

THE COFFEE BILL, 2020

ARRANGEMENT OF CLAUSES

Clause

PART I - PRELIMINARY

PRELIMINARY

1. Short title
2. Interpretation

PART II - ESTABLISHMENT OF THE COFFEE BOARD

3. Establishment of the Board
4. Composition of the Board
5. Cessation of membership of Board
6. Replacement of Board member
7. Functions of the Board
8. Powers of the Board
9. Authority to raise or borrow money
10. Power to employ officers and servants
11. Conduct of business of the Board
12. Managing Director
13. Qualifications of the Managing Director
14. Corporation Secretary
15. Employment of agents of the Board
16. Delegation of powers of the Board
17. Remuneration
18. Personal liability of Board members
19. Staff of the Board
20. Personal liability of employees
21. Liability of the board for damages

PART III: COFFEE RESEARCH FOUNDATION

22. Coffee Research Foundation
23. Status and funding of the Foundation
24. Functions of the Coffee Research Foundation
25. Operations of the Foundation
26. Council of the Coffee Research Foundation
27. Role of the Council

28. Director General of the Foundation

PART IV - ROLE OF COUNTY GOVERNMENTS

29. Role of county governments

PART V– LICENSING PROVISIONS

30. Licenses issued by the Board
31. Licenses issued by county Governments
32. Application for renewal of dealer's licence
33. Licensing provisions
34. Suspension and revocation
35. Prohibition of certain acts without a licence
36. Registration by the Board

PART VI: REGISTRATION PROVISIONS

37. Registration by the County Government
38. Notification after planting, uprooting coffee or change of details of farm or Estate.
39. Registration of distinguishing marks
40. Coffee Industry

PART VII – PRODUCTION AND PROCESSING

41. Standards and Code of Practice.
42. Certification of Kenyan coffee
43. Branding and geographical indications
44. Coffee development
45. Primary processing of coffee
46. Milling of Coffee

PART VIII- COFFEE TRADING AND MARKETING

47. Coffee trading
48. Establishment of the Nairobi Coffee Exchange
49. Funding of the Coffee Exchange
50. Operations of the Exchange
51. Anti-competitive acts
52. Direct Sales
53. Classification of coffee
54. Conduct of coffee Marketing
55. Coffee Buyer
56. Coffee Roaster

- 57. Restriction on purchase and sale of coffee
- 58. Export and import of coffee.
- 59. Promotion of Coffee

PART IX- QUALITY ASSUARANCE

- 60. Quality, safety and health control measures.
- 61. Coffee Inspectors

PART X- FINANCIAL PROVISIONS

- 62. Funds of the Board
- 63. Financial Year of the Board
- 64. Annual estimates.

PART XI- AUDIT AND REPORT

- 65. Accounts and audit
- 66. Annual report.
- 67. Appeals
- 68. Dispute resolution
- 69. Service of notices
- 70. Offences by corporations, co-operative societies, etc.
- 71. General penalty
- 72. Regulations

PART XII: CONSEQUENTIAL AMENDMENTS

- 73. Amendment of the First Schedule to No. 13 of 2013
- 74. Amendment of the First Schedule to No. 16 of 2013

PART XIII – SAVING AND TRANSITIONAL PROVISIONS

- 75. Rights and obligations
- 76. Transfer of staff
- 77. Assets and liabilities
- 78. Reference to the Board
- 79. Previous authorizations
- 80. Pending proceedings and claims

SCHEDULES

First Schedule- Conduct of Business and Affairs of the Board

THE COFFEE BILL, 2020

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

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Coffee Act, 2020.

Interpretation

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

“ad valorem levy” means a fee payable as a per centum of growers gross Coffee sales

“agent of the Board” means an employee of the Board or any other person or institution who is authorized to act on behalf of the Board to undertake certain duties

“association” means an association of coffee growers

“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;

“buyers levy” means a fee payable as a per centum of coffee exports proceeds

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to agriculture.

Coffee Bill, 2020

“commercial coffee miller” means any person who mills parchment coffee per crop year on wholesale basis 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 for the production of coffee for sale;

“coffee trade” means the business of dealing in the coffee commodity and includes 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 deal with coffee as provided under this Act;

“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;

“foundation” means the Coffee Research Foundation established under Part III of this Act

“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 offer own clean coffee for sale or roast and package own coffee for local or international market

“grower miller” means a grower who mills own parchment or buni or its members’ coffee and includes cooperative societies, unions, association, estate or any other legal entity

“guaranteed minimum returns” means the lowest definite amount of money paid to the farmer per one kilogram of cherry delivered

Coffee Bill, 2020

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

“inspector” means an officer of the Board or a County Government appointed in writing by the Board or the County Government, to be an inspector, for purposes of this Act and gazetted by the Cabinet Secretary

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

“marketing agent” means any person duly licensed by the Board and appointed by the grower through a mutual agreement to market the grower’s clean coffee;

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

“miller agent” means a person who performs services in specific functions of secondary processing or milling of coffee and who is contracted by a grower as his miller in consideration for a fee;

“miller’s license” means a miller’s license specified under Section 29

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

“Nairobi Coffee Exchange” means the Nairobi Coffee Exchange established in Section 47 at which Coffee is traded;

“person” includes a company or association or body of persons, corporate

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

“roaster” means a person, licensed by the Board and is freely registered to purchase clean coffee at the Nairobi Coffee Exchange or from 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 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.

Coffee Bill, 2020

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

“Secretary” means the Corporation 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

Establishment of
the Board

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

Composition of the
Board

4. (1) The Board shall consist of-
- (a) a chairman appointed by the Cabinet Secretary from amongst three (3) names, from (b) and (c), elected by the members during their first sitting
 - (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) One 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;
 - (f) the Principal Secretary responsible for the time being for finance;
 - (g) a representative from the Council of Governors (CoG) who should have relevant knowledge in the coffee subsector;
 - (h) the Managing Director appointed under section 11 who shall be an ex-officio member of the Board:
- (2) the Board may from time to time co opt 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 Sub-Sub section (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 3 years in the coffee industry.
- (4) The Cabinet Secretary shall publish in the Gazette the appointed Board members
- (5) 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 other term:
- (6) Members nominated to the Board shall comply with the requirements of Chapter Six of the Constitution of Kenya
- (7) The Cabinet Secretary shall make rules for nomination of the members of the Board under (b)(c) and (d)
- (8) the rules made under sub section (7) shall provide for mechanisms to ensure that not more than two thirds of members so nominated are of the same gender

Coffee Bill, 2020

Cessation of
membership of
Board

5. A member of the Board other than the Managing Director shall cease to be a member of the Board if that person—
- (a) resigns his office as such in writing to the Board;
 - (b) is absent from three consecutive meetings of the Board without the permission of the chairman;
 - (c) is adjudged bankrupt;
 - (d) is incapacitated by prolonged physical or mental illness for a maximum period of six months;
 - (e) ceases to represent the interest in respect of which he was appointed or nominated to the Board;
 - (f) is otherwise unable or unfit to discharge the functions of his office.
 - (g) contravenes the provisions of Chapter Six of the Constitution of Kenya.
 - (h) is convicted of a criminal offense

Replacement of
Board member

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 under section 3, which shall nominate a replacement.

Functions of the
Board

7. (1) The object and purpose for which the Board is established is to, promote competition in the coffee industry, production, processing and branding of Kenya coffee locally and internationally,
- (2) regulate the coffee industry in the public interest.
- (3) In consultation with the county governments register and regulate the stakeholders of the coffee industry in accordance with this Act
- (4) Without prejudice to the generality of subsection (1), the Board shall—
- (a) participate in formulation of policies in the coffee industry;
 - (b) carry out registration of and regulate the operations of millers, marketing agents, buyers, roasters, management agents and warehousemen;
 - (c) license millers, marketing agents, buyers, warehousemen and importers of value added coffee;
 - (d) Undertake capacity building, technology transfer and technical assistance to the counties on matters relating to coffee and provide

Coffee Bill, 2020

advisory services related to coffee production, promotion, quality enhancement and compliance with standards and regulations;

- (e) 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;
- (f) partner and collaborate with the Coffee Research Foundation and other institutions of higher learning in determining the research agenda for the Coffee Industry;
- (g) represent the country in national and international fora on Coffee related matters;
- (h) Collaborate with national and international trade bodies on Coffee related matters;
- (i) establish standards on production, processing, transportation, packaging, blending, storage, preservation of Coffee and Coffee products;
- (j) conduct surveillance and enforce compliance to policies, Coffee standards, Coffee Act and any regulations made under the Act;
- (k) advise the Cabinet Secretary on levies, fees and import or export duties on coffee;
- (l) carry out market research and analysis and disseminate information on its findings to all stakeholders;
- (m) conduct local and international coffee market intelligence and promotional activities including the application of the Kenya Coffee Mark of Origin
- (n) promote value addition in coffee and domestic coffee consumption
- (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.

(2) 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.

Powers of the Board

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

Coffee Bill, 2020

- (a) In consultation with the Cabinet Secretary 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 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.

Authority to raise or borrow money

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.

Power to employ officers and servants

10. (1) The Board may appoint and employ, on such terms and conditions as it may from time to time determine, such officers and servants as it may consider necessary for the proper and efficient administration of the work of the Board.
- (2) At all-time the board must adhere to the principal of equity and fairness in both gender and the face of Kenya.
- (3) In the exercise of its powers and in the performance of its functions under this Act, the Board shall act in accordance with any general or special directions as may be given to it by the Cabinet Secretary

Conduct of business of the Board

11. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the **First Schedule**.
- (2) without prejudice to (1) the Board may regulate its own procedure.

Coffee Bill, 2020

Managing Director	<p>12. (1) There shall be a Managing Director and shall be competitively recruited and appointed by the Board on such terms and conditions as the Board may determine.</p> <p>(2) The Managing Director shall be the chief executive and will be responsible for the day to day running of the affairs of the Board.</p>
Qualifications of the Managing Director	<p>13. A person shall qualify to be appointed to the position of a Managing Director if such person;</p> <p>(a) 'holds a relevant advanced degree from a university recognized in Kenya'</p> <p>(b) 'has at least ten years' knowledge and experience in a relevant field';</p> <p>(c) 'has at least 5 years' experience in a position of senior management.'</p> <p>(d) 'meets the requirements of Chapter Six of the Constitution'.</p>
Corporation Secretary	<p>14. (1) 'There shall be a Corporation Secretary who shall be the secretary to the Board;</p> <p>(2) The terms and conditions of service of the Corporation Secretary shall be determined by the Board</p>
Employment of agents of the Board	<p>15. 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.</p>
Delegation of powers of the Board	<p>16. 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 or to any committee, whether constituted wholly of members of the Board or jointly with members of any body established in any other country and having responsibilities similar to those of the Board.</p>
Remuneration	<p>17. 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.</p>
Personal liability of Board members	<p>18. 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;</p> <p>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.</p>

Coffee Bill, 2020

Staff of the Board	19. 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.
Personal liability of employees	20. 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.
Liability of the board for damages	21. Section 19 shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

PART III- COFFEE RESEARCH FOUNDATION

Coffee Research Foundation	<p>22. (1) There is established an Foundation to be known as the Kenya Coffee Research Foundation</p> <p>(2) The Foundation shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—</p> <p>a) suing and being sued;</p> <p>b) purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;</p> <p>c) borrowing and lending money; and</p> <p>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.</p>
Status and funding of the foundation	<p>23. (1) The Coffee Research Foundation shall be autonomous in its operations, implementation of its programs and the allocation and management of its resources.</p> <p>(2) The annual programmes and budget of the foundation shall be approved by the Council of the Coffee Research Foundation created under section 27.</p> <p>(3) The Council may co-opt additional experts, one international and one national, to strengthen its research capabilities and enhance the Foundation's scientific visibility.</p>
Functions of the Foundation	<p>24. The Coffee Research Foundation shall be:</p> <p>(1) the lead agency in coffee breeding; in the developing a climate resilient coffee crop and in leading the scientific effort to strengthen Kenya coffee's resistance to diseases and pests;</p>

Coffee Bill, 2020

(2) 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) the premier national and regional foundation in research into and development of new coffee varieties and improvement of existing varieties;

(4) to 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

(5) the principal platform for providing in 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.

Operations of the
foundation

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

(a) organise, design and carry out on-station and on-farm research in accordance with the policies and priorities determined by Foundation'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 foundations to ensure the rapid introduction, evaluation and use of improved technology of potential benefit to Kenya;

(e) promote stakeholder responsive as well as demand-driven participatory research.

Council of the
Foundation

26. (1) The management of Coffee Research Foundation shall vest in the Council of

the Coffee Research Foundation 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.

Coffee Bill, 2020

(2) The Council shall competitively recruit and appoint as staff such number of persons with such knowledge and experience as it shall consider necessary for the performance of the functions of the Coffee Research Foundation.

3) The staff of the Coffee Research Foundation shall be appointed on such terms and conditions as the Council with approval of the Cabinet Secretary shall set

Role of the council

27. The Council of the Coffee Research Institute shall provide managerial and intellectual leadership to the Coffee Research Foundation and in that role shall—

(a) identify the strategic and policy issues related to coffee research and develop the Foundation's research program infrastructure;

(b) oversee the implementation of policies and programs of the Coffee Research Foundation and regularly conduct performance reviews;

(c) advise the 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 foundations, research centres, organisations or individuals undertaking coffee research;

(f) annually review the operations, administrative organisation and budgets of the Coffee research foundation in relation to the programs and initiatives undertaken by the Foundation.

Director General of the Foundation

28. (1) There shall be office of the director general to act as chief executive of the Coffee Research Foundation who shall be competitively recruited and appointed by the Council of the Coffee Research Foundation.

(2) The Director General shall, subject to the directions of the Council, be responsible for the day to day management of the Coffee Research Foundation.

PART III - ROLE OF COUNTY GOVERNMENTS

Role of county level of 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-

Coffee Bill, 2020

- (a) development of coffee grown within the county;
 - (b) Promote transfer and adoption of new technologies in coffee developed by research institutions
 - (c) Regulate and enforce national standards related to coffee production, processing, handling and marketing for local and international trade
 - (d) development and regulation of coffee marketing within the county;
 - (e) registration of nursery operators, coffee growers and pulping station licence holders;
 - (f) issuance of coffee movement permits;
 - (g) issuance of pulping station and warehousing licences;
 - (h) offering and coordination of extension services on coffee production and primary processing;
 - (i) inspection of nurseries, pulping stations, roasters and warehouses located within their respective counties;
 - (j) enforcement of county and national legislation on coffee, industry code of practice and other industry standards;
 - (k) in collaboration with law enforcement agencies, enforcement of regulations and enhancement of security of coffee in the county;
 - (l) enforcement of policies and guidelines on corporate governance in coffee growers' institutions; and
 - (m) monitoring and report of incidences of pests and disease outbreaks and taking appropriate action in collaboration with the Board and other relevant government agencies.
 - (n) Promote coffee production in a socially and environmentally responsible manner that adapts and mitigates climate change
- (2) the county governments 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

Coffee Bill, 2020

- (a) affordable farm-inputs including quality seeds, planting materials and market linkage;
 - (b) technical support extension services;
 - (c) infrastructural support including physical infrastructure development, financial and market information;
- (4) (a) In execution of the roles provided for in sub-section (1), the county governments may establish a County Coffee Committee to provide technical guidance in coffee matters.
- (b) The county coffee committee in (a) above may work jointly with the Coffee Board and Coffee Research Foundation in the execution of its roles

PART V– LICENSING PROVISIONS

Licenses issued by the Board

30. (1) The following licences shall be 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 local or export;
- (b) a commercial coffee miller's licence authorizing the holder to conduct the business of milling;
- (c) a grower millers license, authorizing the grower to mill, own parchment or buni or its members' coffee
- (d) a marketing agent's licence, authorizing the holder to conduct the business of marketing coffee;
- (e) a grower marketer's license authorizing the holder to offer his own clean coffee for sale or roast and package own coffee for local or international market ;
- (f) a warehouseman's licence, authorizing the holder to conduct the business of warehousing coffee;
- (g) Independent cupping laboratory license; authorizing the holder to offer coffee quality analysis services

Commented [MNG1]: Deleted because the same provisions have been repeated exactly the same way in Sections 31(1)

Coffee Bill, 2020

		<p>(h) Coffee management agency certificate authorizing the holder to offer management services to coffee farmers; and</p> <p>(i) a coffee roaster licence authorizing the holder to buy, 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</p>
Licenses issued by county Governments	31.	<p>The following licences shall be issued by the respective County Government;</p> <p>(a) pulping station licence authorizing the holder to operate a pulping station and may undertake hulling;</p> <p>(b) a warehouse licence authorizing the holder to warehouse coffee;</p>
Application for renewal of dealer's licence	32.	<p>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:</p>
Licensing provisions	33.	<p>(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.</p> <p>(2) Every licence shall specify the premises upon which the business specified in the licence may be carried on.</p> <p>(3) Licences issued under this section as specified shall remain in force until the 30th of September next following the date of issue, unless earlier cancelled.</p> <p>(4) There shall be payable for the issue of licences such fees as the Board, after consultation with the Cabinet Secretary, may prescribe.</p> <p>(5) The Board shall, for fifteen days before granting a licence to a first time applicant under this Act, give notice of the proposed grant in the Gazette and invite comments and objections if any in such other manner as the Board may determine.</p> <p>(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.</p> <p>(7) A licence issued under this section shall not be transferable.</p>
Suspension and revocation	34.	<p>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 of this Act or the conditions of the license in accordance with the procedures prescribed in the Regulations under this Act.</p>

Coffee Bill, 2020

Prohibition of
certain acts without
a licence

35. (1) No person shall—

- (a) 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;
- (b) transport or have in his possession any coffee unless he is licensed to do any of the things specified in paragraph (a) and is the holder of a movement permit issued by the Board or the county government or is acting in the course of his employment as a servant or agent of a person holding such a permit.

(2) This section shall not apply to any person who purchases coffee for consumption or for planting on his land;

(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 not less than five hundred thousand shillings but not exceeding one million shillings or to imprisonment for a term of not less than two years but not exceeding ten years, or to both.

(4) Where a person is convicted of an offence under this section, the court may order that any coffee in relation to which the offence has been committed be forfeited to the Board

(5) Any coffee forfeited to the Board under subsection (4) shall be sold by at the Nairobi Coffee Exchange and the proceeds accruing from such sale shall be credited to the Board.

PART VI: REGISTRATION PROVISIONS

Registration by the
Board,

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

(2) The Board shall register all warehousemen, warehouses, coffee millers, coffee buyers, roasters, grower marketers, marketing agents, importers, coffee liquorers and certification companies,

(3) The Board shall issue a certificate of registration upon registration of the applicants in (1) above

(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, monthly and/or 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

Registration by
cooperative
societies and
County
Government

37. (1) A smallholder coffee farmer may register with the co-operative society to which he delivers coffee,

(2) Every coffee factory may if its members so resolve, apply for registration as a cooperative society under the cooperatives societies Act

(3) the county shall register all cooperative societies, growers associations or companies, coffee plantation, coffee plantation and nursery operator upon submission of such particulars as shall be prescribed in Regulations made under this Act

(4) 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.

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

(6) where a cooperative 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 notification by registered post of its intention to do so, remove the name of such person from the register

(7) The registers referred to in subsection (4) shall be prima facie 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.

(8) After the commencement of this Act, any grower who carries on business as such without being registered in accordance with subsection (1) or knowingly or recklessly supplies false particulars commits an offence.

Coffee Bill, 2020

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

38. (1) Where a person starts growing coffee at any time after the commencement of this Act, such a person shall, within six months register with
- a. A cooperative society or company if such a person is a small scale farmer or;
 - b. His respective county government if such a person is a plantation grower or a cooperative society
- (2) 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.
- (3) Any change in the particulars supplied by a grower for purposes of registration in accordance with subsections (1) shall be notified to the county government or the co-operative society, association or company in writing, without undue delay.
- (4) 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 notification by registered post of its intention to do so, remove the name of such person from the register.
- (5) Data on area of coffee planted or uprooted within a county shall be maintained by the respective County Government.

Registration of distinguishing marks

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.
- (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 Secretary in a register to be kept for that purpose.
- (3) Any person who contravenes any of the provisions of this section commits an offence

PART VII – PRODUCTION AND PROCESSING

Coffee Industry Standards and Code of Practice.

40. All the coffee produced and processed in the country shall conform to all the Kenya Coffee production standards and industry code of practise

Certification of Kenyan coffee

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

Coffee Bill, 2020

Branding and geographical indications	42. The Board shall promote and register all Kenyan coffees produced in accordance with geographical indications or regions as authentic Mark of origin
Coffee development	<p>43. (1) The Cabinet Secretary may, on the advice of the Board, make policies and take steps to ensure that coffee farmers and other industry stakeholders obtain appropriate technologies, credit, farm input and marketing</p> <p>(2) The Board shall conduct training programs aimed at capacity building county officers towards enhancing their knowledge, skills and technologies in coffee production, processing technologies and marketing.</p> <p>(3) The Board shall in consultation with the relevant standard bodies, coffee stakeholders, county governments and research institutions develop the Kenya coffee production standards and formulate therefrom a binding code of good coffee practice.</p> <p>(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 the farmers' organization of any contributions that may, pursuant to such agreement, be deductible from the farmer.</p>
Primary processing of coffee	<p>44. (1) Primary processing of coffee shall conform to the following;</p> <p>(a) be carried out at a pulping station or a grower's co-operative society or other association comprising growers under a pulping station licence.</p> <p>(b) The pulping station licence may include authority to undertake hulling of own parchment or buni.</p> <p>(c) The huller shall be registered with the County Government and such registration information shared with the Board.</p> <p>(2) The licence holder shall allow free access to the processing premises by the inspectors from the county or the Board for inspection visits to ensure compliance with this Act</p> <p>(3) The licence holder shall submit returns on the coffee received and processed to the Board and the respective county governments.</p>
Secondary processing of Coffee	<p>45. (1) Coffee milling shall only be conducted at premises that are specified under the license issued by the Board.</p> <p>(2) All coffee millers shall comply with the requirements stipulated in the license and the Regulations under this Act.</p>

- (3) Every coffee factory shall by annual resolution of its members designate a registered miller for its parchment coffee
 - (4) The manager of every coffee cooperative society shall within two months of the end of the crop year, call a meeting of members to choose the registered miller referred to in Section 37 from amongst at least three millers invited to make presentations to the members
 - (5) Each registered miller participating in the meeting to choose a miller shall make all disclosures necessary to enable farmers make an informed decision, that is to say, disclosures as to milling costs, handling and storage charges, other fees and charges
 - (6) All milling agreements entered between the grower and specific millers and the tariffs charged therein shall, within fourteen days, be registered with the Board and copied to the relevant departments of the county governments and to the commissioner of cooperatives for information
46. (1) Every contract for milling of coffee under this act shall itemize and make full disclosures of all the expenses associated with milling including the actual cost of milling, the costs 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.
- (2) All milling shall be done in the presence of the manager from the coffee factory of the coffee being milled.
- (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—
- (a) grower and a copy to the Board, the relevant county government and the commissioner of co-operatives, a milling statement of the coffee milled;
 - (b) the marketing agent, a milling statement of the coffee milled and a sample of 200 grams of each grade of the milled coffee.
- (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) Any person who contravenes the provisions of this part commits an offence.

PART VII- COFFEE TRADING AND MARKETING

Coffee trading

47. (1) Kenya Coffee shall be offered for sale through auction or direct sale

- (2) Where coffee is sold through auction;
- (a) A commercial Marketing agent or a grower marketer 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 Exchange in accordance with this Act and any other laws that may govern the Exchange.
 - (c) Coffee trade shall be conducted at the Nairobi Coffee Exchange in accordance with the coffee trading regulations under this Act.
 - (d) Only coffee grown and produced in Kenya shall be traded at the Nairobi Coffee Exchange.

Establishment of
the Nairobi Coffee
Exchange

48. (1) There is established the Nairobi Coffee Exchange for the purpose of conducting coffee auctions.
- (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 under this Act.
- (4) The functions of the 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 Exchange may subject to conditions established by law trade in other commodities
49. The funds of the 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 Exchange.
 - (d) any interest from fixed deposits
 - (e) monies from a source approved by the Exchange;
 - (f) sample fee

Coffee Bill, 2020

- Funding of the
coffee exchange
50. The Cabinet Secretary shall make regulations to provide for the management of the NCE and the development of the Trading Rules
51. The 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.
- Provided that any residual revenues shall, with the approval of the board, be invested to improve efficiency at the exchange or, if necessary, in widening the coverage of the Exchange to include other agricultural commodities.
- Operations of the
Exchange
52. (1) The 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.
- (2) In order to give effect to sub-section(1) coffee sellers, buyers, agents, traders and other players in the coffee market shall be established, formed and organized in a manner avoids anti-competitive practices, that is to say dominance, insider trading and restrictive practices.
- Anti-competitive
Acts
53. (1) For the avoidance of doubt and for the purposes of this Act, an anti-competitive conduct shall mean any act, conduct, practice or behavior by the 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 Coffee Exchange.
- (2) For the purpose of sub-section (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 exchange.
- (3) The provisions of this part as relates to the Coffee Exchange shall prevail anything in any other law to the contrary notwithstanding.
- (4)The Board may, on a finding that a licensee is in breach of the provisions of this Part suspend such licensee from the Exchange for a term not exceeding 6 months.
- (5) A licensee who is in subsequent breach of these provisions commits an offence and is liable on conviction to a fine of one million shillings in addition to having their licence cancelled or suspended for such term as the Cabinet Secretary may, by regulations prescribe.
- (6) The penalties prescribed under this act are without prejudice to other legal sanctions that may be prescribed in the Competition Act.

Direct Sales

54. (1) All contract for direct sales entered between the overseas buyer shall be launched with the Board in the prescribed format.
- (2) All coffee offered for direct sales shall be validated by the Board with similar coffee qualities offered through the Coffee exchange.
- (3) In the event of there being a price of similar quality in the exchange during the last auction higher than the direct sale offer price, the Board will advise the grower to decline the direct sale offer.
- (4) The Cabinet Secretary shall make rules for the conduct of direct sales of coffee

Classification of coffee

55. (1) Where a sample of coffee has been sent to a marketing agent under **section 39(8)(b)**, the marketing agent shall classify the coffee of **which** a sample in accordance with the sample, and shall, within seven days after such classification, notify the grower to whom the sample belongs of such classification
- (2) Any grower who is aggrieved by classification of his coffee under subsection (1) may, within twenty-one days of the notification under the said subsection, appeal in writing against such classification to the Board.

Conduct of coffee Marketing

56. (1) No persons, other than a grower, grower marketer, grower miller shall conduct the business of marketing coffee unless that person—
- (a) has produced to the Board, and the Board has registered in favor of the grower, a bank guarantee worth between one million United States dollars and twelve million United States dollars, or one and a half times the free on board (F.O.B.) value of the coffee transacted on in each particular case less the transaction cost, whichever is the higher and he is licensed and registered as a coffee marketing agent by the Board;
- (b) where the grower is a co-operative society, co-operative union, growers' association, plantation grower or grower miller marketing the grower's own coffee, such grower shall not be required to furnish a bank guarantee;
- (c) A grower may enter into a contract with a marketing agent in a Manner as prescribed in the regulations under this Act.
- (2) Subject to the provisions of this Act, a marketing agent shall market all coffee which has been classified by him on terms agreed between the

Coffee Bill, 2020

grower or the grower in consultation with his financier and the marketing agent

- (3) Every marketing agent shall offer coffee for sale at the auction through a catalogue detailing the quantities of the sellable lots.
- (4) Coffee noted prices shall be disclosed at the end of the auction to enable the preparation of transaction listing of the market report.

Coffee Buyer

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

(2) Upon purchase of coffee at the Exchange, a buyer shall make payment of the coffee so purchased into the Direct Settlement System (DSS), grower marketer or marketing agent account as the case may be within a period not exceeding seven calendar days

(3) a buyer who defaults to remit payments to the DSS, grower marketer and marketing agent within seven days for the bided coffee at the auction shall meet the difference of the value of coffee when such coffee is re-offered at the auction and fails to realize the original bid value by the buyer.

Coffee Roaster

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

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

Restriction on
purchase and sale
of coffee

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

(a) no person shall buy, sell, transport, offer for sale or be in possession of coffee from any farmer;

(b) no person, other than a grower miller shall market clean coffee at the Exchange unless he is a holder of a valid licence issued by the Board or county government and he 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 but not exceeding one million shillings or to imprisonment for a term of not less than two years or to both.

Coffee Bill, 2020

(3) The Cabinet Secretary may cancel the license of any marketing agent convicted of an offence under this Section

Export and import
of coffee.

60. (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

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

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

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

Promotion of Coffee

61. (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.

(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.

Coffee payments

62. (1) All payments from buyers shall be made to the Direct Settlement account, marketing agent, or grower marketer as the case may be, who will in turn settle the obligations owed and remit the net to the grower

2) Payments to factories or societies from the Direct Settlement System for operations and maintenance shall be five percent of the value of coffee sold less the milling, warehousing and marketing costs or the actual cost of running a factory or society over the previous crop year, whichever is lower.

(3) Any discrepancies between the payout to the factory or society and the actual cost under subsection 3 shall be reimbursed in the next crop year.

(4) 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.

Coffee Bill, 2020

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

Guaranteed
minimum returns

63. The Cabinet Secretary may prescribe rules on payment of guaranteed minimum return per kilogram of cherry

No loans by millers
and marketing
agents

64. (1) It shall be illegal for coffee millers and marketing agents to lend to farmers at interest however such lending is described.

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

No loans against
growers' assets

65. (1) Coffee grower's assets held in trust by coffee factories and societies such as land, machinery, equipment, coffee cherry and parchment shall not be used as collateral for loans.

(2) Any factory or society that violates sub-section 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.

PART VIII- QUALITY ASSUARANCE

Quality, safety and
health control
measures.

66. (1) The Board shall ensure that quality control of Kenyan coffee is maintained as prescribed in the Regulations under this Act

(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.

(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

Coffee Bill, 2020

- (5) The Board shall receive samples from marketing agents for purposes of quality analysis, archiving and arbitration. The sample weight shall be 250 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 section 37(3) of 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 Kenya Coffee Standard shall be destroyed by order of court obtained in proceedings founded by the Board with due notice to the importer, and the import permit of the owner may be cancelled

67. The Board shall appoint Coffee inspectors for the purposes of this Act.

68. coffee produced locally or imported into the country shall comply with the prevailing—
- (a) quality standards as set by the body for the time being responsible for setting standards;
 - (b) safety and health standards as set by the body for the time being responsible for public health;
 - (c) environmental issues as set by the body for the time being responsible for environmental matters.

69. Coffee, which does not conform to the Kenya coffee standards shall be destroyed upon an order of a court of competent jurisdiction obtained in proceedings founded by the Board with due notice to the importer, and the import and permit of the owner may be suspended and subsequently cancelled

Coffee Inspectors

70. (1) The Board shall appoint coffee inspectors for the purposes of this Act.
- (2) For purposes of subsection (1), the Board may, by regulations, prescribe the qualifications for different categories of inspectors.
- (3) The Board shall in consultation with the county governments, shall separately or jointly conduct inspection of coffee farms, coffee nurseries, pulping stations, coffee mills, warehouses, cupping centres, roasters or

Coffee Bill, 2020

coffee buyers' vessels transporting coffee to ascertain compliance with the requirements of the Act.

- (4) The Board and county governments shall jointly or separately conduct periodic surveillance among growers, pulping stations, millers, roasters, processing plants, warehousing facilities, transporters, retail outlets, border points, and buyers' premises to assess the degree of compliance with the coffee industry policy, standards, code of practice, laws and the general well-being of the coffee industry.
- (5) A smallholder, a grower, a pulping station operator, a transporter, a miller, a warehouseman or a buyer shall accord an inspector full and free access and all the assistance necessary for the inspection.
- (6) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.
- (7) Any person who refuses entry to a coffee inspector acting under this Section or obstructs him in entering or in making an inspection thereunder, or who, without reasonable excuse, fails to produce any licence or register production of which is required of him under this section, commits an offence.
- (8) A person who contravenes the provisions of this Section commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings.

PART IX- FINANCIAL PROVISIONS

Funds of the Board

71. (1) The funds of the Board shall comprise of—
- (a) monies appropriated by the National Assembly for the purposes of the Board;
 - (b) all monies received in respect of the levies
 - (c) any monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act; and
 - (d) all monies from any other source provided for including donations or loans.
- (2) The Cabinet Secretary may, from time to time, in consultation with the Board, by order in the Gazette, impose the following levies;
- (a) 2% *Ad valorem* levy of the growers gross sales of all clean coffee to be remitted to Coffee Research Foundation to support coffee research

Coffee Bill, 2020

- (b) 4% coffee import levy of the custom value of the imported coffee shall be remitted by coffee dealers to the Board to be used for coffee promotion
 - (c) 2% buyers' levy based on export value shall be remitted by coffee buyers to the Board to support the coffee industry and apportioned as follows;
 - (i) 1% to the Board for regulatory and coffee promotion purposes
 - (ii) 1% to the coffee growing County Governments to support coffee production and quality
 - (3) Every marketing agent appointed under the provisions of this Act, grower marketer or Direct Settlement System facility shall, within seven calendar days from the date the sale proceeds are received from the buyer, remit the amount specified in subsection 2(a) to the Foundation.
 - (4) All moneys due on account of a grower's ad valorem levy shall be a debt due to the Foundation, from the grower concerned or his marketing agent or Direct Settlement Scheme.
 - (5) All coffee exporters under this Act shall remit 2% of the export value to the Board on or before the date of shipment
 - (6) Any person who contravenes the provisions of subsection (1) 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.
72. The financial year of the Board shall be the period of twelve months ending on the 30th September of every year.

Financial Year of
the Board

Coffee Bill, 2020

Annual estimates. 73. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Board for that financial year.

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

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Board;
- (c) the proper maintenance of the buildings and grounds of the Board;
- (d) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Board;
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other 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 X- AUDIT AND REPORT

- Accounts and audit 74.
- 1. The Board shall maintain proper books and records of accounts of all the income, expenditure, assets and liabilities of the Board.
 - 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. a 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.

Coffee Bill, 2020

6. An auditor appointed under subsection (3) shall report directly to the Auditor General on any matter relating to the directions given under subsection (5).
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, under subsection 9, 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.

Annual report.

75. (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.

(2) The Cabinet Secretary shall lay the audit report and the report under subsection (1) before the National Assembly within three months of the day the Assembly next sits after the receipt of the report

PART XI – GENERAL PROVISIONS

Appeals

76. (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.

(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

Dispute resolution

77. (1) any dispute arising between parties under this Act shall be subjected to Alternative Dispute Resolution mechanisms in the first instance

(2) There is established a committee to be known as the Coffee Dispute Resolution Committee to arbitrate disputes between parties acting under this Act.
(3) The Board shall prescribe rules on the membership and procedure of the committee
(4) A party who is not satisfied by a decision of the Dispute Resolution Committee may seek redress from the High Court of Kenya.

Coffee Bill, 2020

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

Service of notices	78. 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 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.
Offences by corporations, co-operative societies, etc.	79. Where any offence under this Act or under any Rules made thereunder is committed by any company or other body corporate, or by any co-operative society, association or body of persons, every person charged with, or concerned, or acting in, the control or management of the affairs or activities of such company, body corporate or co-operative society, association or body of persons, shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed or that he took all reasonable steps to prevent its commission.
General penalty	<p>80. 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</p> <p>81. (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.</p> <p>(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.</p>
Regulations	<p>82. (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.</p> <p>(2) Without prejudice to the generality of the powers conferred by subsection (1) Regulations thereunder may provide for all or any of the following matters—</p>

Coffee Bill, 2020

- (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, 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 therefor;
- (l) providing for the submission of returns to the Board relating to coffee dealers, and the quantities of coffee available for sale by the marketing agents;
- (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 to be done under this Act; and,
- (p) for capping of costs charged to growers by service providers along the value chain
- (q) without prejudice to any provision in this Section, prescribing anything, which under this Act may be prescribed.

PART XII: CONSEQUENTIAL AMENDMENTS

Amendment of the
First Schedule to
No. 13 of 2013

83.

1. The Agriculture and Food Authority Act, 2013 is amended in the First Schedule by deleting paragraph IV

Amendment of the
First Schedule to
No. 16 of 2013

2. The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the words “coffee.....*coffea spp*”

PART XIII – SAVING AND TRANSITIONAL PROVISIONS

Rights and
obligations

84. (1) “appointed day” means the day the Act comes into operation;

(2) 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.

Transfer of staff

85. (1) A 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, 2013 not being under notice of dismissal or resignation or retirement, shall upon commencement of this Act and subject to subsection (2), become an officer or member of staff of the Board on their current or improved terms and conditions of Service.

(2) The members of staff referred to under subsection (1) shall be subjected to an internal vetting process.

(3) The staff pensions or provident fund of the AFA- Coffee Directorate shall on the appointed day vest in the Board

Assets and
liabilities

86. 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

Coffee Bill, 2020

Agriculture and Food Authority shall, by virtue of this paragraph, vest in the Board.

Reference to the Board	87. 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'
Previous authorizations	<p>88. (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.</p> <p>(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.</p>
Pending proceedings and claims	89. 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.

FIRST SCHEDULE- CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings

1. (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 subparagraph (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.

Disclosure of
interest

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

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

Common seal

3. 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.

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

