

**AGRICULTURAL PRODUCTS (MARKETING) ORDINANCE
- CHAPTER 277**

LONG TITLE

Long title VerDate:30/06/1997

To provide for the improvement of agriculture, the marketing of agricultural products, to encourage co-operative markets and for purposes connected therewith.
(Amended 18 of 1969 s. 2)

[2 May 1952]

(Originally 11 of 1952)

SECT 1

Short title VerDate:30/06/1997

This Ordinance may be cited as the Agricultural Products (Marketing) Ordinance.

SECT 2

Interpretation VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

In this Ordinance, unless the context otherwise requires-

"Advisory Board" means the persons appointed to form a Marketing Advisory Board;

"agricultural product" includes any product of agriculture or horticulture and any article of food or drink wholly or partly manufactured or derived from any such products, and fleeces and the skins of animals; [cf. 1931 c. 42 s. 18 U.K.]

"Committee" means the Agricultural Products Scholarship Fund Advisory Committee established by section 9F; (Added 13 of 1978 s. 2)

"Director" means the officer appointed as Director of Marketing;

"fund" means the Agricultural Products Scholarship Fund established by section 9A; (Added 13 of 1978 s. 2)

"market manager" means a person appointed by the Director under section 3(2) to be manager of a wholesale vegetable market; (Added 51 of 1973 s. 2)

"producer" means in relation to any product the person who produces an agricultural product and any other person who employs such a person;

"regulated product" means any product the marketing of which is regulated under this Ordinance whether produced within Hong Kong or otherwise; (Amended 65 of 1999 s. 3)

"senior manager" means any person appointed as such by the Director under section 3(2); (Added 51 of 1973 s. 2)

"trustee" means the Director as trustee of the fund. (Added 13 of 1978 s. 2)

SECT 3

Appointment of Director of Marketing, market manager and senior manager VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) The Chief Executive may appoint, by name or office, an officer to be Director of Marketing. (Amended 65 of 1999 s. 3)

(2) The Director may appoint any person to be the manager of a wholesale vegetable market and may also appoint any person to be a senior manager. (Amended 51 of 1973 s. 3)

SECT 4

Seal, style and acts of Director VerDate:01/07/2007

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) The Director shall be known by the name of the Director of Marketing, and may for all purposes be described by that name. (Amended 18 of 1957 Third Schedule)

(2) The Director shall have an official seal, which shall be officially and judicially noticed, and shall be authenticated by the signature of the Director or of any person authorized by the Director to act in that behalf.

(3) For the purpose of acquiring and holding property, the Director for the time being shall be a corporation sole, and all property vested in the Director shall be held in trust, subject to sections 9A and 9B, for the Government for the purposes of his office. (Amended 13 of 1978 s. 3; L.N. 446 of 1994)

(4) Upon and by virtue of the appointment of any person to be Director, the benefit of all deeds, contracts, bonds, securities or things in action vested in his predecessor at the time of his predecessor ceasing to hold office shall be transferred to and vested in and enure to the benefit of the person so appointed, in the same manner as if he had been contracted with instead of his predecessor, and as if his name had been inserted in all such deeds, contracts, bonds or securities instead of the name of his predecessor. (Amended 35 of 1962 s. 2)

(5) For the purpose of contracts entered into prior to the commencement of this Ordinance by or on behalf of any person who has been exercising functions analogous to those of the Director at the time of entering into the said contract, such contracts shall be deemed to have been lawfully entered into by the Director and for the purpose of subsection (4) shall be deemed to have been entered into by the predecessor of the Director.

(6) If any question arises as to who is or was at any time the Director or whether a person has been exercising functions analogous to those of the Director prior to the commencement of this Ordinance, a certificate under the hand of the Secretary for Food and Health shall be conclusive evidence for all purposes whatsoever as to who is or was the Director or whether a person has been exercising such functions. (Amended L.N. 265 of 1978; 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007) [cf. 1919 c. 21 s. 7 U.K.]

SECT 5

Power to acquire and dispose of property VerDate:30/06/1997

(1) The Director in his corporate capacity shall have power to acquire, accept leases of, purchase, take, hold and enjoy any lands, buildings, messuages or tenements of what nature or kind soever and wheresoever situate, and also to purchase, acquire and possess goods and chattels of what nature and kind soever.

(2) The Director in his corporate capacity shall further have power by deed under his seal to grant, sell, convey, assign, surrender, exchange, partition, yield up, demise, reassign, transfer or otherwise dispose of any lands, buildings, messuage or other goods and chattels whatsoever, which are for the time being vested in or belonging to the Director.

SECT 5A

Director to be subject to Chief Executive's directions VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) The Chief Executive may give such directions as he thinks fit, either generally or in any particular case, with respect to the exercise or performance by the Director, or any person acting on his behalf, of any powers, functions or duties under this Ordinance.

(2) The Director and any person acting on his behalf shall in the exercise or performance of any powers, functions or duties under this Ordinance comply with any directions given by the Chief Executive under subsection (1).

(Added 51 of 1973 s. 4. Amended 65 of 1999 s. 3)

SECT 6

Marketing Advisory Board VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) There shall be a Marketing Advisory Board which shall be a consultative body for advising the Chief Executive upon any matters referred to it by the Chief Executive or the Director. (Amended 65 of

1999 s. 3)

(2) The Advisory Board shall consist of the Director and such other members as are appointed by the Chief Executive by notice in the Gazette.

(Amended 35 of 1962 s. 3; 51 of 1973 s. 5; 65 of 1999 s. 3)

(3) The Director shall be ex officio the Chairman of the Advisory Board, but in the event of his absence from any meeting the members present shall appoint any other of its members as Chairman.

(4) A member appointed by the Chief Executive shall hold office for one year and may be re-appointed from time to time at the discretion of the Chief Executive. (Amended 35 of 1962 s. 3; 65 of 1999 s. 3)

(5) Three members of the Advisory Board shall form a quorum.

(6) The Director shall appoint a public officer to be the secretary to the Advisory Board.

(Replaced 51 of 1973 s. 5)

SECT 7

Borrowing powers VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

With the consent of the Chief Executive in Council, the Director may, for any of the purposes of this Ordinance, borrow money in such manner and upon such security as he may consider expedient.

(Replaced 35 of 1962 s. 4. Amended 65 of 1999 s. 3)

SECT 8

Financial control and investments VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) The Director shall prepare and submit annually to the Chief Executive for his approval estimates of income and expenditure in respect of the next succeeding year and shall not, except with the prior approval of the Chief Executive, incur any expenditure in excess of that specified in the estimates as approved by the Chief Executive: Provided that nothing in this subsection shall be construed to prevent the Director from incurring and making provision for reasonable day to day expenses pending the approval of the annual estimates.

(2) All moneys received, including any moneys borrowed, by the Director shall be brought to account and shall be administered by the Director for the purposes of this Ordinance, and any moneys so brought to account may be invested by him in such securities or deposited in such manner in Hong Kong as the Financial Secretary may from time to time approve for that purpose.

(Added 35 of 1962 s. 4. Amended 65 of 1999 s. 3)

SECT 9

Accounts VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) The Director shall cause proper accounts to be kept of all transactions and shall cause to be prepared for every period of 12 months ending the 31st March in each year a statement of the accounts of the fund, which statement shall include an income and expenditure account and balance sheet and shall be signed by the Director.

(2) The accounts and the signed statement of the accounts shall be audited by an auditor, appointed from time to time by the Chief Executive, who shall certify the statement subject to such report, if any, as he may think fit.

(3) A copy of the signed and audited statement of accounts together with the auditor's report, if any, and a report by the Director on the administration of the fund during the period covered by the audited accounts shall be laid upon the table of the Legislative Council not later than the 31st October next following the end of such period or so soon thereafter as the Chief Executive, in his absolute discretion, may allow.

(Amended 13 of 1978 s. 4)

(Added 35 of 1962 s. 4. Amended 65 of 1999 s. 3)

SECT 9A

Establishment and vesting of fund VerDate:30/06/1997

(1) There is hereby established a trust fund, to be known as the Agricultural Products Scholarship Fund, which is vested in the Director as trustee.

(2) The trustee shall hold the fund upon the trusts and subject to the provisions contained in this section and sections 9B, 9C, 9D and 9E.

(3) The fund shall consist of-

(a) the sum of \$1000000 which shall be appropriated for that purpose by the Director from moneys received by him under this Ordinance;
and

(b) such further moneys and assets as may be-

(i) donated, subscribed or bequeathed to, and accepted by the trustee; or

(ii) otherwise acquired by the trustee.

(Added 13 of 1978 s.5)

SECT 9B

Objects of the fund VerDate:30/06/1997

The trustee shall apply the fund for the following objects-

(a) the provision of scholarships, grants and loans for the education and training of persons who are employed in agriculture and agricultural product marketing industries in Hong Kong and their families and dependants; and

(b) the provision of scholarships, grants and loans for the education and training of persons who wish to enter the agriculture and agricultural product marketing industries in Hong Kong.
(Added 13 of 1978 s.5)

SECT 9C

Cost of administering the fund VerDate:30/06/1997

(1) The cost of the administration of the fund and costs incurred by the Committee in the discharge of its functions under this Part, other than any audit fee paid under section 9E which shall be a charge on the fund, shall be paid from moneys, other than the fund, received by the Director under this Ordinance.

(2) The Financial Secretary may direct that an annual supervision fee to be determined by him shall be charged against the income of the fund and paid into the general revenue of Hong Kong.
(Added 13 of 1978 s.5)

SECT 9D

Investment VerDate:30/06/1997

The trustee may invest any of the moneys of the fund in investments of any kind whether such investments are permitted for the investment of trust funds or not, subject, in the case of investments which are not so permitted, to the prior approval of the Financial Secretary.
(Added 13 of 1978 s.5)

SECT 9E

Accounts VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) The trustee shall cause proper accounts to be kept of all transactions and shall cause to be prepared for every period of 12 months ending the 31st March in each year a statement of the accounts of the fund, which statement shall include an income and expenditure account and balance sheet and shall be signed by the trustee.

(2) The accounts and the signed statement of the accounts shall be audited by an auditor, appointed from time to time by the Chief Executive, who shall certify the statement subject to such report, if any, as he may think fit.

(3) A copy of the signed and audited statement of accounts together with the auditor's report, if any, and a report by the trustee on the administration of the fund during the period covered by the audited accounts shall be laid upon the table of the Legislative Council not later than the 31st October next following the end of such period or so soon thereafter as the Chief Executive may in his discretion allow.
(Added 13 of 1978 s. 5. Amended 65 of 1999 s. 3)

SECT 9F

Establishment of Advisory Committee VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) There shall be established a committee to be known as the Agricultural Products Scholarship Fund Advisory Committee.

(2) The Committee shall advise the trustee on all matters whatsoever touching the administration of the fund and the attainment of the objects thereof.

(3) The Committee shall consist of-

(a) the trustee;

(b) 3 other members of the Marketing Advisory Board to be elected annually by the said Board;

(c) 2 public officers and 2 members of the public to be appointed by the Chief Executive.

(Amended 65 of 1999 s. 3)

(4) The trustee shall be ex officio the chairman of the Committee, but in the event of his absence from any meeting the members present shall appoint any other of its members as chairman.

(5) Four members of the Committee shall form a quorum.

(6) The trustee shall appoint a public officer to be the secretary to the Committee.

(7) The Committee may regulate its own procedure.

(Added 13 of 1978 s. 5)

SECT 10

Regulations VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) The Chief Executive in Council may make regulations- (Amended 65 of 1999 s. 3)

(a) empowering the Director to buy agricultural products and to sell, grade, pack, store, adapt for sale, process, insure, advertise and transport such products;

(b) requiring producers of agricultural products to sell such products or any kind, variety or grade of any agricultural product as may be prescribed only to or through the agency of the Director and at a particular place and enabling the Director to establish and regulate the conduct of markets and collecting centres for this purpose; (Amended 35 of 1962 s. 5)

(c) controlling the landing and transport of agricultural products and the import of such products into Hong Kong; (Amended 65 of 1999 s. 3)

(d) empowering the Director-

- (i) to provide such services as he considers necessary or desirable for the improvement of agriculture or of the marketing of agricultural products;
- (ii) to engage in any activity which may improve or assist in the improvement of agriculture;
(Replaced 18 of 1969 s. 3)
- (e) enabling the Director to advance money on any agricultural products received by his agents for disposal and to lend money to producers for the purposes of such business;
- (f) empowering the Director to use funds under his control for the improvement of agriculture, including the standard of marketing of agricultural products, the encouragement of co-operation in agriculture and the education, health and welfare of persons employed in agriculture and agricultural product marketing and their families and dependants;
(Amended 35 of 1962 s. 5; 18 of 1969 s. 3; 13 of 1978 s. 6)
- (g) generally for the purposes not inconsistent with the provisions of the Ordinance for which funds under the control of the Director may be used;
- (h) requiring producers and persons purchasing from or through the agency of the Director to furnish to the Director such estimates, returns or other information relating to products regulated under this Ordinance as the Director considers necessary;
- (i) prescribing the fee payable to the Director on the grant or renewal of any permit granted under the regulations; (Replaced 18 of 1969 s. 3)
- (j) providing for payment to the Director of a commission in respect of vegetables brought into a wholesale vegetable market, which shall be a percentage of the purchase price or a fee charged on the weight of the vegetables, and empowering the Director, after consulting the Advisory Board-
 - (i) to declare in the case of any vegetables and any wholesale vegetable market whether the commission shall be such percentage or such fee; and
 - (ii) to prescribe such percentage and fee; (Replaced 18 of 1969 s. 3)
- (k) prescribing forms; (Added 18 of 1969 s. 3)
- (l) empowering the Director to co-operate with any other person in doing or authorizing any other person to do anything which the Director is empowered to do by virtue of this section;
- (m) the management and control of markets established by the Director and the conduct of persons therein; (Added 18 of 1969 s. 3)
- (n) generally carrying into effect the provisions of this Ordinance and of any regulations made thereunder.

(2) Any regulation made under this Ordinance may provide that a contravention thereof shall be an offence and that a person guilty of such offence shall be liable on summary conviction to a fine of \$2000 and to imprisonment for 1 year. Any such regulation may provide that the burden of proving whether

agricultural products are for sale, wholesale or not, or that they have been purchased retail or at a wholesale market shall lie upon the person accused.

SECT 11

Power of search, seizure and arrest VerDate:30/06/1997

(1) The Director, any police officer, or any senior manager or market manager authorized in writing by the Director in that behalf, either generally or in any particular case, may, without warrant, if he has reason to believe that any offence against this Ordinance has been committed- (Amended 51 of 1973 s.6)

(a) stop, board and search any vessel or vehicle which he has reason to believe was or is being used in connection with the commission of such offence;

(b) seize and retain any regulated product (and any container thereof in respect of which he has reason to believe such offence has been committed, and may for the purpose of effecting such seizure require the person for the time being in charge of the vessel or vehicle, if any, in or on which such product is being transported to take the same to such port, market or police station as may in the circumstances be expedient and may there detain such vessel or vehicle until such time as he is able to cause the articles seized to be transferred therefrom;

(c) arrest and forthwith take or cause to be taken to a police station any person whom he has reason to believe to have committed such offence.

(2) Whenever the seizure of any regulated product is lawful under this Ordinance, it shall be lawful to seize and retain any book or document which appears to contain evidence relating to such product.

(3) Any person who resists or obstructs any person in the exercise of any of the powers conferred by this section shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500 and to imprisonment for 3 months.

(4) A notification of any authorization made under subsection (1) shall be published in the Gazette. (Replaced 35 of 1962 s.6)

SECT 12

Sale and forfeiture of goods seized VerDate:01/07/1997

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) Where a magistrate is satisfied that an offence against this Ordinance has been committed in respect of any regulated product seized under section 11, whether or not any person has been convicted in respect of such offence, the magistrate may, upon application by the Director, order such product, together with any containers seized therewith, to be forfeited to the Government. (Amended 65 of 1999 s. 3)

(2) Notwithstanding anything contained in subsection (1), where any regulated product seized under section 11 is of a perishable nature, the Director may cause such product to be disposed of prior to application being made under subsection (1) for forfeiture thereof, and if in any such case the magistrate who hears the application for forfeiture is not satisfied that an offence against this Ordinance has been

committed in respect of the regulated product, he shall order the proceeds, if any, arising out of the disposal thereof to be paid to such person as in his opinion is the owner of the product.

(3) Nothing in this section shall be construed to prevent the Director, in his discretion, releasing any regulated product or any container thereof seized under section 11 to any person appearing to him to be the owner thereof before an order for forfeiture is made, in which case no order for the forfeiture thereof shall be made.

(4) For the purposes of subsection (2), "proceeds" means the proceeds of sale in a wholesale vegetable market less any fees or commission payable under the regulations. (Added 18 of 1969 s. 4)
(Replaced 35 of 1962 s. 6)