a coffee levy imposed at the rate of one point five per centum of the Nairobi Coffee Exchange value for all the coffees sold.

Imposition of the Coffee Levy.

(2) The Cabinet may by regulations impose an import levy on all coffee imported into Kenya.

(3) The levies collected under this part shall be apportioned as follows—

- a) one per centum shall be applied for the operations of the Board;
- b) zero point five per centum shall be applied to the Coffee Research Institute.

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

Funds of the Board.

- (a) monies appropriated by the National Assembly for the purposes of the Board;
- (b) such monies as may be payable to the Board under this Act or any other written law.
- (c) any monies that accrues to or vests in the Board in the course of the exercise of its powers or the performance of its functions under this Act; and
- (d) all monies from any other source provided for, including donations or loans.

(2) A person who fails to pay the coffee levy imposed under this Act commits an offence and is liable on conviction to a fine of fifty thousand shillings or imprisonment for six months or to both, and the amount due shall be recoverable with interest at prevailing market rates.

64. The financial year of the Board shall be the period of twelve months ending on the 30th June of every year.

Financial Year of the Board.

65. (1) There is established a Fund to be known as the Coffee Stabilisation Fund which shall be managed by the Board.

Coffee Stabilisation Fund.

(2) The Fund shall consist of—

- (a) monies appropriated by the National Assembly;
- (b) monies from any source approved by the Board;
- (c) grants and donations made to the Board.

(3) The Board shall apply the monies received into the Fund to-

- (a) income and price stabilization; and
- (b) any investments that further the objective of stabilizing the prices paid to farmers.

66. (1) Before the commencement of each financial year, the Board shall prepare estimates of revenue and expenditure of the Board for that financial year.

Annual estimates.

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

- (a) payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Board;
- (c) proper maintenance of the buildings and grounds of the Board;
- (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Board;
- (e) 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 matters 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 once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

PART XI—AUDIT AND REPORT

67. (1) The Board shall maintain proper books and records of accounts of all the income, expenditure, assets and liabilities of the Board.

Accounts
and audit.

(2) Not more than four months from the end of the financial year, the Board shall submit to the Auditor General or to an auditor appointed under subsection (3), the accounts of the Board together with a—

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

(3) The accounts of the Board shall be audited by the Auditor General or by an auditor appointed by the Board with the written approval of the Auditor General.

(4) The appointment of an auditor under subsection (3) shall not be terminated without the prior written consent of the Auditor General.

(5) The Auditor General may give general or specific directions to an auditor appointed under subsection (3) and the auditor shall comply with such directions.

(6) An auditor appointed under subsection (3) shall report directly to the Auditor General on any matter relating to the directions given to him by the Auditor General.

(7) Within six months of the end of each financial year, the auditor General shall report on the examination and audit of the accounts of the Board to the Cabinet Secretary and where an auditor has been appointed under subsection (3), such auditor shall submit a copy of the report to the Auditor General.

(8) The fee payable to an auditor, appointed under subsection (3) shall be determined and paid by the Board.

(9) Nothing in this Act shall be construed as prohibiting the Auditor General from carrying out, at any other time other than the end of the financial year, an inspection of the records and accounts of the Board.

(10) The Auditor General may, transmit to the Cabinet Secretary any special report on any matters incidental to his power under this Act and section 19 (3) and (4) of the Exchequer and Audit Act (Cap. 412) shall, with necessary modifications, apply to any report made under this section.

68. (1) The Board shall, within six months of the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Board for the previous year.

Annual report.

(2) The Cabinet Secretary shall lay the audit report and the report of the operations of the Board before the National Assembly within three months of the day the National Assembly next sits after the receipt of the report.

PART XII—GENERAL PROVISIONS

69. (1) Notwithstanding the provisions of any other law, the provisions of this Act regulating coffee shall prevail.

Other laws.

70. (1) Any person aggrieved by the refusal of the Board to issue any licence or registration certificate, or by any decision of the Board may, within thirty days such decision appeal to the Cabinet Secretary.

Appeals.

(2) Any person aggrieved by the refusal of a County Government to issue any licence or registration certificate, or by any decision of the county government may within thirty days after such decision appeal to the County Executive Member responsible for agriculture.

71. (1) There is established a committee to be known as the Coffee Dispute Resolution Committee to arbitrate disputes between parties acting under this Act.

Dispute resolution

(2) The Cabinet Secretary may prescribe in Regulations under this Act, the membership and rules of procedure for the Committee.

72. Where any notice is required under this Act to be served on any person, such service may be effected either personally on such person, by registered post or courier services; and, where the person to be served is a body corporate or a co-operative society or other body of persons, the service may be effected by serving it personally on any secretary, director or other officer of

Service of notices

such body, or by leaving or sending it by registered post or courier services to the address of such body or, where there is no registered office, at any place where it carries on business.

73. (1) The directorship of a coffee factory is a position of trust and directors shall have held liable for any waste and loss arising from negligence and breach of trust.

Fiduciary duties of directors.

74. (1) Where any offence under this Act or under any Rules made thereunder is committed by a company or other body corporate, or by any co-operative society, association or body of persons, every person responsible for the management of the affairs or activities of such body shall be guilty of that offence and shall be liable to be punished unless it is proved that the person was not aware that the offence was being committed or that the person took all reasonable steps to prevent its commission.

Offences by corporations, co-operative societies, etc.

75. (1) Any person guilty of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

General penalty.

(2) Where the person convicted under this part is also a licence holder under this act, the Cabinet Secretary may, in addition, cancel such person's licence.

PART XIII—DELEGATED LEGISLATION

76. (1) The Cabinet Secretary may, after consultation with the Board, make Regulations prescribing anything which by this Act is required to be prescribed, and generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of the powers conferred by subsection (1) Regulations may provide for all or any of the following matters—

(a) the nomination the members of the Board, who are required by this Act to be nominated to represent respective coffee regions, interests and the manner in which the lists of nominees shall be published;

(b) prescribing the manner in which persons to represent growers shall be nominated;

(c) the manner of registration and licensing or de-registration of buyers, packers, marketing agents, millers, growers and any other persons dealing in coffee;

(d) the rules and regulations of trading in coffee at the Nairobi coffee exchange and direct sales and other matters relating to the sale of coffee;

(e) prescribing the forms and manner of application for licensing and registration;

(f) prescribing the forms of any certificates to be issued under this Act;

(g) prescribing the returns, and the forms thereof, to be made by persons holding licenses under this act;

(h) prescribing the manner in which coffee may be traded and stored, and regulating the bulking and packing of parchment coffee, clean coffee, roasted beans and ground coffee with a view to maintaining or enhancing the quality of coffee;

(i) prescribing the forms of registers required by this Act to be kept, and the matters to be entered therein;

(j) regulating the milling and offering for sale of coffee by the millers and marketing agents respectively, including accountability and sale of coffee sweepings and monitoring milling losses;

(k) prescribing the services which the millers and marketing agents may render to growers for payment, and the charges to be made for such services;

(l) providing for the submission of returns to the Board by coffee dealers, and marketing agents on any matter relevant to their roles under the Act;

(m) prescribing the forms and procedure for appeals under this Act;

- (n) providing for the manner of grading and classification of coffee under this Act;
- (o) prescribing the fees, which may be charged for anything done under this Act;
- (p) for capping of costs charged to growers by service providers along the value chain; and
- (q) without prejudice to any provision in this section, prescribing anything, which under this Act may be prescribed.

(3) For the Purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make rules to provide for the better carrying out unto effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provision of this Act and fulfilment of the objectives specified under this section;
- (c) the principle and standards applicable to the rules made under this section are those set out in the Interpretation and General provisions Act and the Statutory Instruments Act, 2013

PART XIV—SAVINGS AND TRANSITIONAL PROVISIONS

77. (1) Notwithstanding the provisions of any other law, all rights, obligations, liabilities and contracts relating to coffee which immediately before the commencement of this Act were vested in or imposed on Agriculture and Food Authority with respect to coffee, shall from the commencement of this Act be deemed to be the rights, obligations, liabilities and contracts of the Board.

78. (1) Upon the coming into force of this Act any person who was an officer or member of staff of the former Coffee Board of Kenya, immediately before the commencement of the Agriculture and Food Authority Act,

Rights
and
obligation
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Staff of
the Coffee
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2013 not being under notice of dismissal or resignation or retirement, may, upon commencement of this Act, and subject to subsection (2), apply to be an officer or member of staff of the Board on such terms and conditions of service as the board shall determine.

e Food Authority.

(2) The staff pensions or provident fund of the Agriculture and Food Authority, coffee directorate shall on the appointed day vest in the Board.

79. (1) All funds, assets, and other property, moveable and immovable which have been acquired after commencement of the Crops Act, 2013 and Agriculture and Food Authority Act, 2013 relating to coffee and were vested on Agriculture and Food Authority shall, by virtue of this paragraph, vest in the Board.

Assets and liabilities.

(2) Notwithstanding the provisions of sub-section 1 and of any other written law, that portion of the Commodity Fund under the Crops Act and the Agriculture and Food Authority Act which was financed by the Coffee Levy before it was abolished shall be re-allocated and form part of the assets of the Coffee Stabilisation Fund established under section 65 this Act.

(3) The Cabinet Secretary shall make regulations for the apportioning of the monies in the Commodity Fund and for the better operationalisation of the Coffee Stabilisation Fund.

80. All funds, assets, and other property, moveable and immovable which have been acquired after commencement of the Crops Act, 2013 and Agriculture and Food Authority Act, 2013 relating to coffee and were vested on Agriculture and Food Authority shall, by virtue of this paragraph, vest in the Board.

Reference to the Board.

81. (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 commencement of this Act, be read and construed as a reference to the Board.

Previous authorizations.

(2) All directions, orders and authorizations given, or licences 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 or made by the Board as the case may be, under this Act.

82. All legal proceedings and claims pending in respect of actions and activities to which this Act apply shall be continued or enforced by or against the Board in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority had this Act not been enacted.

Pending
proceedin
gs and
claims.

83. All licences issued under any law relating to coffee shall lapse ninety days after the coming into force of this Act.

Licences
under pre-
existing
law

**FIRST SCHEDULE—CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD (s.11)**

1. The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
2. Notwithstanding the provisions of paragraph (1), the Chairperson may, and upon request in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.
3. Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
4. The quorum for the conduct of the business of the Board shall be seven members.
5. The Chairperson shall preside at every meeting of the Board at which he is present but in his absence, the vice-Chairperson shall preside and shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
6. In the event of the absence of both the Chairperson and the vice-Chairperson, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or the vice-Chairperson or the person presiding shall have a casting vote.
8. Subject to paragraph (4), no proceeding of the Board shall be invalid by reason only of a vacancy among the members thereof.
9. Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.
10. If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement

thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

11. A disclosure of interest made under paragraph (10) shall be recorded in the minutes of the meeting at which it is made.
12. 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 the Chairperson and the Chief Executive Officer:

Provided that the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the Chairperson or the Chief Executive Officer.

**SECOND SCHEDULE—THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE COFFEE COUNCIL. (s. 25)**

1. The Council shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Notwithstanding the provisions of paragraph (1), the Chairperson may, and upon request in writing by at least five members shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

2. Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.
3. The quorum for the conduct of the business of the Council shall be seven members.
4. The Chairperson shall preside at every meeting of the Council at which he is present but in his absence, the vice-Chairperson shall preside and shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
5. In the event of the absence of both the Chairperson and the vice-Chairperson, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
6. Unless a unanimous decision is reached, a decision on any matter before the Council 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 the vice-Chairperson or the person presiding shall have a casting vote.
7. Subject to paragraph (4), no proceeding of the Council shall be invalid by reason only of a vacancy among the members thereof.
8. Subject to the provisions of this Schedule, the Council may determine its own procedure and the procedure for any committee of the Council and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

9. The Council shall keep Minutes of it's proceedings and decisions.
10. If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.
11. A disclosure of interest made under paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to provide for the development, regulation and promotion of the coffee industry, to provide for establishment, powers and functions of the Coffee Board of Kenya.

PART I of the Bill provides for preliminaries and set out the objects and purposes of the Bill.

PART II establishes the coffee board, membership of the board, functions and powers of the board, the managing director and the staff of the board.

PART III of the Bill provides for the coffee research institute, functions of the coffee research institute, operations of the Institute, council of the Coffee Research institute and the role of the council.

PART V of the Bill provides of the Role of the County Governments. Pursuant to the fourth schedule of the Constitution, the county governments shall implement the national government policies to the extent that the policies relate to the county and the county shall be responsible for inter-alia the development of coffee grown within the county, issuance of coffee movement permits. Enforcement of county and national legislation on coffee, industry code of practice and other industry standards.

PART VI of the Bill provides for registration provisions. Registrations for persons carrying out businesses that relate to coffee shall be done by the Board. It also provides for registration of co-operative societies, and the registration of distinguishing marks.

PART VII of the bill provides for Production and processing. It seeks to ensure that all coffee produced and processed in the country shall conform to the Kenya Coffee production standards. The Board shall be required to register and monitor the certification schemes for compliance with protocols for Kenyan coffee.

PART VIII of the Bill provides for coffee trading and marketing and it provides that Kenyan coffee shall be offered for sale through auction or direct sale. This part also establishes the Nairobi Coffee Exchange whose purpose will be to conduct coffee auctions. It contains provisions that provides for the funds of the Nairobi coffee exchange, and its operations.

PART IX of the Bill provides for quality assurance which entails quality, safety and health control measures

PART X and PART XI of the Bill provides for financial provisions, reporting mechanism and management of funds of the Board.

PART XII of the Bill provides for general provisions which provides for appeals, dispute resolution, fiduciary duties of directors, general penalty and regulations

PART XIII of the Bill provides for consequential amendments

PART XIV of the Bill provides for saving and transitional provisions.

The First Schedule of the Bill provides for provisions on the conduct of the Business and affairs of the Coffee Board of Kenya

The Second Schedule of the Bill provides for provisions on the conduct of the Business and affairs of the Coffee Council

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

The Bill confers on the Cabinet Secretary the powers to make regulations under the Act for the purposes of operationalizing the Act in order to implement the objectives. The Bill does not limit any fundamental rights or freedoms.

Statement that the Bill does not concern County Governments

The Bill is a Bill that contains provisions concerning County Governments in terms of Article 110 (1)(a) as it does contain matters that affect the functions of the county governments as contained in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 15th April, 2021.

AMOS KIMUNYA,
*Leader of Majority Party,
National Assembly.*

Part 1 of the First Schedule to the Crops Act, No. 16 of 2013 which it is proposed to amend—

FIRST SCHEDULE s. 7)
SCHEDULED CROPS

Part 1

Crops with breeding program under compulsory certification

Sugarcane	Saccharum spp.
Tea	Camellia spp.
Coffee	Coffea spp.
Rhodes grass	Chloris gayana
Irish potatoes	Solanum tuberosum L.
Cotton	Gossypium spp.
Sunflower	Helianthus annuus L.
Soya beans	Glycine max (L.) Merr.
Beans.....	Phaseolus vulgaris L.
Barley	Hordeum vulgare L.
Finger millet.	Eleusine coracana (L.) Gaertn.
Maize	Zae mays L. Pearl
Millet	Pennisetum (L.) RBr.
Rice	Oryza sativa L. (1)
Sorghum.....	Sorghum bicolor (L.) Moench.
Wheat.....	Triticum aestivum.

