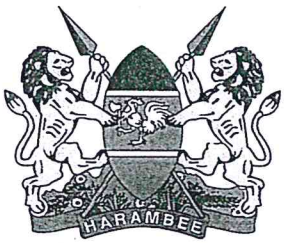
REPUBLIC OF KENYA



Rt Hon Speaker
You may approve for tabling.
16/12/20

Approved
17/12/2020

COS

Recommended for approval for tabling.
17/12/20

TWELFTH PARLIAMENT

FOURTH SESSION

THE SENATE

THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

REPORT ON THE CONSIDERATION OF AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE TEA BILL, (SENATE BILLS No. 36 of 2018)

Clerk's Chambers
Parliament Buildings,
NAIROBI

DECEMBER, 2020

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PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Senate Standing Committee on Agriculture, Livestock and Fisheries was constituted on Wednesday, 24th June, 2020 during the Fourth Session of the Twelfth (12th) Parliament pursuant to the provisions of standing order 187 (1) of the Standing Orders of the Senate which states:

> *"Unless otherwise provided by any written law or these Standing Orders, the Senate Business Committee shall, in consultation with Parliamentary Parties, nominate Senators who shall serve on a Select Committee."*

Mandate of the Committee

The Standing Committee on Agriculture, Livestock and Fisheries is mandated under the Second Schedule of the Standing Orders to consider all matters relating to agriculture, irrigation, livestock, fisheries development and veterinary services.

Oversight

In executing its mandate, the Committee oversees the following Government Departments and agencies, namely-

i. The State Department of Agriculture;
ii. The State Department of Livestock;
iii. The State Department for Fisheries; and
iv. The State Department of Irrigation.

Membership of the Committee

The Committee is comprised of the following members-

1. Sen. Peter Njeru Ndwiga, EGH, MP - **Chairperson**
2. Sen. Enoch Wambua, MP - **Vice-Chairperson**

3. Sen. Kipchumba Murkomen, EGH, MP
4. Sen. (Canon) Naomi Jillo Waqo, MP
5. Sen. (Dr.) Michael Malinga Mbito, MP
6. Sen. (Eng.) Ephraim Maina, EBS, MP
7. Sen. Justice (Rtd.) Madzayo Stewart Mwachiru, MP
8. Sen. Issa Juma Boy, MP

Secretariat of the Committee

The Committee secretariat is comprised of –

1. Ms. Carol Kirorei - Clerk Assistant
2. Ms. Sombe Toona - Legal Counsel
3. Ms. Regina Munyao - Legal Counsel
4. Ms. Caroline Njue - Research Officer
5. Ms. Njeri Manga - Media Relations Officer
6. Ms. Mary Nyawira - Audio Officer
7. Mr. John Pere - Serjeant-At-Arms

Acknowledgement

The Committee wishes to thank the Office of the Speaker and the Office of the Clerk of the Senate for the support extended to it in the consideration of the amendments proposed by the National Assembly.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to standing order 213 (6), to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on the amendments passed by the National Assembly to the Tea Bill, (Senate Bills No. 36 of 2018) for consideration by the House.

Signed.....Ndwiga..... Date.....16/12/2020....

SEN. PETER NJERU NDWIGA, EGH, M.P.

CHAIRPERSON

THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK & FISHERIES

REPORT ON THE CONSIDERATION OF AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE TEA BILL, (SENATE BILLS No. 36 of 2018)

MEMBERS' ADOPTION LIST

NO	NAME	SIGNATURE
1.	Sen. Njeru Ndwiga, EGH , MP	
2.	Sen. (Canon) Naomi Waqo, MP	
3.	Sen. Kipchumba Murkomen, EGH, MP	
4.	Sen. (Dr.) Michael Mbito, MP	
5.	Sen. (Eng.) Ephraim Maina, MP	
6.	Sen. Enock Wambua, MP	
7.	Sen. Justice (Rtd.) Stewart Madzayo, MP	
8.	Sen. Issa Juma Boy, MP	

EXECUTIVE SUMMARY

The Tea Bill, (Senate Bills No. 36 of 2018) sponsored by Sen. Aaron Cheruiyot, M.P., was read a First Time in the Senate on Wednesday, 5th December, 2018. Following the First Reading, the Bill, stood committed to the Standing Committee on Agriculture, Livestock and Fisheries pursuant to standing order 140 (5) of the Senate Standing Orders.

The Senate passed the Bill on 12th June, 2019 and it was thereafter sent to the National Assembly for concurrence. The National Assembly passed the Bill with amendments on 3rd December, 2020.

During the Sitting of the Senate held on 9th December, 2020, the Speaker reported Messages from the National Assembly on the approval (with amendments) of the Tea Bill, 2018. The Speaker directed the Committee to deliberate on the amendments to the Bill and report to the Senate.

At its 114th Sitting held on 14th December, 2020, the Committee considered the amendments and made comments as contained in Chapter Two of this report. The Committee thereafter recommended that the Senate accepts the amendments passed by the National Assembly to the Tea Bill, 2018.

1 INTRODUCTION

1.1 Background on the Tea Bill, (Senate Bills No. 36 of 2018)

The object and reasons of this Bill is to liberalize the tea industry through the reorganization of the industry by the separation of the regulatory and commercial roles currently undertaken by the Agriculture and Food Authority (AFA). This is to be done by transitioning the regulation of the industry to the Tea Board of Kenya and severing tea from the ambit of the Agriculture and Food Authority which has been ineffective in the promotion and development of the tea industry.

Currently the Tea directorate under AFA is mandated to license tea manufacturing factories; to register buyers, brokers, packers, management agents and any other person dealing in tea; and promote Kenya tea in both the local and the international markets.

The Bill was informed by findings of the *Ad hoc* Committee on Tea that was established by a Senate Resolution on 14th March 2018 to identify factors that have led to tea farmers receiving disproportionate returns from tea despite the resources and time they put into tea production. The Committee's terms of reference also included finding challenges that required urgent intervention to ensure that the critical sector thrives for the benefit of Kenyan economy and to recommend specific legislative and policy interventions to address the problems facing the tea sector in Kenya.

1.2 Committal of the Bill to the Standing Committee on Agriculture Livestock and Fisheries

The Tea Bill, (Senate Bills No.36 of 2018) was published on 13th November, 2018 and read a First Time in the Senate on 5th December, 2018. The Bill was thereafter committed to the Standing Committee on Agriculture, Livestock and Fisheries for consideration.

Pursuant to Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Committee invited views on the Bill from the public by placing advertisements in the Daily Nation and the Standard newspapers on 20th February, 2019.

The Committee received oral submissions at the Public Hearings held on Thursday, 28th February, 2019 in the Tsavo Ballroom, KICC. The Committee also received a number of written submissions delivered through the Office of the Clerk of the Senate. The Committee considered the submissions and reported back to the Senate.

The Senate passed the Bill, with amendments, on 12th June, 2019 and it was subsequently sent to the National Assembly for concurrence. Pursuant to standing order 156 of the Senate Standing Orders, the Bill was forwarded to the National Assembly together with a message requesting the concurrence of the National Assembly. The National Assembly passed the Bill with amendments on 3rd December, 2020.

During the Sitting of the Senate held on 9th December, 2020, the Speaker informed the House that the National Assembly had approved the Tea Bill, 2017 (with amendments). The Speaker directed the Committee to deliberate on the amendments to the Bill and report to the Senate.

At its 114th Sitting held on 14th December, 2020, the Committee considered the amendments passed by the National Assembly to the Bill.

2 CONSIDERATION OF AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE BILL

At its 114th Sitting held on 14th December, 2020, the Committee considered the amendments passed by the National Assembly. The Committee noted that the proposals by the National Assembly resulted in some irregularities including conflicts with existing legislation. Appreciating that the legislation to regulate the tea industry was a matter urgent public interest and that there is need for the swift passage of the Bill, the Committee observed that should it proffer further amendments to the Bill, a mediation process would ensue further delaying the passage of the vital legislation.

Further, the Committee observed that the inadequacies noted in the proposed amendments by the National Assembly were outweighed by the benefits resulting from the Bill should it pass in the form proposed by the National Assembly. In addition, the Committee noted that the proposed amendments to align the Bill to existing legislation could be made after the Bill was assented to. Due to the foregoing, the Committee resolved that the Bill should not be delayed any further and that the amendments by the National Assembly should be adopted.

3 COMMITTEE RECOMMENDATION

The Committee recommends that the Senate accepts the proposed amendments passed by the National Assembly to the Tea Bill, (Senate Bills No. 36 of 2018).

APPENDICES

APPENDIX I	Minutes of the Committee Deliberations
APPENDIX II	Amendments passed by the National Assembly to the Tea Bill, 2018

APPENDIX I

Committee Minutes.

MINUTES OF THE 114TH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON MONDAY, 14TH DECMBER, 2020 AT 11.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Peter Njeru Ndwiga, EGH, MP - Chairperson
2. Sen. Kipchumba Murkomen, EGH, MP
3. Sen. (Canon) Naomi Jillo Waqo, MP

ABSENT WITH APOLOGY

1. Sen. Enoch Wambua, MP - Vice-Chairperson
2. Sen. (Dr.) Michael Malinga Mbito, MP
3. Sen. Issa Juma Boy, MP
4. Sen. (Eng.) Ephraim Maina, MP
5. Sen. Justice (Rtd.) Stewart Madzayo, MP

IN ATTENDANCE **SENATE**

1. Sen. Aaron Cheruiyot, MP

IN ATTENDANCE **SENATE**

1. Ms. Carol Kirorei - Clerk Assistant
2. Ms. Sombe Toona - Legal Counsel
3. Ms. Regina Munyao - Legal Counsel
4. Ms. Caroline Njue - Research Officer
5. Ms. Mary Nyawira - Audio Officer

MIN. NO. 278/2020 PRELIMINARIES

The Chairperson called the meeting to order at 10.30 a.m. followed by a word of prayer.

MIN. NO. 279/2020 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Naomi Waqo, MP and seconded by Sen. Kipchumba Murkomen, EGH, MP.

MIN. NO. 280/2020 **CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE TEA BILL, 2018**

The Committee considered the amendments passed by the National Assembly to the Tea Bill, (Senate Bills No. 36 of 2018). The Committee noted that the proposals by the National Assembly resulted in some irregularities including conflicts with existing legislation. Noting the public interest and the urgent need for the swift passage of the Bill, the Committee resolved should not be delayed any further and that the amendments by the National Assembly should be adopted.

MIN. NO. 281/2020 **DATE OF NEXT MEETING**

The next meeting would be held on notice.

MIN. NO. 282/2020 **ADJOURNMENT**

There being no other business the Sitting was adjourned at 12.00 noon.

SIGNED:..... .....

(CHAIRPERSON)

DATE:.....16/12/2020.....
.....

MINUTES OF THE 115TH SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON TUESDAY, 15TH DECMBER, 2020 AT 11.00 A.M. ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

1. Sen. Peter Njeru Ndwiga, EGH, MP - Chairperson
2. Sen. Enoch Wambua, MP - Vice-Chairperson
3. Sen. Issa Juma Boy, MP
4. Sen. Kipchumba Murkomen, EGH, MP
5. Sen. (Canon) Naomi Jillo Waqo, MP

ABSENT WITH APOLOGY

1. Sen. (Dr.) Michael Malinga Mbito, MP
2. Sen. (Eng.) Ephraim Maina, MP
3. Sen. Justice (Rtd.) Stewart Madzayo, MP

IN ATTENDANCE		**SENATE**
1. Ms. Carol Kirorei	-	Clerk Assistant
2. Ms. Sombe Toona	-	Legal Counsel
3. Ms. Regina Munyao	-	Legal Counsel
4. Ms. Caroline Njue	-	Research Officer
5. Ms. Mary Nyawira	-	Audio Officer

MIN. NO. 283/2020 PRELIMINARIES

The Chairperson called the meeting to order at 10.30 a.m. followed by a word of prayer.

MIN. NO. 284/2020 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Naomi Waqo, MP and seconded by Sen. Issa Boy Juma, MP.

MIN. NO. 285/2020 CONSIDERATION AND ADOPTION OF THE REPORT ON THE CONSIDERATION OF AMENDMENTS

PASSED BY THE NATIONAL ASSEMBLY TO THE TEA BILL, 2018

The Committee considered the Report on the consideration of amendments passed by the National Assembly to the Tea Bill, (Senate Bills No. 36 of 2018). The Committee adopted the Report after being proposed by Sen. Kipchumba Murkomen, EGH, MP and seconded by Sen. Naomi Waqo, MP.

MIN. NO. 281/2020 DATE OF NEXT MEETING

The next meeting would be held on notice.

MIN. NO. 282/2020 ADJOURNMENT

There being no other business the Sitting was adjourned at 11.30 a.m.

SIGNED:..... .....

(CHAIRPERSON)

DATE:.....16/12/2020.....

.....

APPENDIX II

Amendments passed by the National Assembly to the Tea Bill, 2018

THE TEA BILL (SENATE BILL NO. 36 OF 2018)

SCHEDULE of amendments passed by the National Assembly to the Bill

(on Thursday, 3rd December, 2020)

CLAUSE 2

Clause 2 of the Bill amended by deleting clause 2 and substituting therefor the following new clause—

Interpretation.

2. In this Act—

"auction" means a physical or electronic system where potential buyers place competitive bids for tea;

"auction organizer' means a person, company or firm established for the purpose of organizing tea auctions in Kenya;

"blending" means the art of mixing of teas of different types and grades to affect the flavour and characteristics of the tea for the purposes of packing and sale;

"Board" means the Tea Board of Kenya established under section 3;

"broker" means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between tea growers or tea factories and buyers for a fee;

"buyer" means a person, company or a firm engaged in acquiring made tea for sale in the local or export market, including export of imported tea;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for

matters relating to agriculture;

"commercial green leaf transporter" means a person, a firm or a corporate body contracted by a tea factory to provide green leaf transport services from the farm or leaf collection center to the tea factory at a fee;

"commercial tea nursery "means a person or firm who maintains not less than five hundred tea seedlings or tea planting material for sale;

"county government" has the meaning assigned to it under Article 176 of the Constitution;

"crops inspector" means a person appointed as an inspector in accordance with section 24Y of the Act;

"export" means to take tea or cause tea to be taken out of the Kenya customs territory or out of an Export Processing Zone;

"exporter" means a person, a firm, or a corporate body engaged in the business of blending, packaging and exporting of tea in bulk or in value added form;

"Foundation" means the Tea Research Foundation established under section 24ZE;"

"Fund" means the Tea Fund established under section 24ZD;

"grower" means any person who is cultivating tea in an area;

"green leaf agreement" means an agreement between a tea grower and a tea factory relating to the delivery of green leaf;

"import" means to bring tea into or cause to be brought into the Kenya customs territory or

into an Export Processing Zone;

"importer" means a person, a firm, or a corporate body engaged in the business of importing tea into Kenya;

"large scale tea grower" means a person cultivating tea in a parcel of land above fifty acres;

"levy" means the levy imposed by the Cabinet Secretary on tea exports and imports in accordance with section 24ZC;

"licensee" means a person who holds a manufacturing licence issued under the Act;

"made tea" means the derivative from tea leaf through a manufacturing process;

"management agent" means any person that is appointed by a tea factory through a specific management contract or agreement to perform or offer professional services other than company secretary services;

"manufacture" means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products and includes the packaging, labelling, distribution of tea and tea products for sale;

"manufacturing licence" means a licence issued under section 24A;

"medium scale tea grower" means a person cultivating tea in a parcel of land of between ten and fifty acres;

"person" includes a firm, a company, an association, cooperative society or a corporate body;

"small scale tea grower" means a grower cultivating tea in a parcel of land of less than ten

acres;

"specialty teas" means premium teas manufactured whole leaf, semi-aerated or non-aerated and includes green, purple, white, oolong and orthodox but does not include black curl tear and cut teas;

"tea" means the plant botanically known as *camellia sinensis* and includes its seed, tea plants and the leaf, whether on the plant or detached therefrom, and in the latter case, whether green tea or manufactured tea;

"tea block" means a block set out in the Third Schedule within which tea is grown;

"tea dealer" includes a warehouse operator, buyer, exporter, importer, broker, packer, manufacturer, management agent, and auction organizer;

"tea factory" means a factory that processes and manufactures tea leaf into made tea;

"tea grower" means a person who grows tea or cultivates tea in Kenya;

"tea packer" any person who blends, brands and packs tea into packets or containers holding not more than ten kilograms of tea intended for sale locally or for export;

"value addition" means improvements on made tea through packaging, blending, flavouring, tea extracts, tea aroma and branding;

"warehouse" means a premise used for the storage of made tea and specialty tea by a warehouse operator;

"warehouse operator" means a company registered in Kenya which is in the business of

storing tea.

CLAUSE 5

Clause 5 of the Bill deleted and substituting thereof with the following new clause—

Functions of the Board.

5. The functions of the Board shall be to—

(a) develop, promote and regulate the development of the tea industry;

(b) co-ordinate the activities of individuals and organizations within the tea industry;

(c) facilitate equitable access to the resources, facilities and benefits of the tea industry by all interested parties;

(d) make recommendations to the Cabinet Secretary on the formulation of policies, plans and strategies for the regulation of the tea sector;

(e) register tea factories, small scale tea growers, medium scale tea growers, large scale tea growers, warehouse operators, tea packers, tea buyers, exporters, importers, tea brokers, management agents, tea auction organizers, commercial tea nurseries, commercial green leaf transporters;

(f) license manufacturers;

(g) promote best practices and standards in the production, processing, marketing, grading, storage, collection, transportation and warehousing of tea;

(h) facilitate marketing and distribution of tea through gathering and dissemination of

market information and monitoring of the local and global supply-demand situation;

(i) co-ordinate prioritization of research in tea;

(j) regulate the sale, import and exports of tea;

(k) develop, implement and coordinate a national tea marketing strategy;

(l) prescribe the maximum period and minimum amount for payment of green leaf;

(m) promote and advise on strategies for value addition and product diversification;

(n) promote demand and consumption of tea locally and internationally;

(o) identify market needs and trends and advise the Cabinet Secretary on issues related to national and international tea trade,

(p) collaborate with national and international trade bodies on tea related matters;

(q) monitor, conduct surveillance and enforce compliance with tea standards, this Act and any regulations made under it;

(r) advise the national government on levies, fees and import or export duties on tea;

(s) advise the county governments on agricultural cess and fees;

(t) oversee the efficient utilization of available Board's funds;

(u) undertake capacity building, technology transfer and technical assistance to the counties on matters related to tea;

(v) 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."

CLAUSE 6

Clause 6 of the Bill amended in sub-clause (1) by inserting the following paragraphs immediately after paragraph (c)—

"(ca) collaborate with such bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the object and purpose for which the Board is established;

(cb) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;"

(cc) ensure the proper and effective performance of the functions of the Board;

(cd) manage, control and administer the Tea Fund for purposes that promote the object and purpose of this Act."

CLAUSE 7

Clause 7 of the Bill amended—

(a) in sub-clause (1)—

(i) by inserting the following new paragraph immediately after paragraph (c) —

"(ca) the Principal Secretary responsible for National Treasury or a representative nominated by the Principal Secretary in writing;"

(ii) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs–

"(d) one person of either gender, who shall have knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternatingly by the Council of Governors;

(e) four persons, two of either gender, representing and elected by small scale and medium scale tea growers from the East and West of the tea blocks:

Provided that two persons shall be from each of the tea blocks;

(f) one person elected and representing large scale tea growers;

(g) one person elected and representing tea traders;"

(b) by inserting the following new sub-clause immediately after sub- clause (2)—

"(2A) The appointment of the chairperson or members of the Board under subsection (1) (a), (d), (e), (f) and (g) and shall take into account the gender, regional and other diversities of the people of Kenya."

CLAUSE 8

Clause 8 of the Bill deleted and substituted thereof with the following new clause—

Term of appointment

8. (1) 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.

(2) The persons appointed under section 7(1) (a), (d), (e), (f) and (g) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times but not more than six months shall lapse between one appointment and another.

CLAUSE 9

Clause 9(a) of the Bill amended by deleting the words "the permission of the chairperson" appearing immediately after the words "the Board without" and substituting therefor the words "notifying the chairperson".

CLAUSE 13

Clause 13 of the Bill amended by deleting sub-clause (3) and substituting therefor the following new sub-clause—

"(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;

(b) has at least ten years knowledge and experience in a relevant field;

(c) has at least five years experience in a position of senior management;

(d) meets the requirements of Chapter Six of the Constitution."

CLAUSE 15

Clause 15 of the Bill amended in sub-clause (3) (d) by deleting the word "seven" appearing immediately after the words "at least" and substituting therefor the word "five".

CLAUSE 16

Clause 16 of the Bill amended by—

(a) renumbering the existing provision as sub-clause (1);

(b) inserting the following new sub-clause immediately after sub-clause (1)—

"(2) In employing staff, the Board shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities."

CLAUSE 19

Clause 19 of the Bill amended by inserting the word "First" immediately after the words "with the".

NEW PART

Part III of the Bill deleted and substituted thereof with the following new Part—

PART III- REGULATORY PROVISIONS

Role of national and county governments in the development of tea.

20. (1) Pursuant to the Fourth Schedule of the Constitution –

(a) the Board, on behalf of the national government, shall be responsible for licensing and charging of levies;

(b) 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 –

(i) the development of tea grown within the county;

(ii) tea disease and pest control;

(iii) markets within the county;

(iv) cooperative societies within the county;

(v) register commercial tea nursery operators

(vi) 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.

Registration of small scale tea

21. (1) A small scale tea grower and medium scale tea grower shall register with the tea factory to

growers and medium scale tea growers.

which the respective tea growers deliver green leaf or purple leaf using the prescribed form.

(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of small scale tea growers and medium scale tea growers and the appeal process in case of refusal or denial of registration.

(3) Every tea factory shall keep or cause to be kept for statistical purposes, a register of all small scale tea growers and medium scale tea growers registered under subsection (1) specifying –

(a) the name of the small scale tea grower and medium scale tea grower;
(b) the location, size and parcel number of the land on which the tea is grown;
(c) the net weight in kilogrammes of green leaf delivered and amount paid submitted annually;
(d) the variety of tea grown; and
(e) such other information as the Board may prescribe.

(4) Where the tea factory has reasonable cause to believe that a person whose particulars are so recorded has ceased to be a small scale tea grower and medium scale tea grower, it may, after giving that person written notification by registered post of its intention to do so, remove their name from the register.

(5) The register referred to in subsection (6) shall be prima facie proof of the fact that a person is a

registered small scale tea grower or medium scale tea grower.

(6) The tea factory shall furnish the Board with particulars of all registered small scale tea growers or medium scale tea growers in such manner as the Board may prescribe.

(7) A person shall not sell or offer for sale green leaf unless the person is registered with a tea factory in accordance with this Act.

(8) A tea factory shall only buy green leaf from its registered tea growers.

(9) A small scale tea grower or medium scale tea grower shall not sell green leaf to any person other than the tea factory where they are registered.

(10) A small scale tea grower or medium scale tea grower wishing to change the tea factory where they deliver their green leaf shall inform their respective tea factory by giving a minimum notice of thirty days.

(11) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding six months, or to both.

Board of directors of tea factory limited companies.

22. (1) The Board of Directors of tea factory limited companies shall be a maximum of five members.

(2) The Board shall put in place mechanisms to ensure that not more than two-thirds of the Board of Directors of tea factory limited companies elected or

appointed are of the same gender.

(3) The Board of Directors of tea factory limited companies shall be elected through a democratic system of one grower, one vote.

(4) Where a Board member for tea factory limited companies is temporarily unable to perform their duties, the Board may appoint another person from the respective block to act in their place during the period of absence.

Registration of large scale tea growers.

23. (1) A large scale tea grower shall register with the Board in a prescribed form and shall pay the prescribed fee.

(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of large scale tea growers and the appeal process in case of refusal or denial of registration.

(3) A person who grows tea in contravention of subsection (1) commits an offence, and shall, on conviction, be liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or to both.

Tea grower certificate.

24. The manager of a tea factory shall issue a certificate of registration to a small scale tea grower, medium scale tea grower or a large scale tea grower in the form prescribed in regulations.

Licensing of manufacturers.

24A. (1) A person shall not manufacture tea for sale except under and in accordance with a licence issued under this Act.

(2) A person shall apply for a manufacturing licence to the Board in a prescribed form and shall pay

the prescribed fee.

(3) The Board may, after consultation with the Cabinet Secretary —

(a) issue a manufacturing licence, in accordance with this Act;

(b) refuse to issue the licence on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof;

(c) cancel, vary or suspend any licence if in the findings of the Board, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing entities.

(4) A manufacturing licence issued under this section shall in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending tea.

(5) Before the issuance or renewal of a manufacturing licence for a tea factory limited company the Board shall satisfy itself that the applicant has a procurement policy providing for competitive procurement of goods and services.

Register of manufacturers.

24B. The Board shall maintain a register, in such form as prescribed in regulations, of all manufacturers licensed under this Act and shall enter therein, in respect of each tea factory —

(a) the full names of the manufacturer,

(b) the date of issue of the licence;

(c) particulars of any cancellation, suspension or

variation of the licence; and

(d) any other particulars the Board may deem necessary.

Illegal manufacture, possession, etc.

24C. (1) A person commits an offence if the person—

(a) manufactures tea for sale in contravention of this Act;

(b) buys, sells, offers for sale, transports or has possession of tea which to the person's knowledge or belief—

(i) has been grown, manufactured or processed otherwise than in accordance with this Act;

(ii) is from a non-registered grower or dealer of such crop.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years, or both.

(3) If a person is in possession or has control of tea for which the person is unable to account to the satisfaction of a crop inspector under this Act, such tea shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.

(4) If a person is convicted of an offence under this section, the court shall order that any tea and any vehicle, vessel or other conveyance in relation to which an offence has been committed shall be forfeited to the Government unless, in the case of a vehicle, vessel or

other conveyance, the court deems it necessary, for reasons to be recorded by it in writing, not to do so.

Registration of warehouse operator.

24D. (1) Every warehouse operator shall register with the Board.

(2) A person shall not store tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of warehouse operators and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) 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 of tea packers.

24E. (1) Every tea packer shall register with the Board.

(2) A person shall not pack tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea packers and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) 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 of a tea buyer, exporter or importer.

24F. (1) A person who intends to carry on the business of tea buying, tea exporting or tea importing shall register with the Board.

(2) A person shall not carry on the business of buying tea, exporting or importing tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea buyers, tea exporters and tea importers and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes 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.

Tea imports.

24G. (1) A person who imports tea into Kenya shall prior to importation—

(a) provide evidence that the teas they intend to import are not available in the local market or at the tea auction;

(b) provide a sample of the teas to be imported and pre-import verification certificate from the country of origin; and

(c) obtain pre-import approval from the Board.

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

Registration of a tea broker.

24H. (1) Every tea broker shall register with the Board.

(2) A person shall not negotiate the purchase or sale of tea unless the person is registered in

accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for—

(a) the procedure for registration of a tea broker and the appeal process in case of refusal or denial of registration;

(b) the maximum number of tea factories that shall be served by a tea broker.

(4) The remuneration paid to a tea broker by a tea factory limited company and a tea buyer or exporter for services rendered shall not exceed zero point seven five per centum of the gross sales by the broker.

(5) A person who contravenes subsections (2) and (4) 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 of a management agent.

24I. (1) Every management agent shall register with the Board.

(2) A person shall not perform or offer professional services to a tea factory unless the person is registered in accordance with this Act.

(3) Every management agent shall submit annual returns to the Board and a copy to the respective county government in the form prescribed.

(4) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a management agent and the appeal process in case of refusal or denial of registration.

(5) A person who contravenes 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.

Management agent agreement.

24J. (1) A person who intends to manufacture or deal in tea may engage the services of a management agent upon such terms and conditions as may be agreed in the management agreement between them.

(2) A management agent shall sign a management agreement with each tea factory limited company that they intend to offer management agent services to.

(3) A management agreement between a management agent and a tea factory, shall be—

(a) submitted to the Board for review and approval before execution by parties; and

(b) for a period of five years, and may be renewed upon expiry at the discretion of the tea factory.

(4) The remuneration for services rendered by a management agent to a tea factory limited company shall not exceed one point five per centum of the net sales value of the tea sold per year.

(5) The staff costs for personnel seconded to the tea factory limited company by a management agent shall be borne by the management agent.

(6) Company Secretarial services shall be excluded from services to be offered by a management agent to a tea factory limited company.

(7) A tea factory shall recruit its own in-house Company Secretary or outsource the service.

(8) Despite subsection (7), a tea factory may enter into an arrangement with one or more tea factories to have a joint in-house Company Secretary.

(9) A director of a tea factory shall not serve as a director in another company having a direct or indirect commercial relationship with the tea factory where the person is serving as a director.

(10) Where the provisions of subsection (9) apply, a director of a tea factory shall forthwith relinquish his or her position.

Registration of a tea auction organizer.

24K. (1) Every tea auction organizer shall register with the Board.

(2) A person shall not deal in tea as a tea auction organizer unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a tea auction organizer and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes 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.

Auction process.

24L. (1) All teas processed and manufactured in Kenya for the export market with the exception of orthodox and specialty teas shall be offered for sale exclusively at the tea auction floor.

(2) All tea factory limited companies shall

register with the Board and the auction organizer to participate in the tea auction directly and not through management agents.

(3) An auction organizer shall establish an electronic trading platform for the auction of tea that will be usable and accessible to all players in the value chain.

(4) A buyer shall pay in full the value of the tea bids they have won at the auction before collecting or taking custody of the tea.

(5) Tea brokers, buyers and the auction organizers shall ensure that the proceeds from the sale of tea are remitted to the tea factories accounts within fourteen days from the date of the auction.

(6) A tea factory shall within thirty days of receipt of the proceeds of the sale of tea, pay tea growers—

(a) at least fifty per centum of payment due for green leaf delivered every month;

(b) the balance due to the tea grower within three months from the end of financial year.

(7) An auction organizer shall develop trading rules to govern its operations and the trading rules shall be submitted to the Board for approval.

Registration of commercial green leaf transporters.

24M. (1) A person who intends to carry on the business of commercial green leaf transporter shall register with the Board.

(2) A person shall not carry on the business of commercial green leaf transporter unless the person is

registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial green leaf transporters and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) 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 of a commercial tea nursery.

24N. (1) A person who intends to establish a commercial tea nursery shall register with the county government where they intend to establish a tea nursery.

(2) A person shall not establish a commercial tea nursery unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial tea nurseries and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) 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.

Considerations before registration and licensing and renewal.

24O. (1) The Board shall, before registering, licensing or renewing a registration or licence under this Act, satisfy itself that—

(a) the applicant has complied with the provisions of this Act and any other relevant law; and

(b) the applicant or the directors of the company are fit and proper for the function for which they seek a licence or registration.

(2) In determining whether a person is fit and proper, regard shall be had to—

(a) whether they have taken part in any business practice in the tea value chain that in the opinion of the Board was fraudulent, prejudicial or otherwise improper; or which otherwise discredited their method of doing business; and

(b) whether they have been directors of a company or entity whose licence or registration certificate has previously been revoked or suspended by the Board for any cause.

(3) In determining whether a person or director is fit and proper, the Board shall have due regard to the provisions of the Fair Administrative Action Act, 2015, the Companies Act, 2015 and any other relevant law.

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Conditions of a licence.

24P. (1) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the licence and to any conditions which may be prescribed.

(2) The Board shall consider the professional and moral suitability of a person applying for a license and satisfy itself that such a person is a fit and proper person for the grant of the license.

(3) For the purposes of this section, the criteria for assessing the professional or moral suitability of a person applying for a license shall be as prescribed in

the Second Schedule.

(4) In considering an application for a license, the Board may require to be satisfied as to—

(a) the financial condition and history of the applicant;
(b) the integrity of its management;
(c) the professional and moral suitability of the persons proposed to manage or control applicant;
(d) the adequacy of the capital structure of the applicant; and
(e) the public interest which will be served by the granting of the licence.

(5) The Board may at any time during the validity of a licence—

(a) vary the conditions of the licence; or
(b) impose conditions or further conditions on the licence.

Application for renewal of a licence.

24Q. (1) An application for the renewal of a licence under this Act shall be made to the Board in a form prescribed not later than the first day of the month of June in which the current licence is due to expire.

(2) Despite subsection (1), a late application may be made upon payment of a late application fee as may be prescribed by the Board.

Revocation or alteration of a licence.

24R. The Board may revoke, alter or suspend a licence issued under this Act if in its opinion—

(a) an offence under this Act, or in respect of the

licensed activity under any other written law, has been committed by the licence holder or any employee of the licence holder; or

(b) a condition of the licence has been contravened or not complied with.

Surrender of licence.

24S. (1) The holder of a licence which is revoked shall immediately surrender it to the Board.

(2) A licence holder may at any time surrender the licence to the Board and the licence shall cease to have effect immediately.

Appeals to the High Court.

24T. (1) An applicant for or holder of a licence who is aggrieved by a decision of the Board may appeal to the High Court on or in respect of—

(a) the grant, refusal, renewal, variation or revocation; or

(b) the conditions imposed on the grant, renewal or variation, of a licence.

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

Approval of fees charged.

24U. Any fee, commission or other dues charged by a broker, management agent or an auction organizer shall be subject to prior approval by the Board.

Declaration of blended teas.

24V. (1) A person who blends any or various grades of tea produced in Kenya with any other tea produced outside Kenya shall declare the percentage of Kenyan tea on the packaging and on the blend sheet.

(2) A person who contravenes 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.

Taxation of tea.

24W. (1) Fees imposed by a county government shall not in any way prejudice national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.

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(2) The Cabinet Secretary shall, using the structures established under the Intergovernmental Relations Act, put in place mechanisms to harmonize fees and charges on tea across counties.

Tea value addition.

24X. (1) All tea buyers or exporters shall value add at least forty per centum of their annual Kenya tea exports within eight years of the commencement of this Act.

(2) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, facilitate the establishment of Common User Facility for tea value addition as may be prescribed.

NEW PART

The following new parts inserted immediately after Part III—

PART IIIA – APPOINTMENT OF CROP INSPECTORS

Appointment of crop inspectors.

24Y. (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

(2) For purposes of subsection (1), the Board

may, by regulations, prescribe the qualifications for a crop inspector.

Entry and inspection.

24Z. A person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

(a) enter any land or buildings occupied by the holder of a manufacturing licence issued under this Act, or a person registered under this Act;

(b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence or registration are being complied with; and

(c) may require any person found thereon to give such information as the person may require.

Powers of entry.

24ZA. (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

(a) perform the functions or exercise the powers conferred by this Act or any other written law;

(b) make enquiries or carry out a search to ascertain if this Act is being complied with;

(c) demand the production by a licence holder of the licence for examination;

(d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or

(e) do any other thing authorized under this Act.

(2) The owner or occupier of or any person on land or in premises or a vehicle which is entered under subsection (1) shall render such reasonable assistance as may be required by the inspector.

(3) A person who refuses, unreasonably delays or fails to comply with a requirement under subsection (2) commits an offence.

Obstruction of inspectors.

24ZB. (1) 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.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three years, or both.

PART IIIB – ESTABLISHMENT OF TEA LEVY AND TEA FUND

Establishment of Tea Levy.

24ZC. (1) The Cabinet Secretary may by notice in the Gazette, impose a levy to be levied on tea exports and imports, to be known as the tea levy.

(2) The levy imposed through a notice under subsection (1) shall be collected by the Board at a rate not exceeding one per centum of the auction value for teas sold through the auction and at such times, being not earlier than one after the date of publication of the notice, in such a manner, as is specified in the notice.

(3) The levy on tea imports shall be charged at a rate of one hundred per centum of the value of the imported teas.

(4) The levy imposed under this section shall be levied and collected in such manner as the Cabinet Secretary may prescribe through regulations.

(5) The tea levy collected under subsection (2) shall be apportioned as follows—

(a) fifty per centum shall be applied by the Board for income or price stabilization for tea growers;

(b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;

(c) twenty per centum shall be remitted directly to the Tea Research Foundation;

(d) fifteen per centum shall be applied for infrastructure development in the tea subsector on a pro rata basis.

(6) A person who fails to pay the tea levy imposed under this Act commits an offence.

Establishment of a Tea Fund.

24ZD. (1) There is established a Fund to be known as the Tea Fund which shall be managed by the Board.

(2) The Fund shall consist of-

(a) monies appropriated by the National Assembly;

(b) monies from the tea levy;

(c) monies from a source approved by the Board;

(d) grants and donations made to the Board.

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

(a) income or price stabilization;

(b) research and development.

PART IIIC- ESTABLISHMENT OF THE TEA RESEARCH FOUNDATION

Establishment of the Tea Research Foundation.

24ZE. (1) There is hereby established a body to be known as the Tea Research Foundation.

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

(a) suing and being sued;

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

(c) borrowing and lending money;

(d) entering into contracts; and

(e) 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.

Functions of the Foundation.

24ZF. (1) The Foundation shall—

(a) promote, co-ordinate and regulate research in tea and tea diseases; and

(b) expedite equitable access to research information, resources and technology and promote the application of research findings

and technology in the development of tea.

(2) For the purpose of carrying out its functions the Foundation shall—

(a) formulate policy and make policy recommendations to the Cabinet Secretary on tea research;

(b) prioritise areas for, and co-ordinate, tea research in Kenya in line with the national policy on tea;

(c) determine and advise the Government on the resource requirements for tea research in Kenya both at the national and county level;

(d) regulate, monitor and ensure that all tea research undertaken by other institutions or persons undertaking tea research is consistent with the national priorities specified in the relevant policy documents;

(e) formulate or approve medium and long term research plans, strategies and budgets of the Foundation;

(f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Foundation;

(g) support and promote the training and capacity building in relation to agricultural research;

(h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in tea research;

(i) establish platforms for the purposes sharing of research information, advancing research and transfer of technology and dissemination of information relating to advancements made in tea research;

(j) conduct training in industry best practice and value-addition;

(k) ensure continuance of performance improvement in the field of tea research; and

(l) perform such other functions as may be conferred on it by this Act or any other written law.

CLAUSE 25

Clause 25 of the Bill amended by—

(a) inserting the following paragraph immediately after the introductory statement—

"(a) such monies as may be appropriated by the National Assembly;"

(b) renumbering the existing paragraphs (a), (b), (c), (d) as (b), (c), (d), (e), respectively.

CLAUSE 26

Clause 26 of the Bill amended —

(a) in sub-clause (1) by deleting the word "three" appearing immediately after the words "at least" and substituting therefor the word "six";

(b) by deleting sub-clause (3) and substituting therefor the following new sub-clause—

"(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 be submitted to the Cabinet Secretary for approval."

(c) by inserting the following new sub-clause immediately after sub-clause (3)—

"(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary."

CLAUSE 27

The Bill amended by deleting clause 27 and substituting therefor the following new clause—

Accounts and audit.

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

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General 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 financial position of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

CLAUSE 28

Clause 28 of the Bill amended—

(a) in sub-clause (1) by deleting the words "balance sheet" appearing immediately after the words "and the annual" and substituting therefor the word "statement";

(b) in sub-clause (2) by deleting the words "balance sheet" appearing immediately after the words "publish the report,";

(c) in sub-clause (3) by deleting the words "balance sheet" appearing immediately after the words "submit to Parliament the reports,".

NEW PART

The following new Part inserted immediately after clause 29—

PART IVA—COMPLAINTS AND INVESTIGATION PROCEDURE

Complaint and investigation against a licensee.

29A. (1) A person who is aggrieved by or is likely to be aggrieved by the contravention of any provision of this Act by a licensee may file a complaint requesting the Board to enforce the provisions of this Act against that licensee.

(2) The complainant shall, in the complaint—

(a) cite the specific provisions of this Act that the licensee has contravened or is likely to contravene;

(b) state the facts relating to the alleged contravention or likely contravention; and

(c) attach any documents relevant to the complaint.

(3) The Board shall provide a written response to the complainant within fifteen days of receipt of a complaint.

(4) The Board may by written notification to the complainant, extend the review of the complaint by up to thirty days where it determines that a complaint raises—

(a) a novel issue whose disposition requires

the Board to consider an issue that it has not previously addressed; or

(b) a complex issue whose disposition requires the Board to obtain significant factual information to resolve a difficult legal, factual or policy issue.

(5) The Board may dismiss a complaint if—

(a) the complainant fails to show that it has been injured, or is likely to be injured as a direct result of the alleged contravention of the provisions of this Act as cited in the complaint;

(b) the factual allegations in the complaint are unsupported or are without merit;

(c) the factual allegations in the complaint, even if proven to be true, do not constitute a contravention of this Act or the regulations made thereunder; or

(d) it concludes that the exercise of its enforcement discretion would not be appropriate.

(6) Where the Board dismisses a complaint, it shall notify the complainant and provide a written explanation.

(7) Where the Board admits a complaint, it shall issue a written notification to the licensee complained of and the complainant indicating—

(a) the specific provisions of this Act that the licensee has been alleged to contravene; and

(b) reasonable details of the alleged facts constituting the contravention.

(8) A licensee that is the subject of a complaint shall, within fifteen days of receipt of the notification from the Board, submit a response providing the basis on which it disputes the allegations of contravention.

(9) The Board shall, subject to section 29G on confidentiality, provide copies of all documents filed by each party to the other party.

(10) The Board may—

(a) allow the filing of additional responses by the parties;

(b) upon application and for good reasons, extend time for the filing of any documents or replies by the parties to the complaint;

(c) request the complainant or the licensee complained of to submit additional information at any time during the course of the enforcement proceedings; or

(d) direct an independent audit or appropriate investigation of the operations and books of account of a licensee to obtain information relevant to the complaint.

Withdrawal of complaint.

29B. (1) A complainant may, at any time and with reasons, withdraw its complaint in writing addressed to the Board and the licensee complained of.

(2) The withdrawal of a complaint shall not preclude the Board from taking enforcement action on its own motion in the public interest.

Decision on a complaint.

29C. (1) The Board shall issue its decision on a complaint within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written

notice to the parties and before the expiry of the sixty day review period, extend the time and specify the date by which it shall issue its decision.

Enforcement action.

29D. (1) Where the Board intends to commence an enforcement action against a licensee on its own motion, the Board shall—

(a) notify the licensee and clearly indicate the specific provisions of this Act the licensee is alleged to have contravened;

(b) allow the licensee at least fifteen days to respond in writing with a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the licensee disputes the allegation; and

(c) issue its decision within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written notice to the licensee and before the expiry of the sixty day review period, extend the time and specify the date by which it shall issue its decision.

Interim directive.

29E. (1) At any time during an enforcement proceeding, the Board may issue an interim directive to a licensee to cease and desist from any specified conduct.

(2) In determining whether to issue an interim directive the Board shall consider whether—

(a) there is prima facie evidence that the licensee has contravened the provision of this Act;

(b) continuation of the licensee's conduct is

likely to cause serious harm to other licensees, consumers or the general public;

(c) the potential harm of allowing the licensee to continue its conduct outweighs the burden on the licensee of ceasing the conduct; and

(d) issuance of the interim directive is in the public interest.

Enforcement measures.

29F. (1) Where the Board determines that a licensee has contravened any provision of this Act, the Board may take such enforcement measures as it considers appropriate, including–

(a) issuing a written warning to the licensee;

(b) directing the licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Act;

(c) directing the licensee to take specific remedial action;

(d) declaring any agreement or contract void;

(e) imposing a financial penalty relative to the period that the breach persists; or

(f) suspension or cancellation of the licence issued under this Act.

(2) A person aggrieved by the decision of the Board under this section may appeal to the High Court.

Confidentiality.

29G. (1) A party submitting information to the Board may request that the information submitted be treated as confidential.

(2) The Board shall grant a request for confidential treatment if the requesting party demonstrates, with reasonable specificity, that the

information for which it requests confidential treatment contains commercially sensitive information or that the disclosure of the information would have a material adverse impact.

(3) For the purposes of this section, "commercially sensitive information" includes information—

(a) that is not otherwise available to the public; or

(b) whose disclosure would cause commercial harm to the party or otherwise provide a commercial benefit to the party's competitors, including business procedures, practices, plans or its assessment of market conditions.

CLAUSE 30

Clause 30 of the Bill amended by—

(a) deleting sub-clause (1);

(b) deleting the expression "(2)" appearing immediately before sub-clause (2);

CLAUSE 32

Clause 32 deleted and substituted thereof with the following new clause—

General penalty.

32. A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or a fine not exceeding twice the value of the tea or tea products or, to imprisonment for a term not exceeding one year, or to both.

NEW CLAUSE

The following new clauses inserted immediately after clause 32—

Offences relating to body corporate.

32A. (1) Where an offence under this Act is committed by a body corporate or any other association, the offence shall be deemed to have been committed by a director, a partner or any other person involved in, or acting or purporting to act in the management of affairs of the body corporate or association.

(2) It shall be a defence to a charge under this section where the court is satisfied that—

(a) the act or omission constituting the offence took place without the person's knowledge; or

(b) the person took reasonable steps to prevent the commission of the offence.

Conflict of laws.

32B. If any conflict arises between the provisions of this Act and any other Act with respect to the development of the tea crop, the provisions of this Act shall prevail.

CLAUSE 33

Clause 33 of the Bill deleted and substituted thereof with the following new clause—

Regulations.

33. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for—

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

(b) the procedure of registration of tea brokers, small scale tea growers, medium scale tea growers, large scale tea growers, commercial green leaf transporters, tea packers, tea buyers, tea importers, tea exporters, management agents, auction organizers, warehouse operators, commercial tea nurseries;

(c) the procedure of licensing of tea manufacturers;

(d) the forms to be used in the application for registration, licensing, contracts and related activities;

(e) the prescribed areas for planting tea;

(f) the appeal process in case of refusal or denial of a licence;

(g) monitoring of the entire value chain in the tea sub-sector;

(h) regulation of the conduct of tea auction including the volumes of tea to be sold through auction or through direct sales;

(i) the promotion of fair and proper governance structures in institutions along the tea value chain in the interest of tea growers;

(j) rules to avoid conflict of interest in the ownership and dealings between tea growers, tea factories and tea dealers;

(k) the criteria for the pricing of green leaf;

(l) maximum fees charged by players along the value chain;

(m) the tenure of board members for tea factory;

(n) procedures for ensuring internal democracy in tea growers' institutions and organizations;

(o) value addition of tea exports and imports;

(p) control of pests and diseases;

(q) any fee charged under this Act;

(r) the regulation of contracts between growers, tea factories and other players in the tea industry;

(s) tea safety including transportation, processing and market standards of tea;

(t) submission of returns and reports by the holders of licences and registrations under this Act;

(u) regulation and controlling the method of blending, packaging and labelling of tea for purposes of traceability;

(v) standards, and the manner of grading and classification of made tea products under this Act; and

(w) anything required to be prescribed under this Act;

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

(a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;

(b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

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CLAUSE 34

Clause 34 of the Bill amended—

(a) by renumbering the existing provision as sub-clause (1);

(b) by inserting the following new sub-clause immediately after the renumbered sub-clause (1)—

"(2) The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the expression "Tea..... *Camellia* spp.""

CLAUSE 35

Clause 35 of the Bill deleted and substituted thereof with the following new clause—

Transfer of assets and liabilities.

35. All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Tea Directorate of the Agriculture and Food Authority and the Tea Research Institute of the Kenya Agricultural and Livestock Research Organization, shall, on the date of commencement of this Act, vest in the Board and the Foundation, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property.

CLAUSE 36

Clause 36 of the Bill deleted and substituted thereof with the following new clause—

Pending proceedings and claims.

36. 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 and the Foundation in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority and the Kenya Agricultural and Livestock Research Organization had this Act not been enacted.

CLAUSE 38

Clause 38 of the Bill deleted and substituted thereof with the following new clause—

Existing licences and registrations.

38. All licences and registrations existing before the appointed day shall remain valid until their expiry, and subsequent licences and registrations shall be issued under this Act.

CLAUSE 39

Clause 39 of the Bill deleted and substituted thereof with the following new clause—

Transfer of Staff.

39. (1) The staff of the Tea Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board.

(2) The staff of the Tea Research Institute employed by the Kenya Agricultural and Livestock Research Organization prior to the commencement of this Act, shall be the staff of the Foundation.

SCHEDULE

The Schedule of the Bill amended—

(a) by deleting the title and substituting therefore the following new title—

"FIRST SCHEDULE"

(b) in paragraph 1(3) by deleting the word "five" appearing immediately after the words "by at least" and substituting therefor the words "two thirds of the".

NEW SCHEDULE

The following new Schedule inserted immediately after the First Schedule—

SECOND SCHEDULE

CRITERIA FOR ASSESSING PROFESSIONAL OR MORAL SUITABILITY

1. In order to determine, for the purposes of this Act, the professional and moral suitability of persons, proposed to be Directors and senior officers of a licensee, the Board shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

   (a) possession of adequate professional credentials or experience or both for the position for which the person is proposed;

   (b) ability to recommend sound practices gleaned from other situations;

   (c) ability to provide dispassionate advice;

   (d) ability to avoid conflicts of interest in his or her activities and commitments with other organizations;

   (e) ability to absent oneself from decisions when the person is incapable of providing objective advice.

2. For the purpose of and without prejudice to the generality of the provisions of paragraph (1), the Board, may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—

   (a) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;

   (b) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence or other malpractices;

   (c) has taken part in any business practices that, in the opinion

conducting business; or

(d) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on the person's competence and soundness of judgment.

3. The Board may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person as stipulated under the Act.

EW SCHEDULE

he following new Schedule inserted immediately after the Second Schedule—

THIRD SCHEDULE [s. 2]

TEA BLOCKS

LOCK	COUNTIES
AST	Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.
VEST	Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega Vihiga, Trans-Nzoia, Baringo, Bungoma, Elgeyo Marakwet and Uasin Gishu

Certified

for Clerk of the National Assembly

This 7th **Day of** December, **2020**