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Act

No. 5 of 2024

I assent

Dr. Lazarus McCarthy Chakwera
President
31st January, 2024

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SCHEDULE

An Act to provide for the establishment of the Tobacco Commission; regulation, promotion and development of the tobacco industry in Malawi; and to provide for matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

Part I—Preliminary

Short title and commencement

1. This Act may be cited as the Tobacco Industry Act, 2024 and shall come into force on a date to be appointed by the Minister, by notice published in the *Gazette*.

Interpretation

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

"Appeals Panel" means an Appeals Panel established under section 92;

"buyer" means a person licensed to buy tobacco from growers at a tobacco floor;

"commercial grader" means a person licensed by the Commission to carry on the business of grading tobacco for profit;

"commercial grading premises" means premises where commercial tobacco grading is carried out in accordance with section 56;

"contract farming" means a contract between a grower and a buyer, whether funded or non-funded, whereby the grower undertakes to grow and sell tobacco to the buyer and the buyer agrees to buy the contracted volume of tobacco as set out in the contract;

"delivery quota" means the volume of tobacco allocated by the Commission to a grower or any other person for delivery at any tobacco floor for a given period;

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"estate" means any registered piece of land registered under the Registered Land Act that is used for purposes of agricultural production in Malawi;

"excess tobacco" means any volume of tobacco in excess of ten per cent of allocated production quota delivered to a tobacco floor;

"good agricultural practices" means the minimum guidelines on agricultural production practices for tobacco as determined by a tobacco research institution;

"grower" means a person registered by the Commission to grow tobacco;

"growers' association" means an association referred to in section 33 for purposes of representing growers in all tobacco matters;

"hessian scheme" means a scheme registered and licensed by the Commission to collect used hessians from buyers, replace the torn hessians and fumigate hessians before distributing them to its members;

"inspector" means a seed inspector licensed under the Seed Act, a pesticide inspector designated by the Pesticides Control Board under the Pesticides Act or any other inspector appointed by the Commission; No. 21 of 2022 Cap. 35:03

"minimum price" means a minimum price set by the Minister under section 69;

"processed tobacco" means leaf tobacco either mechanically or hand processed by separation of its midrib or stem, dried and packed at a processing factory or similar facility that is licensed to carry out such operations;

"sales supervisor" means an official of the Commission having the authority to oversee the performance and conduct of all matters regarding the sale of tobacco at a tobacco floor;

"tobacco" means unprocessed tobacco, whether cured or uncured, and includes stems and scraps resulting from handling by a grower;

"tobacco and nicotine product" means a smoking tobacco product, smokeless tobacco product, tobacco-free nicotine pouch and vaping product;

"tobacco floor" means premises licensed by the Commission for purposes of selling and buying tobacco;

"tobacco research institution" means a designated institution established to, among other functions, carry out research, training and extension services in the tobacco industry;

"transporter" means a person registered and licensed by the Commission to transport tobacco; and

"transporters' association" means an association of transporters referred to in section 51 for purposes of representing transporters in all tobacco matters.

Part II—The Tobacco Commission

Establishment of the Tobacco Commission

3.—(1) There is hereby established the Tobacco Commission (in this Act otherwise referred to as the "Commission") which shall be a body corporate with perpetual succession and a common seal and shall be capable, by that name, of–

(*a*) doing or performing all such acts as may be necessary or expedient for the furtherance of the provisions of this Act; and

(*b*) subject to this Act, doing or performing all acts as a body corporate may, by law, do or perform or such acts as are incidental or appertain to a body corporate.

(2) The Commission shall perform its functions and exercise the powers provided for in this Act independent of the direction, influence or interference of any person or entity.

Functions of the Commission

4.–(1) The Commission shall regulate and promote the development of the tobacco industry in Malaŵi.

(2) Without derogation from the generality of subsection (1), the Commission shall–

(*a*) regulate the–

(i) production, grading, processing, importation, exportation and marketing of tobacco; and

(ii) manufacture, sale, labelling, advertising, promotion and use of tobacco and nicotine products;

(*b*) promote crop diversification and good agricultural practices in tobacco production;

(*c*) collate statistics and distribute market studies and information relating to the production and marketing of tobacco and manufacturing, sale and consumption of tobacco and nicotine products;

(*d*) promote a conducive environment in the tobacco industry to allow effective and fair competition for stakeholders;

(*e*) regulate and enforce quality standards of tobacco;

(*f*) advise Government on policies and strategies to promote and develop the tobacco industry;

(*g*) monitor and enforce compliance by licensees with terms and conditions imposed;

(*h*) where necessary and where the Commission is not an interested party, mediate a dispute under this Act;

(*i*) promote public awareness of the hazards of use of tobacco and nicotine products and ensure that consumers are provided with accurate information to make fully informed decisions about using tobacco and nicotine products;

(*j*) promote public awareness of harmfulness of child labour;

(*k*) promote a smoking harm reduction strategy;

(*l*) provide general direction on the operations of the Commission as may be necessary for the implementation of this Act;

(*m*) recommend reforms to this Act;

(*n*) administer any fund established pursuant to this Act; and

(*o*) perform any other functions as are necessary or incidental to the implementation of this Act.

Powers of the Commission

5.—(1) The Commission shall, in the discharge of its functions, have power to—

(*a*) issue, review, suspend or revoke a licence or certificate of registration;

(*b*) recommend to the Minister, any fees, charges and levies provided under this Act;

(*c*) establish terms of reference and guidelines for the operations of the Commission and its committees;

(*d*) impose administrative sanctions and penalties for breach of this Act;

(*e*) issue regulatory orders and impose regulatory sanctions; and

(*f*) do and perform all things or acts that are necessary or expedient for the execution of its functions, duties and powers under this Act.

(2) The Commission may delegate, in writing, any of its powers and functions under this Act to the Chief Executive Officer or any employee of the Commission.

Composition of the Commission

6.–(1) The Commission shall consist of ten members who shall be citizens of Malaŵi comprising—

(*a*) five members appointed by the Minister as follows—

(i) one person with experience in corporate governance, who shall be the Chairperson;

(ii) one smallholder tobacco grower who is a registered member of an apex growers association;

(iii) one person who is an agriculturist;

(iv) one commercial tobacco grower; and

(v) one person of high integrity, representing the general interest of the public ; and

(*b*) the following *ex-officio* members or their designated representatives—

(i) the Secretary responsible for agriculture;

(ii) the Secretary responsible for labour;

(iii) the Secretary to the Treasury;

(iv) the Comptroller of Statutory Corporations; and

(v) the Secretary responsible for trade.

(2) Members of the Commission shall elect among their number, a Vice-Chairperson who shall exercise the functions of the Chairperson during any period that the Chairperson is unable to do so.

(3) An *ex-officio* member of the Commission shall not be eligible to be appointed as Chairperson or elected as Vice-Chairperson of the Commission.

(4) A person, other than an *ex-officio* member, shall not be qualified for appointment as a member of the Commission, if that person–

(*a*) is adjudged or otherwise declared bankrupt by a competent court of law;

(*b*) is declared mentally or physically incapacitated by a registered medical practitioner;

(*c*) was, within the period of seven years immediately preceding the date of his or her proposed appointment, convicted and sentenced to any term of imprisonment without the option of a fine and has not received a pardon;

(*d*) is a member of Parliament;

(*e*) is a Minister or Deputy Minister;

(*f*) is a licensee or an employee of a licensee;

(*g*) is a director of a company holding a licence under this Act;

(*h*) holds five per cent or more shares in a company holding a licence under this Act;

(*i*) would, for any other reason, be disqualified by law from serving as a trustee or director of a company; or

(*j*) is in a position where there is a conflict of interest between the interests of the member as member of the Commission and the business interest of that member.

(5) A member of the Commission, other than an *ex-officio* member, shall not, by reason only of his or her appointment as a member of

the Commission, be deemed to be an employee in the public service.

(6) The Minister shall publish, in the *Gazette*, the names of all members of the Commission as first constituted, and every subsequent change in the membership.

Tenure and vacancies

7.–(1) A member of the Commission, other than an *ex-officio* member, shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Commission, other than an *ex-officio* member, shall become vacant–

(*a*) on the expiry of the term of office of the member;

(*b*) if the member resigns from office in accordance with subsection (3);

(*c*) upon the member being convicted of an offence against any written law and being sentenced to a term of imprisonment without the option of paying a fine;

(*d*) if a situation arises that if the member had not been appointed, the member would have been disqualified from appointment;

(*e*) if the member is absent, without valid excuse, from three consecutive meetings of the Commission of which the member has had notice;

(*f*) upon the member becoming mentally or physically ill, where a suitably qualified medical practitioner certifies that the member is no longer, by reason of the illness, capable of performing duties of the office of member of the Commission;

(*g*) upon the member being removed from a position of trust by a court of law;

(*h*) upon the member being removed from office in accordance with subsection (4); or

(*i*) upon the death of the member.

(3) A member of the Commission, other than an *ex-officio* member, may at any time resign from office by giving written notice to the Minister.

(4) The Minister may remove any member of the Commission, except an *ex-officio* member, on any of the following grounds–

(*a*) misconduct that brings the Commission into disrepute;

(*b*) incompetence in the execution of the functions of the office of member;

(*c*) failure to declare a conflict of interest relating to any matter under consideration by the Commission;

(*d*) disclosure or publication to any other person or entity, other than in the course of duty, of any confidential information of the Commission obtained in the course of duty or otherwise; or

(*e*) being compromised to the extent that his or her ability to impartially and effectively exercise the duties of his or her office is seriously in question.

(5) A vacancy in the membership of the Commission shall be filled, within sixty days of the occurrence of the vacancy, by the appointment of a new member by the Minister in accordance with section 6.

(6) A person appointed to fill a vacancy under subsection (5) shall serve the remainder of the term of office, but no person shall be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(7) The period served by a person appointed under subsection (5) shall not be regarded as a term, for the purposes of subsection (1), unless the period is two years or more.

Meetings of the Commission

8.—(1) The Commission shall meet for the transaction of its business at least once in every three months at a place and a time as the Chairperson shall determine after consulting the Chief Executive Officer.

(2) The Chairperson shall convene ordinary meetings of the Commission by giving the members not less than fourteen days' written notice.

(3) The Chairperson may, on his own motion and at any time, convene an extraordinary meeting of the Commission upon giving the members not less than three days' written notice.

(4) The Chairperson shall convene an extraordinary meeting within seven days of receipt of a request, in writing, signed by not less than four members specifying the purpose for which the meeting is to be convened.

(5) A quorum at every meeting of the Commission shall be constituted by five members.

(6) The Chairperson or, in his or her absence, the Vice-Chairperson shall preside over all meetings of the Commission, and in the absence of both the Chairperson and the Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over the meeting.

(7) A decision of the Commission on any matter shall be determined by a majority vote of the members present and voting,

and where there is an equality of votes, the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson, or other member presiding, shall have a casting vote in addition to that person's deliberative vote.

(8) The Commission may, where necessary taking into account the nature of the matter to be deliberated, invite any person to attend its meeting or any of its committee meetings and participate in the deliberations or to make a presentation or to be asked questions on any matter, but the person so invited shall not be entitled to vote.

(9) The Chief Executive Officer shall serve as secretary at meetings of the Commission and shall record and keep minutes of each meeting of the Commission and the minutes shall be confirmed at the subsequent meeting.

(10) The Commission may make rules to regulate its proceedings and business or the proceedings and business of any of its committees.

(11) The Chief Executive Officer, or any other member of staff of the Commission as the Chief Executive Officer may designate, may attend a meeting of the Commission and of any of its committees and may address the meeting, but shall not vote on any matter.

(12) Where, at any meeting, the deliberations of the Commission or any of its committees concern the Chief Executive Officer, or any member of staff of the Commission designated to attend the meeting, the Commission, or the committee, may exclude the Chief Executive Officer or the member of staff from the meeting.

Committees of the Commission

9.—(1) The Commission may, for the better exercise of its functions and powers, establish committees to perform any of its functions and carry out such other responsibilities as the Commission may specify.

(2) The Commission shall appoint a chairperson for each committee from amongst the members appointed under section 6 (1) (*a*).

(3) The Chief Executive Officer shall serve as secretary at meetings of each committee of the Commission or may, with the approval of the Chairperson, delegate a senior member of staff to serve as secretary at meetings of a committee.

(4) Every committee shall act in accordance with directions given to it, in writing, by the Commission.

Personal attendance of meetings

10. A member of the Commission, or a committee of the Commission, other than an *ex-officio* member, shall attend meetings

of the Commission or a committee of the Commission in person, and where a member is unable to attend any meeting, the member may request that his or her apology for failure to attend the meeting be recorded.

Disclosure of interest

11.—(1) A member of the Commission or a committee of the Commission and a person invited to attend a meeting of the Commission or any of its committees who has a direct or indirect interest in any matter before the Commission or any of its committees, shall disclose the interest as soon as is practicable before or soon after the commencement of the meeting and shall not take part in any consideration or discussion of, or vote on, any question on such matter at that meeting or any subsequent meeting.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a person fails to disclose interest in accordance with subsection (1) and the Commission or committee of the Commission makes a decision which benefits that person, a close relative, professional or business partner of that person, the decision shall, to the extent that it benefits that person, the close relative, professional or business partner, be null and void.

(4) For purposes of this section, "close relative" means spouse, brother, sister, parent, child, child of the spouse, sibling of a spouse and the spouse of any of these relations.

Allowances and expenses

12.–(1) A member of the Commission or a member of a committee of the Commission shall be paid such allowance, from the funds of the Commission, as the Minister shall determine on recommendation of the Government department responsible for human resource management and development.

(2) The Commission may reimburse any reasonable expenses incurred in connexion with the business of the Commission by a member of the Commission, a member of a committee of the Commission or a person invited to attend a meeting pursuant to section 8(8).

Part III—Administration

Secretariat

13. There shall be a secretariat of the Commission which shall consist of a Chief Executive Officer and other members of staff of the Commission appointed in accordance with this Act.

Appointment of the Chief Executive Officer

14.–(1) The Commission shall appoint a Chief Executive Officer, who shall be responsible for the administrative control of, and supervision over, the work of the Commission.

(2) The Chief Executive Officer shall be appointed through a competitive process and on such terms and conditions as the Commission shall determine after consulting the Government department responsible for human resource management and development.

(3) A person shall not be appointed as Chief Executive Officer unless the person—

(*a*) possesses a minimum qualification of a Master's degree from a reputable education institution accredited or recognized under the National Council for Higher Education Act, obtained subsequent to a bachelor's degree from a reputable education institution accredited or recognized under the National Council for Higher Education Act; Cap. 30:12 Cap. 30:12

(*b*) has proven and demonstrable work experience in agriculture, tobacco industry, trade, finance, economics, law, administration or any field relevant to the functions and responsibilities of the Commission;

(*c*) has not less than five years' experience in executive management; and

(*d*) does not hold a political office.

Duties and responsibilities of the Chief Executive Officer

15.—(1) Subject to the general and special directions of the Commission, the Chief Executive Officer shall be responsible for—

(*a*) the day-to-day administration and management of the affairs of the Commission;

(*b*) the effective management of the funds, property and business of the Commission;

(*c*) the administration, organization and control of the other members of staff of the Commission;

(*d*) the effective administration and implementation of this Act; and

(*e*) the performance of any other duties and functions as may be delegated to him or her by the Commission.

(2) The Chief Executive Officer shall devote his or her full time to the duties of his or her office and shall provide the Commission with all the information, data, statistics, documents and other materials pertinent to the efficient performance by the Commission of its functions and responsibilities under this Act or any other written law.

(3) The Chief Executive Officer may, with the approval of the Commission, delegate any power or function assigned to him or her under this Act to any member of staff of the Commission.

Tenure and removal of the Chief Executive Officer

16.–(1) The Chief Executive Officer shall hold office for a term of five years and shall be eligible for re-appointment for a further term of five years.

(2) The Commission may terminate the appointment of a Chief Executive Officer where the Chief Executive Officer–

(*a*) is incompetent in the execution of the functions of the office;

(*b*) commits a misconduct that brings the office of Chief Executive Officer or the Commission into disrepute;

(*c*) is not able to perform the functions of his or her office by reason of mental or physical infirmity;

(*d*) is declared or adjudged bankrupt by a competent court of law;

(*e*) is convicted of an offence and sentenced to a term of imprisonment without the option of paying a fine;

(*f*) fails to declare a conflict of interest relating to any matter under consideration by his or her office or the Commission; or

(*g*) is found guilty of a misconduct punishable by dismissal under his or her employment contract.

(3) The Commission shall not remove a Chief Executive Officer from office unless the Chief Execute Officer is given an opportunity to be heard.

Other members of staff of the Commission

17.—(1) The Commission shall employ management, administrative, professional, technical and such other staff, subordinate to the Chief Executive Officer, as the Commission considers necessary for the effective discharge of its duties and functions.

(2) The Commission may, by directions in writing, delegate to the Chief Executive Officer, the appointment, discipline and dismissal of members of staff below the level of director, and the Chief Executive Officer shall report to the Commission, at its next meeting, every appointment, disciplinary decision or dismissal made pursuant to this subsection.

(3) The members of staff of the Commission referred to in subsection (1) shall be appointed on such terms and conditions as the Commission shall determine after consulting the Government department responsible for human resource management and development.

(4) Section 16 shall apply, with the necessary modifications, to dismissal of other members of staff employed under this section.

Part IV—Funds and Property of the Commission

Funds and property of the Commission

18.–(1) The funds and property of the Commission shall consist of–

(*a*) such sums as may, from time to time, be payable to the Commission from moneys appropriated by Parliament;

(*b*) such sums of money as may accrue to, or be received by, the Commission by way of fees, charges, penalties, tobacco levies, dues or rates imposed under this Act; and

(*c*) such sums of money, or other property, real or personal, as may be acquired, purchased or received by, or transferred to, the Commission whether by way of donations, devise, bequest, purchase or otherwise.

(2) The funds and property of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purpose.

(3) The Commission shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Assets Act.

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Cap. 37:03

Accounting and audit

19.—(1) The Commission shall cause to be kept proper books of accounts and other records relating to its accounts in accordance with the Public Finance Management Act.

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(2) The accounts of the Commission shall be audited annually by the Auditor General, or by independent professional auditors appointed by the Commission after consulting the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

Financial year of the Commission

20.—(1) The financial year of the Commission shall be a period of twelve months commencing on 1st April each year and ending on 31st March of the following year.

(2) The first financial year of the Commission may be such shorter or longer period than twelve months as the Commission shall determine but being not less than six months nor more than eighteen months.

Part V—Registration, Licensing and Duties of Growers

Registration of growers

21.—(1) A person who intends to grow tobacco shall apply for registration, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, register the applicant and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) A buyer, tobacco floor operator, commercial grader, transporter, and any entity affiliated to the buyer, tobacco floor operator, commercial grader or transporter shall not be registered to grow tobacco.

(4) The Commission shall keep and maintain a register, in the prescribed form, of growers for each growing season.

(5) A buyer or a representative of a growers' association may, upon written request, inspect the register at the Commission's office during working hours.

Registration numbers and production quotas

22.—(1) The Commission shall, upon registering a grower–

(*a*) allot the grower one registration number for each type of tobacco to be grown by the grower; and

(*b*) allocate a production quota to the grower.

(2) A grower who registers more than one estate for growing tobacco shall be allotted a registration number in respect of each estate.

(3) A grower shall not transfer to another person the registration number which has been allotted to him or her.

Licensing of growers

23.—(1) A person registered as a grower shall submit an application for an annual licence, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, issue a licence in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) A grower may be licensed to grow tobacco either on contract farming or non-contract farming arrangement.

(4) A grower with more than one estate may be licensed on either or both auction and contract marketing systems.

(5) The Commission shall license growers no later than 31st October of each year.

(6) Where an application for a licence is received by the Commission after the specified date in subsection (5), the applicant shall pay a prescribed penalty for late licence application to the Commission.

(7) Subsection (1) shall not apply to a person who grows tobacco for research purposes.

Production of certificate of registration

24.— (1) A person shall not have in his or her possession, for any purpose, a certificate of registration which is not his or her own, except when he or she is selling tobacco as an agent of a grower.

(2) A grower shall, on demand by an officer of the Commission, produce for inspection, his or her certificate of registration.

(3) An agent shall, on demand by an officer of the Commission, produce for inspection, the written authority and certificate of registration of his or her principal.

(4) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

(5) For purposes of this section, "agent" shall be a worker, spouse, child or sibling of a grower.

Grower reporting obligations at the beginning of growing season

25.—(1) A grower shall, at the beginning of the growing season, furnish the Commission with his or her undertakings on how he or she dealt with issues of–

(*a*) child labour;

(*b*) afforestation;

(*c*) tobacco nesting;

(*d*) non-tobacco related materials;

(*e*) crop diversification initiatives;

(*f*) good agricultural practices;

(*g*) safe environment for his or her workers;

(*h*) freedom of association of the workers;

(*i*) forced labour;

(*j*) fair treatment of workers; and

(*k*) workers' working hours.

(2) Where a grower fails to furnish the Commission with his or her undertakings referred to in subsection (1), within the prescribed period, the Commission may—

(*a*) deregister the grower; or

(*b*) impose any other regulatory sanction on the grower.

(3) Where the Commission deregisters a grower under subsection (2), the Commission may, if satisfied that the grower has complied with terms imposed by the Commission, re-register the grower.

(4) The Commission shall appoint inspectors to monitor compliance of the grower's undertaking in subsections (1).

(5) For purposes of this section–

"non-tobacco related material" means any material or an object that is not related to tobacco but is present in tobacco bales; and

"tobacco nesting" means—

(*a*) the concealment of substandard tobacco within a bale; or

(*b*) the concealment of stems, scraps, loose leaf or any other object within a bale of graded tobacco bundles,

with an intention to deceive a buyer on quality and weight of tobacco.

Certificate of compliance

26.–(1) A grower shall not use child labour, forced labour and tenancy labour throughout the tobacco value chain.

(2) A grower shall, when applying for a licence or renewing a licence issued under this Act, sign a commitment document as set by the Commission, for purposes of complying with subsection (1).

(3) An officer of the Commission, a labour officer appointed under the Employment Act, or any other person authorized by the Commission may, at any time and without notice, visit a grower's premises to monitor the growers' compliance with subsection (1).

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(4) The Commission shall, upon being satisfied that a grower has complied with subsection (1), issue a certificate of compliance.

PART VI—BUYERS

Registration of buyers

27.—(1) A person shall not be registered as a buyer unless the person—

(*a*) is a body corporate;

(*b*) demonstrates that it has good financial standing; and

(*c*) has capacity to buy tobacco.

(2) A person who intends to buy tobacco shall submit an application for registration, in the prescribed form, to the Commission.

(3) The Commission shall, within thirty days of receipt of the application under subsection (2), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, register the applicant and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

Licensing of buyers

28.—(1) A person registered to buy tobacco shall not buy tobacco unless the person holds a valid buying licence issued by the Commission.

(2) A person registered to buy tobacco shall submit an application for a licence, in the prescribed form, to the Commission.

(3) The Commission shall, within thirty days of receipt of the application under subsection (2), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, issue a licence to the buyer in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(4) The Commission shall keep and maintain a register, in the prescribed form, of buyers for each growing season.

(5) The register shall identify, for each growing season, a buyers' trade requirements, including number of contracts and the buying quota for that season.

(6) A stakeholder in the tobacco industry may, upon written request, inspect the register at the Commission's office during working hours.

(7) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K40,000,000 and imprisonment for seven years.

(8) In addition to the penalty in subsection (7), a court may order that any tobacco connected with the offence be forfeited to the Commission.

Part VII—Contract and Non-Contract Farming

Contract farming

29.—(1) A grower and a buyer may enter into contract farming no later than 31st July of each year.

(2) The Commission may, where it considers fit, allow a buyer to enter into contract farming with a grower after the period stipulated under subsection (1).

(3) Where a grower has registered more than one estate for growing tobacco, he or she may enter into contract farming in respect of each registered estate.

(4) A grower may grow more than one type of tobacco on one estate.

(5) A grower may enter into contract farming with no more than one buyer in each season and shall commit to sell the whole of his or her contracted crop for that season to the buyer.

(6) A buyer shall, before entering into a contracting farming with a grower, consult the Commission on the production quota to be allocated to the grower.

(7) A buyer who enters into contract farming with a grower shall commit to buy from the grower the whole of the contracted volume of tobacco for that season.

(8) A buyer shall not purchase tobacco under contract farming except—

(*a*) at tobacco floors; and

(*b*) in the presence of officials of the Commission.

Minimum terms under contracts

30.—(1) The Commission shall prescribe minimum terms and conditions to be included in a contract between a grower and a buyer.

(2) Where a grower and a buyer enter into a funded contract, the buyer may, with the authorization of the Commission, provide a loan for inputs for crops other than tobacco provided that the provision of the loan for inputs for crops other than tobacco shall not be a condition of the funded contract.

(3) A buyer may recover the loan provided under subsection (2) from tobacco proceeds on condition that—

(*a*) the buyer shall disclose to the grower in full all the funds to be deducted prior to signing the contract;

(*b*) the interest rate and other terms of the loan shall not be less favourable to the interest rates and terms available on the market; and

(*c*) production of other crops shall not be a compulsory requirement under the funded contract.

(4) A buyer shall submit to the Commission a loan portfolio, in a form prescribed by the Commission, of a loan executed between the buyer and a grower before the beginning of the marketing season.

(5) A buyer shall not deduct or cause to be deducted a loan from a grower without the authorization of the Commission.

(6) A buyer who contravenes this section shall be liable to an administrative penalty of K10,000,000 for the first offence and K20,000,000 for the subsequent offence.

Register of contracts

31.—(1) The Commission shall keep and maintain a register of contracts executed between growers and buyers.

(2) A buyer shall register a contract executed under section 29 with the Commission.

(3) A register kept and maintained under subsection (1) shall, upon request by parties to the contract, or any other person authorized by the law, be open for inspection during the working hours of the Commission.

Non-contract farming

32.—(1) A grower may produce tobacco without being contracted by a buyer.

(2) The Commission shall keep and maintain a register of growers who produce tobacco without being contracted by buyers.

(3) A register kept and maintained under subsection (2) shall, upon request by buyers, growers and growers' associations, be open for inspection during the working hours of the Commission.

(4) A grower who produces tobacco pursuant to subsection (1) shall sell the tobacco at a tobacco floor under auction marketing system.

(5) The Commission shall prescribe the minimum terms and conditions for auction marketing system.

Part VIII—Growers' Associations

Growers' association

33.—(1) Growers may form a grower's association which shall—

(*a*) have a membership of not less than three thousand growers; and

(*b*) be registered under the Trustees Incorporation Act or the Cooperative Societies Act. Cap. 5:02 Cap.47:02

(2) The Commission may, in consultation with the growers' associations registered under this Act, facilitate the establishment of an apex growers' association which shall be a representative organization of all growers' associations in Malawi.

Registration of growers' associations

34.—(1) A growers' association shall submit an application for registration, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the growers' association has—

(*a*) met the prescribed requirements, register the growers' association and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) The Commission shall keep and maintain a register of growers' associations in the prescribed form.

(4) A register kept and maintained under subsection (3) may, upon request by a buyer, tobacco floor operator, grower or growers' association, be open for inspection during the working hours of the Commission.

Licensing of growers' associations

35.—(1) A registered growers' association shall submit an application for a licence, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the growers' association has—

(*a*) met the prescribed requirements, issue a licence to the growers' association in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

Membership of growers' associations

36.—(1) A grower shall not belong to more than one grower's association.

(2) A grower may join a growers' association of his or her choice and where a grower's preferred association does not qualify for licensing, the grower may, with the approval of the Commission, join any other growers' association that has been registered and licensed by the Commission.

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(3) Notwithstanding any provision of the Cooperative Societies Act, where a growers' association has become insolvent or has otherwise been dissolved due to failure to perform or other malpractices, an executive committee member or a trustee of that growers' association shall not hold a position in another growers' association for a period of seven years from the date the growers' association was declared insolvent or was dissolved.

Growers' association to represent its members

37.—(1) A growers' association shall represent its members in the production and marketing of tobacco.

(2) Notwithstanding subsection (1), a growers' association shall not enter into a contract on behalf a member of the association.

Part IX—Production Quota and Excess Tobacco

Allocation of production quota

38.—(1) The Commission shall determine a total annual production volume for a season based on the trade requirements submitted by buyers.

(2) A grower shall not produce tobacco in excess of the allocated quota.

(3) Notwithstanding subsection (2), the Commission may allow a grower to produce ten per cent variance on the allocated quota.

Regulation of excess tobacco

39.—(1) Where a grower produces excess tobacco as a result of natural factors, the Commission shall uplift the grower's allocated quota and, upon sale of the excess tobacco, collect one-quarter of the proceeds of the excess tobacco and remit the remainder to the grower.

(2) A grower who willfully produces excess tobacco in contravention of his or her allocated quota or the contractual agreement with his or her buyer shall be subject to a regulatory order.

(3) Any penalties collected by the Commission under subsection (1) shall be used for the development of the tobacco industry.

Part X—Hessian Scheme

Registration of hessian scheme

40.—(1) A person who intends to operate a hessian scheme shall submit an application for registration, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, register the applicant and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) A buyer, transporter, a tobacco floor operator, or any company associated with the buyer, transporter or tobacco floor operator shall not be registered to operate a hessian scheme.

Licensing of hessian scheme

41.—(1) A person registered to operate a hessian scheme shall submit an application for an annual licence, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, issue a licence, to operate a hessian scheme, in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

Membership of hessian scheme

42.—(1) A grower may, for each growing season, join a hessian scheme of his or her choice.

(2) A grower shall not join more than one hessian scheme in a growing season.

(3) Where a hessian scheme licence has been revoked, a grower may, with the approval of the Commission, join a hessian scheme of his or her choice.

(4) A hessian scheme shall not provide its services to a person who is not a member of the hessian scheme.

Hessian charges

43.—(1) The Commission shall, by notice published in the *Gazette*, prescribe hessian charges for each growing season.

(2) A person shall not deduct any sum from a grower other than the hessian charge prescribed by the Commission.

(3) The hessians charge deducted under subsection (2) entitles a grower to the hessians and the grower shall be free to collect or transfer the hessians to another hessian scheme upon expiry of his or her membership.

Hessian returns

44. A hessian scheme shall, within the period fixed by the Commission, furnish the Commission with information relating to the condition, quantity and quality of hessians collected, replaced and distributed to its members.

Hessian inspectors

45. The Commission shall appoint hessian inspectors who shall have the power of entry to all hessian scheme premises for the purpose of inspecting the hessian stored on the premises.

Collection of hessian for non-hessian scheme members

46.—(1) A buyer shall surrender hessians for a grower who is not a member of a hessian scheme to the tobacco floor operator.

(2) A grower who is not a member of a hessian scheme shall collect his or her hessians from a tobacco floor operator.

Part XI—Transporters

Transporters to be registered and licensed

47.—(1) A person shall not transport tobacco to a tobacco floor unless the person is registered and licensed by the Commission.

(2) Subsection (1) shall not apply to a grower who transports his or her tobacco to a tobacco floor using a vehicle registered in his or her name.

(3) The Commission shall, by notice published in the *Gazette*, prescribe requirements for a grower to transport his or her tobacco using a vehicle registered in the name of the grower.

Registration of transporters

48.—(1) A person who intends to transport tobacco to a tobacco floor shall submit an application for registration, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, register the applicant and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) A buyer, tobacco floor operator, commercial grader, growers' association or any company associated with the buyer, tobacco floor operator, commercial grader, growers' association shall not be allowed to register and operate as a transporter.

Licensing of transporters

49.—(1) A person registered to transport tobacco to a tobacco floor shall submit an application for a licence, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, issue a licence to the transporter in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) The Commission shall—

(*a*) develop and publish a code of conduct for transporters; and

(*b*) before the opening of each marketing season, publish a list of licensed transporters, in print and electronic media and the Commission's website.

Transport rates

50.—(1) The Commission shall, after consulting relevant stakeholders, determine maximum transport rates for transportation of tobacco in a particular season.

(2) The Commission shall circulate transport rates determined under subsection (1) to all relevant stakeholders and publish the transport rates in at least two newspapers of nationwide circulation.

(3) A transporter shall not charge a rate or fee from a grower other than the maximum transport rate published by the Commission.

(4) A transporter who contravenes subsection (3) shall be subject to a regulatory order.

PART XII—TRANSPORTERS' ASSOCIATIONS

Transporters' associations

51.—(1) Transporters may form a transporters' association which shall—

(*a*) have a minimum membership of thirty transporters; and

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(*b*) be registered under the Trustees Incorporation Act or the Cooperative Societies Act.

(2) A transporter shall—

(*a*) belong to one transporters' association in a growing season; and

(*b*) pay service charges as approved by the Commission.

Registration of transporters' associations

52.—(1) Transporters who intend to form a transporters' association shall submit an application for registration of the transporters' association, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the transporters have—

(*a*) met the prescribed requirements, register the transporters' association and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) The Commission shall keep and maintain a register of transporters' associations in the prescribed form.

(4) A register kept and maintained under subsection (3) may, upon request by stakeholders, be open for inspection during the working hours of the Commission.

Licensing of transporters' associations

53.—(1) A registered transporters' association shall submit an application for a licence, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the transporters' association has—

(*a*) met the prescribed requirements, issue an annual licence to the transporters' association in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

Part XIII—Commercial Graders

Registration of commercial graders

54.—(1) A person who intends to carry on business as a commercial grader shall submit an application for registration, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, register the applicant and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) The Commission shall not register a transporter, buyer, tobacco floor operator, grower, a growers' association or any company associated with the transporter, buyer, tobacco floor operator, grower or growers' association, as a commercial grader.

Licensing of commercial graders

55.—(1) A person shall not carry on business as a commercial grader unless he or she is licensed by the Commission.

(2) A registered commercial grader shall submit an application for licence, in the prescribed form, to the Commission.

(3) The Commission shall, within thirty days of receipt of the application under subsection (2), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, issue a commercial grader's licence in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(4) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

Commercial grading premises to be licensed

56.—(1) A commercial grader shall grade tobacco at a premises licensed by the Commission.

(2) An application for a commercial grading premises licence shall be in the prescribed form.

(3) The Commission shall, within thirty days of receipt of the application under subsection (2), where it is satisfied that the premises—

(*a*) meets the prescribed requirements, issue an annual commercial grading premises licence in the prescribed form; or

(*b*) does not meet the prescribed requirements for licensing, reject the application and give reasons for the decision.

(4) A person who grades tobacco at a premises not licensed by the Commission commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

Commercial grading rates

57.—(1) The Commission shall, after consulting relevant stakeholders, determine maximum commercial grading rates applicable for a particular season.

(2) The Commission shall circulate commercial grading rates determined under subsection (1) to all stakeholders and publish the commercial grading rates in at least two newspapers of nationwide circulation.

(3) A commercial grader shall not charge a rate from a grower higher than the maximum commercial grading rates circulated and published by the Commission.

(4) A commercial grader who contravenes subsection (3) shall be subject to a regulatory order.

Grading inspectors

58.—(1) The Commission shall appoint grading inspectors.

(2) A grading inspector may, during office hours, enter a commercial grading premises to inspect the premises and the grading of tobacco on the premises.

(3) A grading inspector may open any bale of tobacco at a tobacco floor or at a commercial grading premises.

Labelling of graded tobacco

59.—(1) A commercial grader shall label each bale of tobacco graded by the commercial grader.

(2) A label under subsection (1) shall—

(*a*) be legible; and

(*b*) contain the—

(i) the name or official stamp of the grader; and

(ii) distinct identification number of the bale.

(3) A commercial grader who fails to label a graded tobacco bale shall be subject to a regulatory order.

Part XIV—Tobacco Floor

Tobacco floor operator to be registered

60.—(1) A person shall not operate a tobacco floor unless he or she is registered with the Commission.

(2) A person who intends to operate a tobacco floor shall submit an application for registration, in the prescribed form, to the Commission.

(3) The Commission shall, within thirty days of receipt of the application under subsection (2), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, register the applicant as a tobacco floor operator and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(4) A buyer, commercial grader, growers' association, transporter, or any company associated with the buyer, commercial grader, growers' association or transporter shall not be registered to operate a tobacco floor.

(5) A tobacco floor operator may be allowed to operate more than one tobacco floor.

(6) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

Tariff for a tobacco floor operator

61.—(1) The Commission may, after prior consultation with a tobacco floor operator, and with the approval of the Minister, fix a tariff for tobacco floor operator's services.

(2) The Commission shall publish the tariff fixed under subsection (1) in the *Gazette* or in such media as the Commission shall determine appropriate.

(3) A tobacco floor operator shall not charge a tariff that exceeds the tariff fixed under subsection (1).

Tobacco floor licensing

62.—(1) A registered tobacco floor operator shall not operate a tobacco floor unless the tobacco floor is licensed by the Commission.

(2) The Commission shall not license a tobacco floor unless the tobacco floor is suitable for the sale of tobacco.

(3) A person who intends to operate a tobacco floor shall submit an application for a tobacco floor licence, in the prescribed form, to the Commission.

(4) The Commission shall, within thirty days of receipt of the application under subsection (3), where it is satisfied that the applicant has—

(*a*) met the prescribed requirement, issue a tobacco floor licence in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(5) A tobacco floor may be licensed as a main floor or satellite floor.

(6) For purposes of this Part, "satellite floor" means a branch of a main floor that is located away from the main floor and with a maximum holding capacity of one thousand and five hundred bales sold per day.

Inspection of tobacco floors

63. The Commission may, with or without notice, inspect a tobacco floor when the tobacco floor is operating.

Part XV—Sale of Tobacco

Allocation of delivery quota

64.—(1) The Commission shall allocate a quota of tobacco to—

(*a*) each buyer under contract marketing system;

(*b*) a grower on auction marketing system; and

(*c*) any other person for any marketing system as the Commission deems fit,

to be delivered at a tobacco floor over the course of a marketing season.

(2) A delivery quota shall allow for the delivery of ten per cent variance on the allocated quota.

Regulation of excess delivery quota

65.—(1) A person who delivers or causes to be delivered tobacco to a tobacco floor in excess of his or her delivery quota under section 64, shall be subject to a regulatory order.

(2) The proceeds collected by the Commission pursuant to subsection (1) shall be used for the development of the tobacco industry.

Transportation of tobacco under contract farming

66. A buyer shall, under contract farming, arrange for transportation of tobacco from a tobacco collecting point to a tobacco floor, unless the grower uses his or her own transportation to transport his or her own tobacco, and where such arrangement is made, the transporter shall recover cost of the transportation from the tobacco proceeds.

Delivery of tobacco by a grower to tobacco

67. A grower shall deliver or cause to be delivered tobacco to a tobacco floor in accordance with his or her delivery quota.

Marking of registration number on a bale

68. A grower shall mark his or her registration number, or cause his or her registration number to be marked, on each bale of tobacco which is delivered by him or her, or on his or her behalf, to a tobacco floor for sale.

Tobacco minimum prices

69.—(1) The Minister shall—

(*a*) at the beginning of the growing season, provide indicative prices for each grade of tobacco;

(*b*) at the beginning of the marketing season, provide the government minimum prices for each grade of tobacco; and

(*c*) ensure the wide spread dissemination of the indicative and government minimum prices, through official channels, including government websites, publications and agricultural extension services in order to ensure accessibility to all concerned parties.

(2) The Minister shall set minimum tobacco prices under subsection (1) after consulting the Commission, tobacco research institutions, buyers and growers through growers' associations.

(3) The Minister shall, in determining minimum tobacco prices, take into account—

(*a*) the production cost during the season;

(*b*) prices for the previous season;

(*c*) crop throw;

(*d*) global demand;

(*e*) good agricultural practices;

(*f*) the need to protect the interest of growers and buyers; and

(*g*) any other matter the Minister considers relevant.

(4) For purposes of this section—

"crop throw" means the percentage of each grade within the total crop volume; and

"production costs" means all the costs incurred in the production of tobacco from the nursery to the tobacco floor, including all materials, inputs, labour, transportation, levies and other services

expended in the production of tobacco and bringing it to the tobacco floor.

Classification and pricing of tobacco

70.—(1) The Commission shall, prior to a sale, classify tobacco into grades.

(2) The prices of tobacco, on all tobacco floors, shall be determined according to the grade of the tobacco as classified by the Commission.

Supervision, suspension and prohibition of sales on a tobacco floor

71.—(1) The Commission shall develop and publish guidelines for the purposes of controlling, regulating, suspending or prohibiting sales of tobacco on a tobacco floor.

(2) The Commission shall appoint a sales supervisor for each tobacco floor.

(3) A sales supervisor may, where in his or her opinion thinks that the tobacco floor operator has not complied with guidelines or any provision of this Act—

(*a*) suspend the tobacco floor for any period as he or she may determine;

(*b*) prohibit the sale of any tobacco; and

(*c*) give any directions as he or she considers appropriate to the tobacco floor operator.

Opening of tobacco floors

72.—(1) The Commission shall, for each tobacco floor, fix days and hours during which tobacco of different types may be offered for sale at the tobacco floor.

(2) The Commission shall, at least seven days before the opening of the tobacco floor, publish particulars in subsection (1) in such media as the Commission shall determine appropriate.

(3) A tobacco floor operator shall affix a notice of the particulars under subsection (1) at a conspicuous place at the tobacco floor.

(4) A tobacco floor operator shall not allow tobacco to be sold or offered for sale on his floor—

(*a*) on any day or time in the selling season other than a day or time fixed by the Commission; or

(*b*) at any time in any period in a selling season during which the Commission has prohibited sales on his or her tobacco floor.

Selling of tobacco

73.—(1) A person shall not offer tobacco for sale—

(*a*) on a tobacco floor, unless he or she is a grower; and

(*b*) at a place other than a tobacco floor licensed by the Commission.

(2) A grower shall not sell or cause to be sold tobacco using another grower's registration number.

(3) A grower who has grown more than one type of tobacco on one estate may sell on different types of marketing systems or to different buyers respective of each tobacco type.

(4) A grower shall not sell tobacco on a tobacco floor unless he or she has a certificate of compliance issued by the Commission under section 26.

(5) Where a grower has sold ten percent above the contracted volume of tobacco to the contracted buyer, the excess tobacco may be sold to the same buyer, another buyer or on auction market.

Sale of imported tobacco

74.—(1) A person shall not offer for sale, on a tobacco floor, imported tobacco unless—

(*a*) the imported tobacco is sold separately from tobacco which was grown within Malawi; and

(*b*) the imported tobacco is not purchased for the purposes of processing or manufacturing in Malawi without the written authority of the Minister.

(2) The Minister shall not authorize the purchase of tobacco for the purposes of subsection (1)(*b*) except under a customs or trade agreement between Government and the country within which the tobacco was grown.

(3) A sales supervisor shall, before the imported tobacco is sold on a tobacco floor, make known to all buyers on the tobacco floor the presence of and the country within which the tobacco in question was grown.

Sale of tobacco grown in previous growing season

75.—(1) The Commission shall, at the commencement of each season, issue guidelines for fumigation of tobacco which was grown in previous season to the effect that the tobacco or a representative sample of the tobacco has been inspected and no evidence of the presence of a living pest of tobacco has been found.

(2) A person shall not offer for sale, on a tobacco floor, tobacco which was grown in a previous growing season unless he or she is a holder of a fumigation certificate issued by the Commission.

(3) A sales supervisor shall, before tobacco grown in a previous season is offered for sale, make known to all the buyers on the tobacco floor the year in which the tobacco was grown and the state of the tobacco.

Buying of tobacco

76.—(1) A person shall not buy tobacco unless registered and licensed by the Commission.

(2) A buyer shall not buy tobacco at a place other than a tobacco floor licensed by the Commission.

(3) A buyer—

(*a*) shall buy at least five percent of his or her tobacco on an auction marketing system;

(*b*) may also purchase tobacco on a contract marketing system; and

(*c*) shall buy at least all the volumes that he committed to buy in that particular season.

(4) A buyer may refuse to purchase tobacco from a grower if the tobacco displays some demonstrable defect or damage.

(5) The Minister may in collaboration with the relevant regulatory bodies, issue guidelines and standards to ensure that the system under this section is treacable.

Deductions from and payments for purchase price of tobacco Cap. 48:03

77.—(1) A buyer shall pay the purchase price of tobacco to a tobacco floor operator on whose floor the tobacco is sold.

(2) A tobacco floor operator shall, within twenty-four hours of receiving the sale proceeds in accordance with subsection (1), remit the proceeds to the grower after deducting—

(*a*) the charges which he or she is authorized to make in terms of this Act;

(*b*) the amount of the levy, if any, which he or she may be required to collect in terms of this Act; and

(*c*) any amounts deductible as per issued garnish orders or charging orders.

(3) A person who contravenes or causes another person to contravene subsection (2), without a valid justification, shall be liable to an administrative penalty of up to one percent of the actual amount and currency involved.

(4) The Commission shall not cause to be deducted anything from the growers' proceeds in respect of his or her membership or activities performed by the growers' associations on behalf of the grower.

Prohibition for buying below set minimum prices

78.— (1) A buyer shall not buy tobacco at a price below the set minimum prices.

(2) A buyer who buys tobacco below the set minimum prices shall, within twenty-four hours of the sale, be notified and directed by the Commission to pay the grower the difference between the set minimum price and the price at which the buyer bought the tobacco.

(3) A buyer who buys tobacco below the set minimum prices commits an offence and shall be liable to an administrative penalty.

Mediation during sale of tobacco

79.—(1) Where a grower and a buyer disagree on the grade of the tobacco offered for sale—

(*a*) in the case of tobacco on auction marketing system, the grower or buyer may refer the matter to the Commission for mediation; and

(*b*) in the case of tobacco on contract marketing system, the grower and the buyer shall negotiate in good faith to reach an amicable resolution.

(2) The outcome of negotiations, under subsection (1)(*b*), shall not compromise the classification standards set by the Commission.

(3) Where a grower and buyer fail to agree after negotiations under subsection (1) (*b*), the grower or buyer shall refer the matter to the Commission for mediation.

(4) Where tobacco under contract marketing system is rejected by a buyer, a grower may re-offer at least two times before the tobacco is—

(*a*) withdrawn from the sale;

(*b*) offered to another buyer; or

(*c*) taken to the auction market.

Disposal of unsold tobacco

80.—(1) A grower or importer of tobacco, which remains unsold on a tobacco floor after the last day of the selling season, shall remove the tobacco from the tobacco floor within thirty days after the closure of the marketing season.

(2) Where the owner of tobacco fails to remove the tobacco, within the period prescribed under subsection (1), the Commission shall–

(*a*) collect the unsold tobacco into a central warehouse;

(*b*) dispose of unfit tobacco in accordance with Environment Management Act;

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(*c*) sell the tobacco as carry over stock in the next marketing season;

(*d*) determine the cost associated with the storage of tobacco; and

(*e*) deduct from the proceeds of the sale of the tobacco and remit balance to owner.

(3) For purposes of this section, "unfit tobacco" means tobacco with the worst physical characteristics and cannot be classified into any grade by the Commission.

Part XVI—Tobacco Processing, Import and Export

Registration of tobacco processors

81.—(1) A person shall not be registered as a tobacco processor unless the person—

(*a*) is a body corporate;

(*b*) demonstrates that it has good financial standing; and

(*c*) has capacity to process tobacco.

(2) A person who intends to process tobacco shall submit an application for registration, in the prescribed form, to the Commission.

(3) The Commission shall, within thirty days of receipt of the application under subsection (2), where it is satisfied that the applicant has—

(*a*) met the prescribed requirement, register the applicant and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

Licensing of tobacco processors

82.—(1) A person registered to process tobacco shall submit an application for a licence, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, issue a licence in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) Upon receipt of a licence authorizing the processing of tobacco, the licensee shall start the operation of processing tobacco within twelve months from the date of issuance of the licence.

(4) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K40,000,000 and imprisonment for seven years.

Exportation of tobacco or processed tobacco

83. A person shall not export tobacco or processed tobacco unless the person has—

(*a*) an export permit issued by the Commission;

(*b*) a plant phytosanitary certificate issued under the Plant Protection Act; and

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(*c*) an export sanitary certificate issued under the Control and Diseases of Animals Act.

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Importation of tobacco

84. A person shall not import tobacco into Malaŵi unless the person has an import permit issued by the Commission.

Part XVII—Tobacco Plants and Stalks

Tobacco plants and stalks to be uprooted and disposed

85.—(1) The Minister shall, by notice published in the *Gazette*, fix dates prior to which all tobacco plants and stalks of the preceding growing season shall be uprooted.

(2) A grower shall uproot and dispose of tobacco plants and stalks in accordance with a notice issued under subsection (1) and guidelines issued by the Commission, in writing.

(3) A grower may sell tobacco plants and stalks within the period announced by the Commission, in such media as the Commission shall determine appropriate.

Part XIII—Research and Extension in Tobacco

Designation of tobacco research institution

86.—(1) The Minister shall designate a research institution to conduct research in tobacco.

(2) A tobacco floor operator, commercial grader, processor, manufacturer and transporter shall not conduct research in tobacco.

(3) A buyer shall, with aproval from the Minister, conduct his or her own research in tobacco, in line with the acceptable guidelines.

Tobacco extension services

87.—(1) Tobacco extension services, as set by the Minister, shall be done by a person possessing relevant qualification as prescribed by the Commission.

(2) A person providing extension services shall, before the beginning of each season, submit, to the Commission, an application for a licence in the prescribed form.

Part XIX—Manufacturer

Registration of manufacturers

88.—(1) A person shall not be registered to manufacture tobacco and nicotine products unless the person—

(*a*) is a body corporate;

(*b*) demonstrates that it has good financial standing; and

(*c*) has capacity to manufacture tobacco and nicotine products.

(2) A person who intends to manufacture tobacco and nicotine products shall submit an application for registration as a manufacturer, in the prescribed form, to the Commission.

(3) The Commission shall, within thirty days of receipt of the application under subsection (2), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, register the applicant and issue a certificate of registration in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(4) A grower, hessian scheme operator, transporter, commercial grader, tobacco floor operator or any company associated with the grower, hessian scheme operator, transporter, commercial grader, tobacco floor operator shall not register to manufacture tobacco and nicotine products.

(5) The Commission shall keep and maintain a register of manufacturers in the prescribed form.

(6) A register kept and maintained under subsection (4) shall, upon request, be open for inspection during the working hours of the Commission.

Licensing of manufacturers

89.—(1) A person registered to manufacture tobacco and nicotine products shall submit an application for a licence, in the prescribed form, to the Commission.

(2) The Commission shall, within thirty days of receipt of the application under subsection (1), where it is satisfied that the applicant has—

(*a*) met the prescribed requirements, issue a manufacturer's licence to the applicant in the prescribed form; or

(*b*) not met the prescribed requirements, reject the application and give reasons for the decision.

(3) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K40, 000,000 and to imprisonment for seven years.

Inspection

90. The Commission may, with or without notice, inspect manufacturing premises during office hours.

Packaging and labelling

91. A manufacturer shall package and label tobacco and nicotine products in accordance with conditions prescribed by the Commission and standards set by the Malaŵi Bureau of Standards.

Part XX—Appeals Panel

Establishment of the Appeals Panel

92.—(1) There shall be an Appeals Panel consisting of three members, one of whom shall be designated chairperson, appointed by the Minister which shall determine appeals from decisions of the Commission.

(2) The Appeals Panel shall consist of a retired judge, a crop scientist and a person who is conversant with the tobacco industry.

(3) A member of the Appeals Panel shall hold office for three years and shall be eligible for reappointment for one further term of three years.

(4) A member of the Appeals Panel shall be paid such honoraria and allowances as the Minister shall determine.

(5) The Minister shall publish, in the *Gazette*, names of all members of the Appeals Panel as first appointed and every subsequent change in the membership.

Procedure of the Appeals Panel

93.—(1) A person who is aggrieved by a decision of the Commission under this Act may, within fourteen days of receipt of the decision, appeal to the Appeals Panel, in writing, for review of the decision.

(2) The Appeals Panel shall, subject to this Act, determine its own procedure.

(3) Proceedings of the Appeals Panel shall be conducted expeditiously with as little formality and technicality as the requirements of the matter under consideration permit.

(4) The Appeals Panel shall not be bound by rules of evidence but may inform itself on any matter as it deems appropriate.

(5) The Appeals Panel may, in considering an appeal, consult experts in any relevant field as it considers necessary.

Decisions of the Appeals Panel

94.—(1) The Appeals Panel shall, within fourteen days after hearing an appeal, make a decision in writing.

(2) A decision made under subsection (1) shall include the reasons for the decision, and a statement of its findings on material questions of fact and a reference to the evidence or other material on which those findings are based.

(3) A decision of the Appeals Panel shall be by consensus but where this is not possible, the decision of the Panel shall be determined by a majority of members of the Panel.

(4) In determining an appeal, the Appeals Panel may—

(*a*) affirm the decision under review;

(*b*) vary the decision under review; or

(*c*) set aside the decision under review and—

(i) make a decision in substitution for the decision so set aside; or

(ii) remit the matter to the Commission for reconsideration in accordance with any guidance provided by the Appeals Panel.

(5) The Appeals Panel shall cause a copy of its decision to be served on each party to the proceedings.

(6) The appellant shall pay the costs and expenses of the Appeals Panel in the event that his appeal has not been successful, otherwise the costs and expenses shall be paid by the Commission.

(7) A party aggrieved by a decision of the Appeals Panel may, within twenty-one days of the decision, appeal to the High Court on matters of law.

(8) The High Court shall hear and determine the appeal lodged under subsection (7) and may make such orders as it deems appropriate.

Part XXI—Offences and Penalties

Growing tobacco without registration and licence

95. A person who grows tobacco without being registered and licensed commits an offence and shall, upon conviction, be liable to–

(*a*) in the case of a body corporate, a fine of K20,000,000; and

(*b*) in the case of a natural person, a fine of K10,000,000 and to imprisonment for two years.

Prohibition against sale of tobacco

96.—(1) A grower who allows another person to use his or her registration number for selling any tobacco commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

(2) A tobacco floor operator who accepts for sale, on his or her tobacco floor, tobacco grown by an unlicensed person, commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

(3) Subject to section 79 (4), a person who accepts for sale, buys or sells, or offers for sale, or permits the sale, on tobacco floors, of tobacco under contract farming to a buyer other than the buyer to whom the grower is contracted, commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

(4) A person who accepts for sale, buys or sells, or offers for sale, or permits the sale, on a tobacco floor, of tobacco which was not grown within Malaŵi without authorization by the Minister, commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

(5) A tobacco floor operator who allows tobacco to be sold or offered for sale on his or her tobacco floor at times prohibited by the

Commission, commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

(6) A person who—

(*a*) buys or sells tobacco at any unauthorized place; or

(*b*) in any other way, contravenes section 30,

commits an offence and shall, upon conviction, be liable to—

(i) in the case of a buyer, a fine of K30,000,000; and

(ii) in case of a grower, a fine equivalent to twenty per cent of the value of the tobacco sold or purchased.

(7) In addition to the penalty under subsections (1), (2), (3), (4), (5) and (6), a court may order that all tobacco connected with the offence be forfeited to the Commission.

(8) Where a person offers for sale, or has sold, on a tobacco floor, nested tobacco, the Commission shall confiscate the nested tobacco bales.

Prohibition against processing, importing and exporting of tobacco without licence or permit

97.—(1) A person who—

(*a*) processes tobacco without a licence;

(*b*) exports or imports processed tobacco or tobacco without a permit, or

(*c*) attempts to export or import processed tobacco or tobacco without a permit,

commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

(2) In addition to the penalty in subsection (1), a court may order that any tobacco connected with the offence be forfeited to the Commission.

Prohibition against obstruction, etc., of officers of the Commission

98. A person who—

(*a*) obstructs or impedes an officer of the Commission in the exercise of the officer's powers under this Act;

(*b*) refuses to furnish to an officer of the Commission, without justifiable cause, any information which the officer requests; or

(*c*) willfully or recklessly gives to an officer of the Commission any false or misleading information,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for twelve months.

Prohibition against making false statements

99. A person who—

(*a*) in connexion with an application for registration or any licence or permit under this Act; or

(*b*) in connexion with any return or information required by this Act or any record or book kept in pursuance of this Act,

knowingly makes any statement or gives any information which is false, commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for twelve months.

Transportation of tobacco

100.—(1) A person who—

(*a*) is not authorized by the Commission and who, by himself or herself or through his or her agents, transports or causes to be transported tobacco; or

(*b*) during transportation of tobacco, fails or neglects to meet his or her obligations,

shall be liable to a regulatory order.

Operation of a hessian scheme

101.— (1) A person who—

(*a*) operates a hessian scheme without a licence; or

(*b*) fails or neglects to meet his or her obligations under a hessian scheme,

shall be liable to a regulatory order.

Failure to uproot tobacco plants and stalks

102. A grower who willfully fails to uproot and dispose of tobacco plants and stalks shall be liable to a regulatory order.

General Penalty

103. A person who commits an offence under this Act for which a penalty has not been specified shall be liable to a fine of K20,000,000 and to imprisonment for five years.

Offences by body corporates

104. Where an offence under this Act is committed by a body corporate, each director or manager of the body corporate at the time the offence is committed, commits the same offence, unless the director or manager proves that the offence was committed without his or her consent or connivance and that he or she exercised such diligence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity, to prevent the commission of the offence.

Part XXII—Miscellaneous

The Commission's number

105. The Commission may allot to itself one registration number for each type of tobacco for purposes of selling tobacco.

Validity of decisions and acts of the Commission

106.—(1) Where the Commission makes a decision that affects a stakeholder in the tobacco industry, the Commission shall communicate the decision to the relevant stakeholder, in writing, and shall state the reasons for the decision.

(2) A decision or act of the Commission or act done under the authority of the Commission shall not be invalid only by reason that a disqualified person acted as a member at the time the decision was taken or the act was done or authorized.

Annual reports

107.—(1) The Commission shall cause to be prepared and submitted to the Minister, within three months after the end of each financial year, an annual report on the general conduct of the affairs of the Commission and the activities carried out during that financial year.

(2) The report submitted under subsection (1) shall be in the format prescribed by the Minister, and there shall be appended to the report—

(*a*) an audited statement of financial position;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Minister may consider appropriate.

(3) The Minister shall, as soon as practicable, but not later than six months after the end of the financial year, lay before Parliament a copy of the annual report.

Oath of secrecy

108. Every—

(*a*) member of the Commission;

(*b*) member of a committee of the Commission;

(*c*) member of staff, consultant, adviser of the Commission; or

(*d*) person invited to attend a meeting of the Commission pursuant to section 8(8),

shall, upon assumption of his or her office, engagement or before attending the first meeting, take an oath of secrecy in the form set out in the *Schedule*.

Protection from liability

109.—(1) A person shall not bring a court action or other proceeding personally against any member of the Commission, a member of a committee of the Commission or a member of staff of the Commission in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act.

(2) Where, in any proceeding, a question arises on whether or not an act or omission was done in good faith in the course of carrying out the provisions of this Act, the burden of proving that the act or omission was not done in good faith in the course of carrying out the provisions of this Act shall be on the person alleging that it was not so done.

Power of entry and production of documents

110.—(1) The Commission or any person, authorized in writing by the Commission, may enter upon or into any land, building, vehicle, aircraft or vessel where tobacco is grown, purchased, stored or transported for the purpose of ascertaining that the provisions of this Act or the conditions of any licence or authority issued under this Act are being complied with.

(2) For purposes of subsection (1), the Commission or any authorized person may call upon the owner, occupier or manager of the land, building, vehicle, aircraft or vessel to—

(*a*) produce books or records that relate to such land, building, vehicle, aircraft or vessel as are used in connexion with the subject matter of this Act;

(*b*) produce books or records that will enable the Commission to check the accuracy of any return or application made or required under this Act;

(*c*) permit samples of tobacco to be taken to ascertain that this Act and the conditions of any licence or authority are being complied with; or

(*d*) generally, provide any information required by the Commission in pursuance of the Commission's powers and functions under this Act.

(3) A person who—

(*a*) obstructs or refuses entry to the persons referred to in subsection (1); or

(*b*) fails, neglects or refuses to produce books or records or to permit samples to be taken or to provide information under subsection (2),

commits an offence and shall, on conviction, be liable to a fine of K5,000,000 and imprisonment for twelve months.

Confidentiality of returns

111.—(1) The returns or information in the returns furnished to the Commission by a licensee under this Act shall not be disclosed to any unauthorized person.

(2) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K1,000,000 and to imprisonment for six months.

Registration certificate, licence or permit not transferable

112.—(1) A certificate of registration, licence or permit issued under this Act shall not be transferable.

(2) Notwithstanding (1), a grower's certificate of registration and registration number may be transferable upon—

(*a*) the death of a grower;

(*b*) a grower's physical incapacitation;

(*c*) sale of an estate; or

(*d*) sublease of an estate:

Provided that the Commission shall require written evidence of death, physical incapacitation, sale or sublease and change of land ownership transactions.

Validity of licences

113.—(1) A licence issued under this Act shall be valid for a period of twelve months from the date of issuance and may be renewed on such terms as the Commission may determine.

(2) Notwithstanding subsection (1)—

(*a*) a manufacturer's licence shall be valid for a period of five years from the date of issuance and may be renewed on such terms as the Commission may determine; and

(*b*) a tobacco processor's licence shall be valid for three years from the date of issuance and may be renewed on such terms as the Commission may determine.

Power to cancel certificate; suspend, vary or revoke licence or permit

114.—(1) The Commission may cancel certificate of registration, suspend, vary or revoke a licence or permit issued under the Act.

(2) A decision under subsection (1) shall be notified to the licensee, in writing, giving reasons for its suspension, variation or revocation.

(3) Where a registration certificate, licence or permit issued under this Act is revoked, the holder of the certificate, licence or permit or, in the case of death of the holder, a member of the immediate family of the holder, shall, within thirty days of receipt of the revocation notice, surrender the certificate, licence or permit to the Commission.

(4) A person who contravenes subsection (3) shall be liable to an administrative penalty of K5,000,000 for the first offence and K10,000,000 for the subsequent offence.

Right of aggrieved party to review or appeal the decision of the Minister

115. A person aggrieved by a decision or determination of the Minister may, within fourteen days from the date on which the decision was communicated to him or her, apply to the High Court for a review of the decision of the Minister.

Display of licence

116.—(1) A licensee shall display a licence at a visible place or produce it when so required by the Commission as the case may be.

(2) A person who contravenes subsection (1) shall be liable to an administrative penalty of K1, 000,000.

Sale of tobacco and nicotine products

117.—(1) A person shall not sell tobacco and nicotine products to a person under the age of eighteen.

(2) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

Smoking in public places

118.—(1) A person shall not smoke in a public place.

(2) Subject to subsection (1), a person may smoke in a designated area of a public place.

(3) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K50,000 and to imprisonment for three months.

(4) For purposes of this section, "public place" means any enclosed area used by the general public.

Advertisement of tobacco and nicotine products

119.—(1) A manufacturer, importer, distributor or retailer may advertise tobacco and nicotine products in accordance with the conditions prescribed by the Commission.

(2) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

Cess, levies and charges

120. The Minister may, by order published in the *Gazette*, prescribe cess, levies and charges at an expressed rate per stated unit of net weight to be paid, levied and collected in respect of—

(*a*) tobacco sold at a tobacco floor;

(*b*) tobacco exported from Malaŵi; and

(*c*) tobacco imported into Malaŵi.

Regulatory orders and sanctions

121.–(1) Notwithstanding any criminal sanction imposed under this Act, the Commission may, if it is satisfied that—

(*a*) a person has contravened or is likely to contravene any provision of this Act; or

(*b*) a holder of a registration certificate, licence or permit has contravened or is likely to contravene a term or condition of the registration certificate, licence or permit,

issue a regulatory order to the person or holder of the registration certificate, licence or permit.

(2) A regulatory order shall be in writing and shall state—

(*a*) particulars of the person to whom it is addressed;

(*b*) particulars of the contravention or potential contravention;

(*c*) the action required of the person to whom the order is addressed; and

(*d*) the period within which the order should be complied with.

(3) A regulatory order may include one or more of the following—

(*a*) a written warning;

(*b*) directing the person to do a specified act, or refrain from doing a specified act, in order to—

(i) remedy the effects of the contravention;

(ii) compensate the person who has suffered loss because of the contravention; or

(iii) ensure that the person does not commit further contraventions;

(*c*) requiring the person to pay a monetary penalty not exceeding K20,000,000;

(*d*) suspending a licence;

(*e*) revoking a licence; and

(*f*) cancelling a registration certificate.

(4) A regulatory order shall be discharged upon the Commission being satisfied that a person to whom it is addressed has fully complied with the contents of the order.

(5) Where a person to whom the regulatory order is addressed fails to comply with the order within the period stated in the order, the Commission may—

(*a*) seize, remove or detain any material used in the commission of the act proscribed in the order and the seized material may be released upon the person to whom the order is addressed complying with the order and paying all costs and expenses incurred by the Commission in enforcing the order; and

(*b*) where the person against whom the order is issued is a holder of a registration certificate or licence or permit under this Act, revoke the certificate, licence or permit, as the case may be.

(6) Where, pursuant to this section, the Commission orders a person to pay compensation to an aggrieved person, or imposes a monetary penalty, and the person fails to pay the compensation or monetary penalty for a period exceeding thirty days from the date the penalty is imposed or order of compensation is made, the

Commission may recover the compensation or penalty as a civil debt due to the aggrieved person or the Commission, as the case may be.

(7) A person who fails to comply with a regulatory order made under this Act, other than an order to pay compensation or a monetary penalty, commits an offence and shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K5,000,000 and imprisonment for twelve months; or

(*b*) in the case of a body corporate, a fine of K10,000,000.

Regulations

122.—(1) The Minister may make Regulations for implementing the provisions of this Act and prescribing all matters which are necessary or contingent to be prescribed for the better carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision for—

(*a*) forms of registers, notifications, licences, certificates, permits and returns required under this Act;

(*b*) procedure and requirements for registration and licensing of various stakeholders;

(*c*) procedure and methods for uprooting tobacco stalks;

(*d*) manner and methods of labelling, marking or sealing of tobacco bales;

(*e*) manner of advertising tobacco and nicotine products;

(*f*) fees and charges payable under this Act; and

(*g*) anything required to be prescribed under this Act.

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(3) Notwithstanding the provisions of section 21(*e*) of the General Interpretation Act, the Regulations made under this Act, may create offences in respect of any contraventions to the Regulations and for any such contravention may impose a fine not exceeding the maximum fine imposable under this Act and imprisonment for up to five years.

Repeals and savings
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123.—(1) The Tobacco Industry Act, 2019 is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) and in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation under this Act; and

(*b*) may be replaced, amended, or repealed by subsidiary legislation made under this Act.

(3) Anything done in accordance with this Act repealed by subsection (1) prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

(4) Any person who immediately before the commencement of this Act is a person registered and licensed under this Act repealed by subsection (1) shall, on the commencement of this Act, be deemed to be registered and licensed under this Act.

Transfer of assets and liabilities

124.—(1) Property, assets, funds liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Tobacco Commission shall, on the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission and shall become enforceable by or against the Commission to the same extent as they were enforceable by or against the Tobacco Commission.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within one year from the commencement of this Act or within a period that the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

(*a*) make entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make the certificates or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsement on the deeds or other documents as may be presented on the registering authority relating to the title, right or obligation concerned.

Transitional provisions

125.—(1) A licence issued or permission granted in accordance with the repealed Act shall, unless otherwise expressly provided for in this Act or in any other written law, continue to be in force and be deemed to have been issued or granted by the Commission under this Act.

(2) Any approval for equipment given under the repealed Act shall continue to be in force and be deemed to have been made under this Act.

(3) Members of the Commission, as constituted immediately before the coming into force of this Act, shall continue to hold office as members until the appointment of new members of the Commission in accordance with this Act.

(4) The Commission shall, within two years from the commencement of this Act, transfer all licences and certificates issued or granted under this repealed Act, as if the licences had been granted under this Act and the Commission may extend the two year period by a period not exceeding six months after the expiry of the two year period.

Legal proceedings

126. Any legal proceedings commenced immediately before the coming into force of this Act by or against the Tobacco Commission, shall be deemed to have been commenced by or against the Commission established under this Act.

Transfer of employees

127. Unless the Commission otherwise determines, all persons who, immediately before the commencement of this Act, were employed by the Tobacco Commission established under the repealed Act, shall, on the commencement of this Act, be deemed to have been transferred to the employment of the Commission established under this Act, on terms and conditions of service not less favourable than their previous terms and conditions of service and, for the purpose of determining their rights thereunder, their services shall be regarded as being continuous from the time they were employed, by the Tobacco Commission established under the repealed Act.

SCHEDULE (s.108)

Oath of Secrecy

I,……..., being a member of the Commission/member of a committee of the Commission/member of staff of the Commission/consultants/advisers/subcontractors of the Commission/having been invited to attend a meeting of the Commission, do hereby swear that I will freely without fear or favour, affection, or ill-will, discharge the functions of a member/member of staff/consultants/advisers/subcontractors/invitee of the Commission and that I will not directly, or indirectly reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. So, help me God/Allah.

SWORN at ……..……. this … day of ……..……., 20….

Deponent
Before me: ……
Commissioner for Oaths

Passed in Parliament this Twenty nineth day of November, two thousand and twenty-three.

FIONA KALEMBA
Clerk of Parliament