



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 36 of 2018)

THE TEA BILL, 2018

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and passed by the Senate, with amendments, on 12th June, 2019.)

THE TEA BILL, 2018
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.

PART II—THE TEA BOARD OF KENYA

- 3—Establishment of the Board.
- 4—Headquarters.
- 5—Functions of the Board.
- 6—Powers of the Board.
- 7—Membership of the Board.
- 8—Term of appointment.
- 9—Vacation of office.
- 10—Committees of the Board.
- 11—Delegation of the Board.
- 12—Remuneration of members of the Board.
- 13—Chief executive officer.
- 14—Vacancy.
- 15—Corporation Secretary.
- 16—Staff of the Board.
- 17—Common Seal of the Board.
- 18—Signing authority.
- 19—Conduct of business of the Board.

PART III—REGULATORY PROVISIONS

- 20—Role of national and county governments.
- 21—Registration.
- 22—Licensing.
- 23—Form of licence.

24—Dissemination of market information.

PART IV—FINANCIAL PROVISIONS

25—Funds of the Board.

26—Annual Estimates.

27—Accounts and Audit.

28—Annual report and publication.

29—Financial year of the Board.

PART V—MISCELLANEOUS PROVISIONS

30—Arbitration of disputes.

31—Protection of members and staff from liability.

32—Penalties.

33—Regulations.

34—Consequential Amendments.

PART VI—TRANSITIONAL PROVISIONS

35—Rights and obligations.

36—Legal proceedings.

37—Reference to written laws.

38—Previous authorizations.

39—Staff.

40—Interpretation.

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

THE TEA BILL, 2018

A Bill for

**AN ACT of Parliament to provide for the regulation,
development and promotion of the tea industry,
and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

PART 1—PRELIMINARY

1. This Act may be cited as the Tea Act, 2018.

Short title.

2. In this Act—

Interpretation.

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

“broker” means a person who negotiates the purchase or sale of tea between tea growers and buyers;

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

“dealer” means an exporter, importer or marketer registered under the Act;

“financial year” means the financial year of the Board as provided for under section 29;

“licence” means a licence granted under section 23;

“managing factory” means a factory appointed to process green leaf into made tea;

“processor” means a person registered by the Board to process tea or tea products;

“tea” means the plant or part of the plant of the species known botanically as *camellia spp* or of any inter-specific hybrid involving this species or of any progeny of such hybrid;

“tea grower” means a person who grows or cultivates tea in Kenya, or a person who manages, controls or cultivates land in Kenya upon which tea is

grown;

“tea product” means any product, extract or substance obtained or derived from tea by any treatment or process.

PART II—THE TEA BOARD OF KENYA

3. (1) There is established a Board, to be known as the Tea Board of Kenya.

Establishment of Board.

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

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

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

Headquarters.

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

5. (1) The Board shall—

Functions of the Board.

- (a) regulate and promote the development of the tea industry;
- (b) co-ordinate the activities of individuals and organizations within the tea industry; and
- (c) facilitate equitable access to the resources, facilities and benefits of the tea industry

by all interested parties.

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

- (a) make recommendations to the Cabinet Secretary for the formulation of policies, plans and strategies for the regulation of the tea sector;
- (b) in consultation with the relevant county governments-
 - (i) register and regulate the operations of tea growers and processors;
 - (ii) register commercial tea nurseries and green leaf transporters;
 - (iii) license tea dealers and processors;
 - (iv) license managing factories and their agents; and
 - (v) license tea brokers.
- (c) provide advisory services on tea production and quality enhancement;
- (d) collect and analyze statistics related to, and maintain a database for the tea industry; and
- (e) co-ordinate the prioritization of-
 - (i) research; and
 - (ii) ensure the efficient utilization of available funds.

6. (1) The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) enter into contracts;

Powers of the Board.

- (b) manage, control and administer the assets of the Board;
- (c) receive gifts, grants, donations or endowments made to the Board and make disbursement therefrom in accordance with the provisions of this Act;
- (d) subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Board's funds not immediately required for the purposes of this Act, as it may determine; and
- (e) operate a bank account into which all monies received by the Board shall be paid in the first instance and out of which all payments made by the Board shall be made.

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

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

- (a) a chairperson appointed by the President by notice in the *Gazette*;
- (b) the Principal Secretary responsible for agriculture or a representative nominated by the Principal Secretary in writing;
- (c) the Principal Secretary responsible for trade or a representative nominated by the Principal Secretary in writing;
- (d) two persons of either gender, nominated by the Council of County Governors;
- (e) four persons, two of either gender, representing small-holder tea growers from the east and west of the tea growing

Membership of Board.

areas;

- (f) one person representing plantation tea growers;
- (g) one person representing tea traders;
- (h) a chief executive officer appointed in accordance with section 13 who shall be an *ex-officio* member of the Board.

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

(3) A person shall not be appointed to be a chairperson of the Board of Directors unless that person holds at least a degree or its equivalent in any discipline from an institution recognized in Kenya and has relevant experience in the tea sector.

8. The persons appointed under section 7 (1) (a), (d), (e), (f), and (g) shall serve for a term of three years renewable for one further term.

Term of appointment.

9. A person shall cease to be a member of the Board of Directors if such person—

Vacation of office.

- (a) is absent from three consecutive meetings of the Board without the permission of the chairperson;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing, addressed, in the case of the chairperson to the President and in the case of any other member, to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is declared bankrupt ;
- (f) is unable to perform the functions of his office by reason of mental or physical

infirmity; or

(g) dies.

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

Committees of the Board.

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

11. The Board of Directors may, by resolution, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

Delegation by the Board.

The Board of Directors shall be paid such remuneration or allowance as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission determine.

Remuneration of members of the Board.

13. (1) The chief executive officer shall be competitively recruited and appointed by the Board on such terms and conditions as the Board shall determine.

Chief executive officer.

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

(3) A person is not qualified for appointment under subsection (1) unless the person—

- (a) holds a relevant degree from a university recognized in Kenya; and
- (b) has at least five years' experience in a position of management.

(4) The chief executive officer shall serve for a term of three years and is eligible for appointment for a further term of three years upon satisfactory performance.

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

Vacancy.

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

No. 4 of 2003.

15. (1) There shall be a Corporation Secretary who shall be competitively recruited and appointed by the Board.

Corporation Secretary.

(2) The terms and conditions of service of the corporation secretary shall be determined by the Board in the instrument of appointment upon the advice of the Salaries and Remuneration Commission.

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

- (a) holds a degree from a recognised university;
- (b) is registered under the Certified Public Secretaries of Kenya Act;
- (c) is a member of good standing of the Institute of Certified Public Secretaries of

Cap 534.

Kenya;

- (d) has at least seven years' experience in a similar position; and
- (e) satisfies the requirements of chapter six of the Constitution.

(4) The Corporation Secretary shall be the secretary to the Board and shall —

- (a) provide guidance to the Board of Directors on their duties and responsibilities and on matters of governance;
- (b) ensure timely preparation and circulation of Board and Committee papers and minutes;
- (c) maintain and update the register of conflicts of interest;
- (d) facilitate effective communication between the organisation and the shareholders; and
- (e) ensure that the annual returns and any other statutory documents required to be filed are promptly filed with the relevant authorities.

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

Staff of the Board.

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

Common seal of the Board.

18. All letters and instruments written or made by or on behalf of the Board of Directors, other than those

Signing authority.

required by law to be under seal, and all decisions of the Board of Directors, shall be signed under the hand of the chief executive officer or in the absence of the chief executive officer, a person authorized by the Board.

19. The business and affairs of the Board of Directors shall be conducted in accordance with the Schedule.

Conduct of business of the Board.

PART III—REGULATORY PROVISIONS

20. (1) Each county government shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—

Role of national and county governments.

- (a) the development of tea grown within the county;
- (b) disease control;
- (c) markets;
- (d) cooperative societies within the county;
- (e) soil and water conservation.

(2) In order to achieve the objects and purposes of this Act, the national and county governments shall provide an enabling environment for the development of the tea sector.

21. (1) Every tea grower shall register with a processor.

Registration.

(2) Every processor shall keep or cause to be kept for statistical purposes, a register of all tea growers registered with under subsection (1) specifying—

- (a) the name of the grower;
- (b) the location, size and parcel number of the land on which the tea is grown;
- (c) the variety of tea grown; and
- (d) such other information as the Board may

prescribe.

22. (1) A person shall not export, import, market or process tea or tea products unless that person has applied for and obtained a licence from the Board.

Licensing.

(2) Subsection (1) shall not apply to the export, import or marketing of any tea consisting of a sample or parcel not exceeding ten kilograms or tea processed for consumption on ships, aeroplanes or any other international carrier.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or twice the value of the tea or tea products whichever is greater or to imprisonment for a term not exceeding two years or both.

(4) The Board may revoke a licence issued to a person under subsection (1) if that person contravenes the conditions upon which the licence is issued.

23. A licence issued under this Act shall be in a form prescribed by the Board, and shall be renewable upon the expiry of three years.

Form of licence.

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

Dissemination of market information.

PART IV—FINANCIAL PROVISIONS

25. The funds and assets of the Board shall consist of—

Funds of the Board.

- (a) such monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such monies as may be payable to the Board pursuant to this Act or any other written law;

- (c) such gifts as may be donated to the Board;
and
- (d) monies from any other source granted,
donated or lent to the Board.

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

Annual Estimates.

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

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

27. (1) The Board shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the Cabinet Secretary may from time to time approve and shall, within a period of three months after the end of the financial year, cause to be prepared, signed and forwarded to the Auditor-General—

Accounts and Audit

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

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

(3) The Board shall submit to the Auditor-General all books and accounts of the Board, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Board such information and explanation as the Auditor-General may consider necessary for the performance of his duties.

28. (1) The Board shall, within a period of three months after the end of each financial year or within such longer period as the Cabinet Secretary may approve, submit to the Cabinet Secretary a report of the operations of the Board during such year, and the annual balance sheet and such other statements of account as the Cabinet Secretary shall require, together with the Auditor-General's report.

Annual report and publication.

(2) The Board shall, if the Cabinet Secretary so requires, publish the report, balance sheet and statements submitted to him under subsection (1) in such manner as the Cabinet Secretary may specify.

(3) The Cabinet Secretary shall submit to Parliament the reports, balance sheet and statements submitted under subsection (1), within a period of fourteen days of the receipt of the reports and statements or, if Parliament is not sitting, within fourteen days of the commencement of its next sitting.

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

Financial year of the Board.

PART V—MISCELLANEOUS PROVISIONS

30. (1) The Board shall arbitrate disputes arising between any parties under this Act.

Arbitration of disputes.

(2) A party who is not satisfied with the decision of the Board may, within thirty days, appeal to a Court of competent jurisdiction.

31. Liability shall not attach to the Board or to any of its members, officers, agents or staff for loss or damage incurred by a person as a result of an act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed by or conferred under this Act.

Protection of members and staff from liability.

32. (1) A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine of not less than twenty thousand shillings or a fine not exceeding twice the value of the tea or tea products or, to imprisonment for a term not exceeding six months, or to both.

Penalties.

(2) Where an offence under this Act is committed by a partnership, company, association or co-operative society, every person who at the time when the offence was committed—

- (a) was director, partner or officer;
- (b) had knowledge or should have had knowledge of the commission of the offence; and
- (c) did not exercise due diligence to ensure compliance with this Act,

commits an offence and shall be liable for the offence as if that person had committed the offence, unless that person proves that the act or omission constituting the offence took place without that person's knowledge, consent or connivance and that the person exercised diligence to prevent the commission of the offence as the person ought to have exercised having regard to the nature of that person's functions as director, partner or officer, concerned as aforesaid and to all the circumstances.

33. (1) The Cabinet Secretary may, upon consultation with the Board, make Regulations—

Regulations.

- (a) prescribing anything that may be prescribed under this Act; and
- (b) generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make Regulations to provide for—

- (a) the regulation of the processing, importation and exportation of tea and tea

products;

- (b) the forms to be used in the application for registration, licensing, contracts and related activities;
- (c) the process of application for registration, licensing and related activities;
- (d) any fee which may be charged for anything done under this Act; and
- (e) the regulation of contracts between growers, processors and other players in the tea industry.

34. The Crops Act is amended by deleting—

- (a) paragraph (b) of section 14(1); and
- (b) the term “tea” appearing in Part 1 of the First Schedule.

Consequential amendments.

No. 16 of 2013.

PART VI—TRANSITIONAL PROVISIONS

35. All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on the Agriculture and Food Authority with respect to the tea sector shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Board as the case may be.

Rights and obligations.

36. On or after the appointed day, all actions, suits or legal proceedings pending by or against the Agriculture and Food Authority in relation to the tea sector shall be carried on or prosecuted by or against the Board, and no action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

Legal proceedings.

37. Any reference to the Agriculture and Food Authority in any written law or in any contract, document or instrument of whatever nature, in relation

Reference to written laws.

to tea, shall, on the commencement of this Act, be read and construed as a reference to the Board.

38. All directions, orders and authorizations given, or licenses or permits issued, or registrations made by the Agriculture and Food Authority in relation to tea, and subsisting or valid immediately before the appointed day, shall be deemed to have been given, issued or made by the Board as the case may be, under this Act.

Previous authorizations.

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

Staff.

40. In this Part—

Interpretation.

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

SCHEDULE

s. 19

CONDUCT OF BUSINESS AND AFFAIRS OF
THE BOARD

1. (1) The Board of Directors shall meet at least once in every three months to conduct the business of the Board.

Meetings of the Board.

(2) The Chairperson shall convene the ordinary meetings of the Board of Directors at the premises of the Board.

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

(4) Unless three quarters of the total number of the members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board of Directors shall be given to every member of the Board by the Secretary.

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

(6) The Chairperson shall preside at every meeting of the Board at which the Chairperson is present and in the Chairperson's absence, the members of the Board present shall elect one person from their number to preside over the meeting of the Board of Directors and that person shall have all the powers of the Chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board of Directors shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or person presiding over the meeting shall have a casting vote.

(8) The proceedings of the Board of Directors shall not be invalidated by reason of a vacancy within its membership.

(9) Subject to provisions of this Schedule, the Board of Directors may determine its own procedure and the

procedure for any committee of the Board and for the attendance of other persons at its meetings thereof.

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

Disclosure of
interest.

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

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

I certify that this printed impression is a true copy of the Bill as passed by the Senate on 12th June, 2019.


Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.


Speaker of the Senate

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