

Sugar Act, 2001

An Act of Parliament to provide for the development, regulation and promotion of the sugar industry, to provide for the establishment, powers and functions of the Kenya Sugar Board, and for connected purposes

ENACTED by the Parliament of Kenya, as follows:-

This Act may be cited as the Sugar Act, 2001 and shall come into operation on 1st April, 2002.

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

"agreements" means the agreements specifying the standard provisions governing the rights and obligations of growers, millers and out-grower institutions in the sugar industry;

"Board" means the Kenya Sugar Board established by section 3;

"by-product" means any substance (other than sugar) produced incidentally during the process of manufacturing sugar;

"Fund" means the Sugar Development Fund established by section 19;

"guidelines" means the guidelines for agreements between parties in the sugar industry set out in the Second Schedule;

"grower" means a person who produces sugar-cane or any scheduled crop in Kenya for the manufacture of sugar but does not include an out-grower institution;

"industry" means the sugar industry in Kenya and includes the growing of sugar-cane and any other sugar producing crop, the manufacturing, refining, marketing and disposal of sugar and its by-products;

"interested parties" means the Government, millers, growers or out-grower institutions;

"licence" means a licence issued by the Board to a miller;

"member" means a member of the Board appointed under section 5;

"miller" means a person licensed to operate a sugar mill or a jaggery mill in Kenya for the production of sugar including refined sugar and other by-products;

"Minister" means the Minister for the time being responsible for matters relating to agriculture;

"out-grower" means a person who has a sugar-cane farm in a zone and who has in force a cane supply contract in respect of the sugar-cane grown on such farm;

"out-grower institution" means an out-grower institution registered under the Companies Act, the Co-operative Societies Act, Trade Unions Act or any other organization registered under any other law that the annual general meeting may approve;

"refined sugar" means sugar, which complies with the specifications set by the body for the time responsible for setting standards;

"scheduled crop" has the meaning assigned to it in section 2 of the Agriculture Act;

"sugar" means crystalline or liquid sucrose in any of its recognized commercial forms, intended for human consumption or other uses;

"sugar-cane" means any plant or part of a plant of the genus *Saccharum* or any hybrid of sugar-cane;

"Tribunal" means the Sugar Arbitration Tribunal established under section 31;

"zone" means the area within a radius of up to a maximum of forty Kilometres of a sugar mill.

3. (1) There is established a board to be known as the Kenya Sugar Board.

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

(a) suing and being sued;

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

(c) borrowing or lending money; and

(d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Board shall be the successor to the Kenya Sugar Authority established by the Kenya Sugar Authority Order (now revoked) and subject to this Act, all rights, duties, obligations, assets and liabilities of the Kenya Sugar Authority existing at the commencement of this Act shall be automatically and fully transferred to the

4. (1) The object and purpose for which the Board is established is to -

(a) regulate, develop and promote the sugar industry;

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

(c) facilitate equitable access to the benefits and resources of the industry by all interested parties.

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

- (a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;
- (b) act as an intermediary between the industry and the Government;
- (c) facilitate the flow of research findings to interested parties through the provision of effective extension services;
- (d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;
- (e) facilitate the arbitration of disputes among interested parties;
- (f) facilitate the export of local sugar;
- (g) promote and encourage the use of environmentally friendly technologies in the industry;
- (h) provide advisory services to growers, out-grower institutions and millers;
- (i) facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines;
- (j) represent the industry in such organizations as are relevant for the promotion of the industry;
- (k) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties;
- (l) collect, collate and analyze industry statistics and maintain a data base for the industry;
- (m) licence sugar mills;
- (n) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and
- (o) perform such other functions as may, from time to time, be assigned by the interested parties.

5. (1) The Board shall consist of -

- (a) a non-executive Chairman elected by the Board from among the representatives of growers representatives on the Board and appointed by the Minister;
- (b) seven representatives elected by growers and appointed by the Minister;
- (c) three representatives elected by millers and appointed by the Minister
- (d) the Permanent Secretary in the Ministry for the time being responsible for matters relating to agriculture;

(e) the Permanent Secretary to the Treasury;

(f) the Director of Agriculture; and

(g) the Chief Executive of the Board appointed under section 10 who shall be an *ex-officio* member and the secretary to the Board.

(2) The Board shall elect a vice chairman from amongst its members.

(3) A member of the Board other than an *ex-officio* member shall hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment or re-election, as the case may be.

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

(a) impose a levy or levies upon growers and millers for the purposes of giving effect to the provisions of this Act;

(b) control, supervise and administer the assets of the Board in such manner and for such purpose as best promotes the purpose for which the Board was established;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

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

(e) lay down policy guidelines for the operations and management of all the funds collected by the Board;

(f) access all such relevant information as may be necessary for the efficient administration of the industry;

(g) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Board is established;

(h) open a banking account or banking accounts for the funds of the Board; and

(i) invest any funds of the Board not immediately required for its purposes in the manner provided in section 22.

7. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the First Schedule.

(2) Except as provided in the First Schedule, the Board shall regulate its own procedure and the procedure of any committees thereof.

8. Subject to this Act, the Board may, either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

9. The Board shall pay to its members, such remuneration, fees or allowances for expenses as it may determine after consultation with the Minister.

10. (1) There shall be a Chief Executive Officer of the Board who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless he holds a degree from a university recognized in Kenya in agriculture, economics or business administration and has at least five years experience in a managerial capacity.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board.

(4) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day management of the affairs of the Board.

11. The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine.

12. No matter or thing done by a member of the Board, or by any officer, employee or agent thereof shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

13. The provisions of section 12 shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

14. (1) No person shall operate a sugar mill or a jaggery mill unless he is a holder of a current licence issued by the Board for that purpose.

(2) Any person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of any licence granted thereunder commits an offence and shall be liable on conviction to a fine of not less than fifty thousand shillings but not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

15. (1) The Board shall not issue a licence under this Act unless -

(a) it is of the opinion that the applicant is a fit and proper person to hold such a licence; and

(b) it is satisfied that the applicant has sufficient knowledge, experience and capacity to enable him conduct business or that he has, amongst his staff, a person with such knowledge and experience:

Provided that the issuance of a licence to an applicant under this section shall not be withheld without reasonable cause.

(2) Every licence shall specify the premises upon which the milling of sugar may be carried on.

(3) Every licence shall, unless earlier revoked, expire on the 30th June next following the date of issue.

(4) There shall be payable for the issue of a licence, such fees as the Board, after consultation with the Minister, may prescribe.

(5) An application for the renewal of a licence shall be made to the Board not later than the 1st June in the year in which the current licence is due to expire.

16. (1) No person shall conduct the business of a miller unless he is registered as such by the Board and no such business shall be conducted at any premises other than the premises specified in the register.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence.

(3) The Board shall issue to every miller registered under this section, a certificate of registration specifying the premises at which milling may be carried on by the miller.

(4) No fee shall be charged in respect of any registration or certification of registration made or issued under this section.

(5) A miller may offer extension or other services to growers.

(6) Every miller registered under this section shall conduct business in accordance with this Act and any regulations made thereunder.

17. The funds of the Board shall comprise -

(a) such monies as may be appropriated by Parliament for the purposes of the Board;

(b) such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act; and

(c) all monies from any other source provided for or donated or lent to the Board.

18.(1) The Minister may, in consultation with the Board, by order in the Gazette, impose a levy on domestic and imported sugar to be known as the Sugar Development Levy.

- (2) A levy imposed under this section shall be payable at such rate as may be specified in the order.
- (3) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.
- (4) All moneys received in respect of the levy shall be paid to the Board and if not paid on or before the date prescribed by the order, the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Board.
- (5) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the order, a sum equal to five per centum of the amount shall be added to the amount due for each month or part thereof during which the amount due remains unpaid.
- (6) The Board shall apply the money received under this section for the furtherance of the objects of the Board.

19. (1) There is established a Fund to be known as the Sugar Development Fund which shall be administered by the Board.

(2) The Fund shall consist of -

- (a) the Sugar Development levy;
- (b) any funds provided by bilateral or multilateral donors for the purposes of the Fund;
- (c) any moneys provided by Parliament for the purposes of the Fund;
- (d) moneys from any other source approved by the Board.

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

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

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

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Board;

(c) the proper maintenance of the buildings and grounds of the Board;

(d) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Board;

(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

22. The Board may invest any of the funds of the Board in securities in which, for the time being, trustees may by law invest trust funds or in any other securities which the Treasury may, from time to time, approve for that purpose.

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

(2) Within a period of three months from the end of the financial year, the Board shall submit to the Auditor-General (Corporations) or to an auditor appointed under subsection (3), the accounts of the Board together with -

(a) a statement of the income and expenditure of the Board during that year; and

(b) a statement of the assets and liabilities of the Board on the last day of that year.

(3) The accounts of the Board shall be audited by the Auditor-General (Corporations) or by an auditor appointed by the Board with the written approval of the Auditor-General (Corporations).

(4) The appointment of an auditor under subsection (3) shall not be terminated by the Board without the prior written consent of the Auditor-General (Corporations).

(5) The Auditor-General (Corporations) may give general or specific directions to an auditor appointed under subsection (3) and the auditor shall comply with such directions.

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

(7) Within a period of six months after the end of each financial year, the Auditor-General (Corporations) shall report on the examination and audit of the accounts of the Board to the Minister and where an auditor has been appointed under subsection (3), such auditor shall transmit a copy of the report to the Auditor-General (Corporations).

(8) The fee payable to an auditor, appointed under subsection (3) shall be determined and paid by the Board.

(9) Nothing in this Act shall be construed to prohibit the Auditor-General (Corporations) from carrying out an inspection of the records and accounts of the Board whenever it appears to him desirable.

(10) Notwithstanding anything in this Act, the Auditor-General (Corporations) may transmit to the Minister a special report

24. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Minister a report of the operations of the Board for the immediate preceding year.

(2) The Minister shall lay the report submitted to him under subsection (1) before the National Assembly within three months of the day the Assembly next sits after the receipt of the report.

25. (1) The Board shall, at least once in every year, convene an annual general meeting of representatives of millers and growers for the purposes of considering the annual report and accounts of the Board and for the purposes of transacting such other business of which notice shall be given.

(2) The Board may convene special meetings in addition to the meetings mentioned in subsection (1) for such purposes and at such times as it may deem fit.

(3) Subject to this Act and any regulations made thereunder, the Board may make rules for the regulation of the conduct of business and procedure at the general meetings convened pursuant to this section.

26. All sugar produced locally or imported into the country shall comply with the prevailing -

(a) quality standards as set by the body for the time being responsible for setting standards;

(b) safety and health standards as set by the body for the time being responsible for public health;

(c) environmental issues as set by the body for the time being responsible for environmental matters.

27. (1) Subject to such regional and international trade agreements to which Kenya is a party, all sugar imports into the country shall be subject to the prevailing import duties, taxes and other tariffs and such imports shall be controlled by the Board.

(2) The Government shall introduce other safeguard measures as may be necessary to protect the industry from unfair trade practices

28. (1) The Board may, direct any organization or person in the industry to produce any document or information, or submit any returns which it reasonably considers necessary for the proper performance of its functions under this Act.

(2) Any person who -

(a) fails to, comply with any direction given by the Board under this Act; or

(b) furnishes to the Board any information or produces any document which is false or misleading in any material particular; or

(c) obstructs an officer of the Board in the performance of his functions under this Act; or

(d) diverts or abets the diversion of transit sugar into the domestic market, commits an offence.

(3) A person convicted of an offence under paragraph (d) of subsection (2) shall be liable to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or two million shillings, whichever is the higher, or to imprisonment for a term not exceeding ten years, or to both. (4) A person who contravenes any of the provisions of this Act commits an offence.

(5) A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

29. (1) There shall be, for the purposes of this Act, agreements to be known as the sugar industry agreements negotiated between growers and millers, growers and out-grower institutions, and millers and out-grower institutions.

(2) The agreements referred to in subsection (1) shall conform to the guidelines set out in the Second Schedule.

(3) Without prejudice to the generality of subsection (2), the matters to be provided for in the agreements shall include-

(a) the designation of any agricultural crop from which it is possible to manufacture sugar which is subject to the agreement;

(b) a sugar-cane farming contract providing for the terms and conditions of the production of sugarcane and sugar and prescribing the rights and obligations of growers and millers,

(c) a formula for determining the price to be paid by millers to growers for sugarcane or any other designated agricultural produce, which may include any factor related to the sale or other disposal of sugar industry products; (d) the functions to be executed by the Board in the execution of the agreement;

(e) the granting of powers to the Board to impose penalties prescribed in the agreement for the contravention of, or failure to comply with any term of the agreement; and

(f) the imposition of levies upon growers and millers for the purpose of enabling the Board to fulfil any obligation incurred by it in accordance with its constitution.

30. Notwithstanding any other provision in this Act or any other written law to the contrary, growers shall be entitled to at least -

- (a) 51% shareholding of all privatized sugar factories;
- (b) 51 % representation on the Boards of Directors of milling companies

31. (1) There is established a tribunal to be known as the Sugar Arbitration Tribunal for the purpose of arbitrating disputes arising between any parties under this Act.

(2) The Tribunal shall consist of -

(a) a chairman who shall be a person qualified for appointment as a judge of the High Court of Kenya; and

(b) two other members, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct material interest in the sugar industry, all of who shall be appointed by the Minister in consultation with the Attorney-General.

(3) The members of the Tribunal appointed under subsection (2) shall hold office for such period, not exceeding three years, on such terms and conditions as shall be specified in the instrument of appointment but shall be eligible for re-appointment for one further term of a period not exceeding five years.

(4) The provisions set out in the Third Schedule shall have effect with respect to the meetings and procedure of the Tribunal.

(5) Except as provided in the Third Schedule, the Tribunal shall regulate its own procedure.

32. The Minister may, on the recommendation of the Board, by order in the Gazette, amend the Second Schedule.

33. The Minister may, in consultation with the Board, make regulations generally for the better carrying out of the provisions of this Act and without prejudice to the generality of the foregoing, such regulations shall provide for -

(a) the regulation and control of the production, manufacturing, marketing, importation or exportation of sugar and its by-products;

(b) the forms of licences to be issued under this Act, and the form and manner of application therefor;

(c) the fees which may be charged for any activity relating and incidental to the development, products, marketing and distribution of sugar and its by-products.

FIRST SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Vacation of office.

A member of the Board, other than the chairman or an *ex-officio* member, may -

- (a) at anytime resign from office by notice in writing to the Minister;
- (b) be removed from office by the Minister if the member -
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is incapacitated by prolonged physical or mental illness;
 - (iv) is adjudged bankrupt; or
 - (v) is otherwise unable or unfit to discharge his functions.

Meetings.

2. Meetings.

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Notwithstanding the provisions of subparagraph (1), the chairman may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- (3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (4) The quorum for the conduct of the business of the Board shall be seven members.
- (5) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the vice-chairman shall preside and shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
- (6) In the event of the absence of both the chairman and the vice-chairman, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
- (7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairman or the vice-chairman or the person presiding shall have a casting vote.
- (8) Subject to paragraph (4), no proceeding of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

3. Disclosure of interest.

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

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

The common seal.

4. The common seal.

The affixing of the common seal of the Board shall be authenticated by the signature of the chairman and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the Chief Executive Officer:

Provided that the Board shall, in the absence of either the chairman or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the chairman or the Chief Executive Officer.

Contracts and Instruments.

5. Contracts and Instruments.

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

SECOND SCHEDULE

(s. 29)

GUIDELINES FOR AGREEMENT BETWEEN PARTIES IN THE SUGAR INDUSTRY]

PART 1

INTRODUCTION AND SCOPE OF AGREEMENTS

1. Scope of Agreement

The agreements define the linkages among the different instructions in the industry and govern the operations of interested parties in the industry and any disputes arising in relation thereto shall be referred

to the Tribunal.
Interpretation. Cap. 486. Cap. 108.

2. Interpretation.

In these agreements, unless the context otherwise requires -

"cane supply contract" means a contract for the supply of sugar-cane to a miller;

"cane farming contract" means a contract between a grower and an out-grower institution or miller;

"*force majeure*" means events that cannot be reasonably anticipated or controlled and includes acts of war or enemies, riots, strikes, embargoes, acts of God, acts of the government or of any authority or agency thereof;

"grower member" means a member of an out-grower institution;

Kenya Research Foundation incorporated under the Companies Act with the principal object of promoting research investigating all problems relating to sugar in Kenya.

"Kenya Sugar-Cane Growers Association" the Kenya Sugarcane Growers Association registered under the Societies Act;

"Kenya Sugar Manufacturers Association" means the Kenya Sugar Manufacturers Association registered under the Societies Act.

PART 2 - ROLES OF INSTITUTIONS IN THE INDUSTRY

3. The role of the Kenya Sugar Board.

The role of the Kenya Sugar Board is to -

(a) co-ordinate the activities of the various organizations concerned with the industry, both in the private and the public sector;

(b) support the general development of out-grower institutions and enable them become effective intermediaries for providing financial assistance and extension services to growers; .

(c) review, on a regular basis, the economic and financial performance as well as the problems and prospects of the industry;

(d) promote a more extensive use of sugar and its by- products;

(e) promote the manpower development of farmers and employees in the industry through establishment and co-ordination of a central training institute;

(f) facilitate dispute arbitration between interested parties;

(g) license mills;

(h) facilitate negotiations on cane pricing between growers, out-grower institutions and millers;

(i) facilitate studies and investigations in respect of any specific or general issue affecting the industry;

(j) facilitate long-term master plans for the rehabilitation, rationalization of factories and marketing of sugar, with due regard to the interest of all parties concerned;

(k) collect information and evaluate any fixed investment to be made in the sugar sector by any individual.

(l) examine and advise on the operating costs of any organization concerned with the industry;

(m) monitor the production, importation and consumption of sugar and its by-products with a view to ensuring a viable industry;

(n) ensure that millers and outgrower institutions look into the welfare of its members and infrastructural development of the regions where they are situated.

4. The Role of the Sugar Research Foundation.

The role of the Kenya Sugar Research Foundation includes -

(a) breeding of sugarcane varieties suited for various agro-ecological zones of Kenya;

(b) conducting research on nutritional requirements of sugarcane in order to provide recommendations on the appropriate fertilizers;

(c) appraising technologies on land preparation, drainage and water management for economical cane production;

(d) studying and monitoring of pests and diseases that affect sugarcane and recommending appropriate control strategies;

(e) developing agronomic packages for sugarcane maintenance and management;

(f) instituting socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;

(g) testing, designing and evaluating of farm machinery and factory equipment for efficient sugar production;

(h) promoting the transfer of sugar technology based on applied research through relevant extension mechanisms;

(i) fostering research on sustainable productivity, environmental issues, human safety at field and factory levels; and

(j) collaborating with the Government, the industry, universities and other national and international organizations for the purpose of furthering the Foundation's mission.

(2) In addition to research, the Foundation shall undertake to -

(i) raise funds to support research;

(ii) analyse soil and plant samples for advisory purposes; and

(iii) offer modular courses on various aspects of cane management and practices

5. The role of out-grower institutions.

The functions and role of out-grower institutions include -

- (a) promoting and representing the interests of growers;
- (b) negotiating or arranging, on behalf of such grower members, the terms of supply of sugar-cane to the factory and the co-ordination of the production, harvesting and transport thereof;
- (c) providing financial credit or otherwise arranging finance for such grower members in connection with the production of their sugar-cane, including land clearance and preparation, planting, cultivation and tending, harvesting, transport and the supply of goods and services relating thereto;
- (d) providing or procuring services, advice and assistance for such grower members as may be required, to carry out or procure the carrying out of such operations for such members;
- (e) providing or procuring accounting services and books or records for members in respect of their individual operations;
- (f) purchasing, selling or otherwise dealing in, securing or providing such goods, materials, supplies and services as may be required by members ;
- (g) negotiating cane prices with millers through the Kenya Sugar-cane Growers Association;
- (h) effectively participating in lobbying for favorable Government policies in the industry through the Kenya Sugar-cane Growers Association.

6. The role of the miller.

The role of the miller is to -

- (a) harvest, weigh at the farm gate, transport and mill the sugar-cane supplied from the growers' fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement;
- (b) maintain and develop adequate milling capacity for sugar-cane planted on the basis of agree planting Plans with the growers and the out-grower institution
- (c) mill the sugar-cane efficiently so as to realize maximum returns for the millers and the growers;
- (d) pay the sugar-cane farmer within 30 days of accepting delivery or otherwise pay interest on the sum due market rates, plus a penalty of 3 per cent per month on late payment;
- (e) participate in lobbying for favorable Government policies in the industry through the Kenya Sugar Manufactures Association;
- (f) maintain accurate weighbridges to ensure correct weight of sugar-cane;
- (g) install and maintain appropriate systems and technologies for sampling sucrose content in sugar- cane delivered; and

(h) negotiate the sugar-cane price with the growers through the Kenya Sugar Manufacturers Association and formulate policies related to sugar marketing, distribution and pricing.

PART 3 - SUGARCANE FIRES AND CANE PRICING

7. Sugarcane fires.

(1) The out-grower institutions shall follow the harvesting programs strictly and be subject only to factory capacity;

(2) A miller may decline to accept burnt sugar-cane but where lift such sugar-cane is accepted, the following guidelines shall be adhered to -

(a) the grower shall sign an authority to harvest his burnt sugar-cane prior to commencement of cutting which authority shall be different from any sugar-cane farming contract and shall set out conditions under which the miller may accept the burnt sugar-cane;

(b) sugar-cane shall be delivered to the mill weighbridge within a period of up to seven days, inclusive of the day of burning, according to specific factory zones;

(c) only sugar-cane of an acceptable quality shall be harvested;

(d) a payment for burnt sugar-cane shall be made one month from the date of the scheduled harvest of the sugar-cane.

8. Cane pricing policy.

(1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as "the Committee") comprising representatives from the Kenya Sugar Board, Kenya Sugar Manufacturers Association and the Kenya Sugarcane Growers Association.

(2) The main objectives of the Committee shall be to review sugar-cane prices which shall be determined on the basis of sucrose content.

(3) The following formula shall be adopted in payment of sugarcane based on sucrose content -

Price of sugarcane = Pol % cane x KR x Farmers' share x monthly average net price of sugar

1 + E %

plus % of value of by-products, where KR == Expected Mill Extraction x Expected Boiling House Recovery and E% = Extraneous matter % cane.

(4) The formula set out in subparagraph (3) shall be subject to change as agreed upon by the Committee.

(5) The exercise of determining the sucrose content of sugarcane for the purpose of sugarcane pricing shall be carried out by a sugar-cane testing unit to be set up by the Committee.

PART 4

RELATIONSHIP BETWEEN THE OUT GROWER INSTITUTION AND THE MILLER

9. Out-grower and miller Agreement.

(1) Except as otherwise agreed, a miller shall -

(a) subject to the provisions of a supply contract, buy all sugar-cane of requisite quality harvested from the area specified in the supply contract in accordance with the program provided for herein;

(b) notify the out-grower institution in advance of any planned closure of the mill for any reason;

(c) advise the grower of any change in planned activities as soon as the need for such change becomes apparent;

(d) reject any sugar-cane found not to be of the requisite quality based on parameters established by the Kenya Sugar Board;

(e) pay the out-grower institution within thirty days of sugar-cane delivery: Provided that the sugar-cane will be harvested not later than twenty-four months for plant crops and not later than twenty-two months for subsequent ratoons.

(2) If a miller fails to pay the out-grower institution as specified the miller shall be liable to pay interest charges on the outstanding grower loan accounts of the affected growers up to the time it completes payment so as to safeguard the grower's ability to repay the funds borrowed to finance cane production.

(3) The out-grower institution shall -

(a) before the start of each financial year prepare a cultivation and planting program covering all growers and showing acreage, approximate timings and production quantities anticipated for each grower;

(b) at the appropriate time, prepare a harvesting program showing the approximate expected time of harvesting the crop of each grower;

(c) furnish the miller with copies of such programs as soon as they are completed, and consult with the growers regarding any significant changes therein that the miller may subsequently consider necessary to make:

(d) furnish the miller with a list of all growers showing the acreage of each grower's sugar-cane area as specified in his sugar-cane supply contract:

Provided that the programs referred to in subparagraph (a), (b) and (c) shall be tentative and their implementation shall be to the exigencies of subsequent operations and circumstances.

(4) Neither the out-grower institution nor the miller shall be obliged to perform their respective obligations under an agreement if and to the extent that they or either one of them may be hindered or prevented from so doing directly or indirectly by an event of *force majeure*;

(5) Any event of *force majeure* shall be reported by the affected party to the other party within seven days from the date of its occurrence and the said event shall be certified by the competent authorities of both parties.

(6) The obligations of the parties under the specified agreement shall remain suspended for the period during which the said event of *force majeure* persists.

(7) The provisions of this Part shall apply *mutatis mutandis* to the relationship between the grower and the miller.

PART 5

RELATIONSHIP BETWEEN THE OUT-GROWER INSTITUTION AND THE GROWER

11. Out-grower institution and grower agreement.

(1) A grower may appoint an out-grower institution as his representative in all matters of sugar-cane development and the financing of sugar-cane supply, including negotiations for the price of sugarcane, costs of farm inputs and related services.

(2) The out-grower institution and the grower may agree on a specific period of maturity for purposes of harvesting, delivery and payment which shall be eighteen to twenty months for plant crop, and sixteen to twenty-two months for first and second ratoon crops:

Provided that by mutual consent the said term may be extended to include the harvesting of one or more ratoon crops or by such period as may be agreed upon, with or without modifications of the terms and conditions herein contained, by a memorandum of extension endorsed hereon not less than three months before the date of the anticipated commencement of harvesting of what would otherwise have been the last ratoon crop under the contract or six years which ever shall be the earlier.

(3) Where a grower decides to discontinue the production of sugar-cane or terminate the relationship with an out-grower institution he shall give a three months' notice of his intention to do so and shall pay all his dues before the expected time of harvest and the out-grower institution will then harvest cane in the normal harvesting manner:

Provided that such notice shall only be effective if the grower shall, within the period of notice, repay in full all loans received by him from the out-grower institution.

(4) Any such termination of the contract shall be without prejudice to all rights accrued and obligations incurred to or by either party prior to the date of termination and shall not prejudice any claim for damages for such breach of contract.

(5) Any question or dispute as to the responsibility to fulfill the terms of the specified agreement due to the reasons stated above shall be referred to the Sugar Arbitration Tribunal.

12. Obligations of the grower.

The grower shall -

(a) plant or cultivate the most suitable variety of cane recommended by the Kenya Sugar Research Foundation;

(b) allow the cultivation of seed cane nurseries, if the out-grower institution desires, for the multiplication of seed sugar-cane material to be supplied to other growers:

Provided that such sugar-cane may be used for milling when it is no longer required for seed cane.

(c) allow the cutting of commercial sugar-cane of both plant and first ratoon only to supply seed to other

growers in the absence of suitable nurseries:

Provided that the age of the seed cane shall be not less than ten but not more than fourteen months;

(d) at all times allow the out-grower institution to enter upon his land together with any vehicles, machinery or livestock which the out-grower institution may require to-

(i) inspect the land and the cane growing thereon;

(ii) sample the sugar-cane;

(iii) gain access to other grower's land, including such construction of access tracks as may be required for the transport of sugar-cane produced by the grower or other growers; and

(iv) do anything required to be done by either party in terms hereof:

Provided that, if the grower fails to facilitate the harvesting of his sugar-cane at the appointed time, the out-grower institution shall refer the matter to the Sugar Arbitration Tribunal;

(e) maintain his sugar-cane cultivation in a manner which will enhance a satisfactory yield by -

(i) maintaining the sugar-cane crop weed-free;

(ii) applying at the recommended time and in the recommended amounts all fertilizers and other material recommended by the out-grower institution and the Kenya Sugar Research Foundation;

(iii) undertaking the planting and gapping of sugar-cane area at the times recommended by the out-grower institution in order to ensure a high plant population; and

(iv) applying all services and goods, which he may have obtained from the out-grower institution for the benefit for the sugarcane crop solely for that purpose;

(v) undertaking stubble shaving, inter-row cultivation and trashlining within one month after harvesting;

(vi) inspecting sugar-cane crops for pests and diseases periodically and removing diseased or infested sugar-cane and disposing them off in a the manner prescribed by extension agents;

(vii) planting the sugar-cane inter-row, one row only of common beans, soyabeans, potatoes, tomatoes, onions, cabbages or carrots;

Provided that:

(aa) if the out-grower institution so requires, in the case of a default, the grower shall allow all or any such work to be carried out at his cost by the out-grower institution and its agents or employees working in conjunction with the grower;

(bb) within seven days of receipt of a written notification from the out-grower institution that such operations are necessary to achieve a satisfactory yield of sugar-cane, allow unimpeded access to the out-grower institution and his equipment for the purpose of carrying out any or all operations which the grower has failed to carry out and that notification shall have either been served to the grower or his representative and acknowledged, or shall have been posted to the grower by registered mail.

(f) offer for harvest and transport by the out-grower institution all such cane as is derived from his contracted sugar-cane plot and no other for use either as seed cane or mill sugar-cane;

(g) not sell his sugar-cane through a middleman nor dispose of it or any interest therein to any other parties without the written permission of the out-grower institution specifying the tonnage of sugar-cane which may be sold, the date on which the sale may take place and destination of the sugar-cane;

(h) either attend himself or send an authorised representative to the buying point to witness the condition of the sugar-cane at the time of delivery and to obtain a ticket showing the value of sugar-cane delivered in the absence of an official representative appointed for the purpose;

(i) bear all direct and indirect costs of the works, goods and services supplied by the out-grower institution as specified in the agreement and unless the same are paid earlier allow such costs to be deducted from payment for sugar-cane supplied by the grower;

(j) be responsible for maintaining suitable permanent boundary marks and cleared firebreaks for his sugarcane crop;

(k) be liable to pay the cost of any damage suffered by other growers as a result of failure to comply with the terms hereof;

(l) take precautions against fire according to the advice of the out-grower institution;

(m) not assign his land or any interest therein or any of his rights or obligations under the agreement without the written consent of the out-grower institutions; and

(n) attend meetings and field days convened by the out-grower institution for the purpose of learning the proper sugar-cane husbandry, operation and application of goods and services obtained from the out-grower institution for the satisfactory yield of sugar-cane.

13. Obligations of out-grower Institutions.

The out-grower institution shall -

(a) during each harvest period, deliver to the miller from the grower, sugarcane in the quantities and on the dates agreed upon between the miller and the out-grower institution;

(b) within the limits imposed by the condition of the roads, provide and operate an efficient system of transport from the field to the mill;

(c) cause the grower's sugar-cane to be weighed and tested on arrival at the buying point, allow the grower or his representative access to the weighbridge to check the weight, maintain in duplicate a written or printed record of the value of each load of sugar-cane delivered and give to the grower or his representative on the day of delivery one copy of such record.

(d) establish seed cane 'B' Nurseries on growers plots for bulking of seed cane to be supplied to other farmers, and for this purpose to purchase, harvest and transport such seed cane after certification by the out-grower institution's agronomist as to its suitability for planting; seed cane which fails to be used for seed will be used for milling:

Provided that the grower whose sugar-cane is cut for seed will be paid at the price not less than that of

mill cane and will not be charged the cost of transport.

(e) have absolute charge and control of all equipment, machinery, staff and labour concerned with operations on the growers land:

Provided that the out-grower institution shall exercise due care to ensure that the operational costs to be charged to the grower shall be kept at a reasonable level;

(f) be entitled, in the event that the grower does not prepare, plant and maintain his land and sugar-cane in accordance with the agreement, to carry out all and any such operations on the grower's land which the out-grower institution shall consider necessary to ensure that the grower's quota of sugar-cane of satisfactory quality will be delivered on the due date, in which case the out-grower institution shall be further entitled to deduct the cost, including a penalty for these operations, from the payment to be made for the grower's sugar-cane.

(g) charge interest on any credit that may be granted by the out-grower institution to the grower, such credit being only granted in exceptional circumstances at such rate as may, from time to time, be notified by the out-grower institution and be entitled to deduct such interest from the payment due to the grower in respect of the first cane harvest from the grower's land subsequent to the grant of the credit.

(h) be entitled to charge the grower for all works, goods and services supplied to the grower by the out-grower institution in accordance with the out-grower institution's schedule of charges from time to time in force at the date the agreement signed:

Provided that:

(i) the said charges shall at all times be as agreed with the grower;

(ii) the out-grower institution shall consult with the grower regarding any proposed changes in the said charges before such charges are proposed to take effect and shall maintain such records as are necessary to show the growers that the charges from time to time are as agreed in (i) above;

(iii) the out-grower institution shall notify all changes to the grower at least thirty days before the charges are due to take effect; and

(iv) where a grower ends up with a debit balance, the out-grower institution shall immediately write to the grower for arrangements of recovery of the said debt.

14. Force Majeure.

(1) Neither the out-grower institution nor the miller shall be obliged to perform their respective obligations under an agreement if and to the extent that they or either one of them may be hindered or prevented from so doing directly or indirectly by an event of *force majeure*;

(2) Any event of *force majeure* must be reported by the affected party to the other party within seven days from the date of its occurrence and the said event be certified by the competent authorities of both parties.

(3) The obligations of the parties under an agreement shall remain suspended for the period during which the said event of *force majeure* persists.

PART 6

SUGAR INDUSTRY CONTROL MEASURES

15. Industry Control.

(1) The sugar industry agreement shall recognize the measures already undertaken to deal with constraints to development which include the setting of a committee comprising the Kenya Sugar Authority, Kenya Ports Authority and the Kenya Bureau of Standards to co-ordinate the inspection and certification of imported sugar.

(2) In dealing with the illegal diversion of unaccustomed transit sugar, there will be control measures put in place from time to time .

(3) In addition to existing taxes on imported sugar the antidumping duty and countervailing duty have been imposed.

(4) The Minister for finance shall, by notice in the Gazette, establish a five person advisory committee to investigate cases of dumping or subsidization of goods exported to Kenya and to report its findings to the Minister.

Sugar specifications.

16. Sugar specification.

(a) The following are the specifications for mill white and sugar refined sugar as per the Kenya Bureau of Standards specifications (KS:05-38):

Parameters	Raw Sugar	Mill White	Refined Sugar
Colour (ICUMSA)	1200 (max)	400 (max)	60 (max)
Moisture %	0.25 (max)	0.10 (max)	0.70 (max)
Polarimeter(s)	97.5 (min)	99.5 (min)	99.8 (max)

THIRD SCHEDULE

(S. 29)

PROVISIONS AS TO THE MEETINGS AND PROCEDURE OF THE TRIBUNAL

1. Resignation.

Any member of the Tribunal may, at any time, by notice in writing to the Minister, resign his office.

2. Vacation of office of member.

(1) If a member of the Tribunal becomes a member of the Board or, in any case where a member other than the chairman is appointed to the service of the Government or the Commission his office shall become vacant.

(2) The chairman or a member of the Tribunal may be removed from office by the Minister if he is -

(a) unable to discharge the functions of his office by reason of mental or physical infirmity; or

(b) an undischarged bankrupt; or

(c) convicted of an offence involving fraud or dishonesty; or

(d) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings.

(3) In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the Minister may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy caused the appointment.

3. Disclosure of interests.

If any member of the Tribunal has any interest in any particular proceedings before the Tribunal he shall so inform the Minister and the Minister may, after considering that interest, appoint another member in his place for the purpose of the particular proceedings.

4. Vacancy.

Where the office of any member becomes vacant, whether by death or otherwise, the Minister may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy cause the appointment.

5. Temporary members.

In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the Minister may appoint a temporary member for the purposes of those proceedings.

6. Majority decisions.

The decision of the Tribunal shall be that of the majority and shall be signed by the members thereof agreeing thereto.

7. Proceedings to be valid.

No proceedings of the Tribunal shall be invalid by reason only of a vacancy among the members thereof.

8. Powers.

The Tribunal shall have the powers of the High Court -

(a) to administer oaths to the parties and witnesses to the proceedings;

(b) to summon witnesses and to require the production of documents;

(c) to order the payment of costs; and the provisions of the law relating to Commissions of Inquiry in Kenya with respect to: -

(i) the protection of the members of the Tribunal from suit;

(ii) the form of summonses to witnesses;

(iii) to giving or fabricating of false evidence;

(iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and

(v) the appearance of advocates; shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

9. Venue.

The Tribunal shall sit at such place as it may consider most convenient having regard to all the circumstances of the particular proceedings.

10. Rules.

Subject to the provisions of this Schedule, the Tribunal shall have power to make rules governing its procedure.

11. Proof of document.

A document purporting to be a copy of any order of the Tribunal, and certified by the chairman to be a true copy thereof, shall in any legal proceedings be *prima facie* evidence of the order.