

LEGAL NOTICE NO. 100

THE COFFEE ACT, 2001

(No. 9 of 2001)

IN EXERCISE of the powers conferred by section 44 of the Coffee Act, 2001, the Minister for Agriculture, after consultation with the Board, makes the following Rules –

THE COFFEE (GENERAL) (AMENDMENT) RULES, 2006

I. These Rules may be cited as the Coffee (General) (Amendment) Rules, 2006

2. The Coffee (General) Rules 2002, in these Rules referred to as the principal Rules, are amended in Rule 2 –

(a) by inserting the following new definitions in their proper alphabetical sequence:

"direct sales" means a contractual agreement between the grower and his or its marketing agent and a buyer located outside Kenya for the sale of clean coffee based on mutually accepted terms and conditions enforceable in law and registered with the Board.;

"specialty coffee" means Kenya mild arabica coffee grown above 1,200 metres above sea level and possessing special characteristics defined by the buyer prior to entering into the contract and made known to the Board in writing by the grower or his or its marketing agent;

(b) in the definition of "coffee sales proceeds" by inserting the words "or through direct sales," immediately after the word "auction";

(c) in the definition of "prompt date" by inserting the words "or buyers" immediately after the word "dealers";

(d) by deleting the definition of "sales catalogue" and substituting therefor the following new definition-

"sales catalogue" means a document prepared by a marketing agent for sale of clean coffee at the Nairobi Coffee Exchange and through the direct sale.

3. The principal Rules are amended by deleting the heading to Part III and substituting therefor the following new heading-

PART III - REGISTRATION AND LICENSING

4. The principal Rules are amended by deleting rule 6 and substituting therefor the following new rule-

Certain registration requirements

6 (1) A person who applies for registration, or for licensing for the first time, shall submit to the Board certified copies-

(a) in case of a co-operative society, a growers' association or a plantation owner, a certified copy of its certificate of registration and registered by-laws or constitution, as the case may be;

(b) in case of a company, a certified copy of its certificate of incorporation and memorandum and articles of association;

(c) in case of an individual, proof of ownership of the business.

(2) An application for a renewal of a licence shall be accompanied by a copy of the list of the current office bearers and board of directors, as the case may be, of the entity making the application.

5. The principal Rules are amended in rule 8 (1) by deleting the expression "(1)" and by deleting the word "grower" and substituting therefor the word "owner".

6. The principal Rules are amended in rule 9 by deleting the word "grower" and substituting therefor the word "owner".

7. The principal Rules are amended in Clause 10 by inserting the following proviso thereto-

Provided that the Board shall not effect such changes unless the grower has cleared all the liabilities with(financiers or has agreed to liquidate such liabilities.

8. The Principal Rules are amended by deleting rule 13 and substituting therefor the following new rule — Grower miller to submit records to

Board.

13. A grower who or which mills and markets his or its own coffee shall ensure that the delivery records are submitted to the Board for the Board's examination and record.

9. The principal Rules are amended by deleting rule 14 and substituting therefor the following new rule — Movement permit.

14(1) No person shall move coffee unless that person has been issued with a movement permit by the Board in respect of that particular consignment of coffee.

(2) No person shall change his name as entered in the movement permit.

10. The principal Rules are amended in rule 15-

(a) by deleting sub rule (1) and substituting therefor the following new sub rule —

(1) Cherry and parchment advances may be made to a grower by the marketing agent on such terms and conditions as shall be agreed between the parties.

(b) by inserting the following new sub rule immediately after sub rule (4)

(5) A marketing agent who fails to deduct and remit loan recoveries as specified in sub rule (2) shall pay the interest accruing from the loan during the period when that loan remains outstanding owing to such a delay.

11. The principal Rules are amended in rule 17 by inserting the words "and sale" immediately after the word "milling" and by deleting the words "and of sale of coffee by auction" appearing immediately after the words "of coffee".

12. The principal Rules are amended in rule 18 by deleting the words "Co-operative Bank of Kenya" and substituting therefor the word "grower".

13. The principal Rules are amended by inserting the following new rule immediately after rule 20 - Notice of appointment of management agent.

20A. Notice of appointment by a grower of a management agent shall be given in writing by the grower to the Board.

14. The principal Rules are amended by deleting rule 26 and substituting therefor the following new rule- Commercial miller to provide returns.

26. A commercial coffee miller shall, after milling, provide returns of stock and any other returns to the grower, the Board and the marketing agent.

15. The principal Rules are amended in rule 28 by —

(a) re-numbering the existing rule 28 as sub rule (1);

(b) inserting a new sub rule (2) as follows-

(2) A commercial miller shall ensure that the coffee in his possession is properly stored and secured to protect that coffee from any damage, pilferage or degeneration in quality.

16. The principal Rules are amended by deleting rule 30.

17. The principal Rules are amended in rule 32 by deleting the words "Fourth or Fifth" and substituting therefor the words "Fifth or Sixth".

18. The principal Rules are amended by inserting a new rule immediately after rule 32 as follows —

Requirements for marketing agents licence.

32A. An applicant for a marketing agent's licence shall meet the requirements prescribed in the Third Schedule.

19. The principal Rules are amended in rule 33 —

(a) in subrule (1) by deleting the words "Sixth" and substituting therefor the word "Seventh". and by deleting the word "Seventh" and substituting therefor the word "Eighth".

(a) by renumbering sub rule (1) as sub rule (2) and inserting the following new sub rule (1)- (1) A marketing agent shall possess-

(a) a bank guarantee as specified in the Seventh Schedule.

(b) evidence of ownership of coffee, by a grower who is licensed as a marketing agent;

(b) by renumbering the rest of the rule accordingly.

20.The principal Rules are amended by deleting Rule 34.

21.The principal Rules are amended by deleting rule 36 and substituting therefor the following new rule-

Marketing agent to disclose selling price, etc.

36. (1) The marketing agent shall disclose to the grower and the Board the selling price at the auction and in direct sales, all other deductions and all material facts pertaining to any transaction on coffee.

(2)A marketing agent who contravenes sub rule (1) commits an offence.

(3)The contract for direct sales shall be registered with the Board and shall be in the form specified in the Ninth Schedule.

22.The principal Rules are amended by deleting rule 37 and substituting therefor the following new rule –

Promotion of Kenya coffee.

37. A marketing agent shall contribute to the promotion of Kenya coffee both in the local and overseas markets and shall ensure that coffee received by him from a grower is sold at the best price available.

23.The principal Rules are amended in rule 39 by-

(a) deleting sub rules (1) and (2) and substituting therefor the following new sub-rules -

(1)Every marketing agent shall take out insurance cover against fire, theft and other risks for all clean coffee in his possession.

(2)A marketing agent shall take all reasonable steps to ensure that delivery of coffee from the grower is continuous, that coffee is available for milling and later for auction or direct sales and that supply is assured to buyers and exporters.

(b) deleting the words "auction hall" in sub rule (4) and substituting therefor the words "central trade sample room of the Nairobi Coffee Exchange".

24. The principal Rules are amended by deleting Rule 41.

25. The principal Rules are amended in rule 47-

a) by inserting the words "a certificate of inspection" and a coma immediately after the word "either " in sub rule (I);

(b) in sub rule (6) by inserting the following new definition of "certificate of inspection" in its proper alphabetical sequence –

"certificate of inspection" means a certificate issued by the Board for all coffee produced in Kenya and destined for export.

26. The principal Rules are amended by inserting the following new rules immediately after rule 47-

Buyer, etc., of specialty coffee to provide details.

47A. A buyer of specialty coffee and the grower or its marketing agent shall each provide the Board with full details of specialty coffee intended for export indicating the name of the grower, type, grade, class and the special characteristics, quantity, price, name of buyer and destination.

Requirements for arrangements for specialty coffee.

47B. Any person intending to enter into special arrangements with a grower to produce specialty coffee for export shall-

(i) enter into formal contracts with a grower specifying the rights and obligations of the grower on one part and the contracting person on the other;

(ii) ensure that the grower receives the highest percentage of the price obtained from the transaction; and

(iii) register the transaction with the Board before execution.

Inspection of specialty coffee facilities etc

47C. Any person contracted to produce and market specialty coffee shall give access to persons authorized by the Board to inspect the farms, processing facilities, warehouses and shall, when required to do so, to produce for the purpose of inspection any document information related to production, processing and export of the coffee.

27. The principal Rules are amended by rule 48 by deleting sub rule (1) and substituting therefor the following new sub rule-

(1) Every licenced dealer, marketing agent, buyer or auctioneer shall submit to the Board two copies of a return of the total stock of coffee held by such licenced dealer, marketing agent, buyer or auctioneer' on a monthly basis.

28.The principal Rules are amended in rule 49 by deleting all the words appearing after the word "dealers" and substituting thereof the words "or between marketing agents or between a dealer and a marketing agent".

29.The principal Rues are amended by inserting the following new rule immediately after rule 49 -

Local contract of sale; etc. not direct sale.

49A. A local contract of sale between a marketing agent and a dealer or a buyer located in Kenya shall not qualify as direct sale.

30.The principal Rules are amended by deleting rule 51.

31.The principal Rules are amended in rule 53 by inserting the words "any certificate of inspection" immediately after the word "origin".

32.The principal Rules are amended in rule 54 by inserting the words "or marketing agent" immediately after the word "dealer".

33.The principal Rules are amended in rule 55 by-

(a)inserting the word "movement" immediately after the word "original" in sub rule (1);

(b)inserting the word "movement" immediately after the word "original" in sub rule (2) ;

(c)deleting sub rule (3) aid substituting therefor the following new sub-rule-

(3) A person who moves coffee contrary to this rule commits an offence.

34.The principal Rules are amended in rule 57 by deleting sub rule (4) and substituting therefor the following new sub rule-

(4) A person who operates or utilizes a building or premises contrary to this rule commits an offence.

35.The principal Rules are amended in rule 58-

(a) by deleting sub rule (1) and substituting therefor the following new sub rule —

(1) The Board shall monitor the movement of parchment coffee between stores and the movement of clean coffee and hulled buni to the market in order to ensure that the coffee is safe from pilferage.

(b) by inserting the words "on regular basis" after the word "inspected" appearing in(sub rule (2).

36. The principal Rules are amended by deleting rule 62 and substituting therefor the following new rule-

Management of Nairobi Coffee Exchange

62. The Nairobi Coffee Exchange shall be managed by the Kenya Coffee Producers and Traders Association

37. The principal Rules and are amended in rule 64 —

(a) by deleting sub rule (1) and substituting therefor the following new sub rule —

(1) The Board may appoint inspectors to conduct independent inspection of a grower's farm or a mill or warehouse or marketing or management agent's or dealer's or roaster's or packer's premises to ascertain whether the requirements of the Act and these rules are being complied with.

(b) by inserting the words "dealer, management agent or roaster or packer" immediately after the word "agent" in sub rule (2)

(c) by deleting sub rule (3) and substituting therefor the following new sub rule-

(3) No coffee grower, miller, marketing agent, dealer, management agent, roaster or packer, or warehouseman, and no agent of such grower, miller, marketing agent, dealer, management agent, roaster or packer, or warehouseman, shall refuse entry to an inspector acting in the course of that inspector's duty or obstruct an inspector from making an entry or conducting an inspection of mill or premises.

38. The principal Rules are amended in rule 66 by deleting sub rule (1) and substituting therefor the following new sub rule —

(1) Sampling of parchment coffee by a miller shall be limited to one kilogram per sample, while sampling of clean coffee by marketing agent shall be limited to 200 grams per sample, and the value of the sample shall be accounted for.

39. The principal Rules are amended in rule 67-

(a) in sub rule(1) by deleting the words "on a full-time basis".

(b) in sub rule (2) by deleting the words "on a full-time basis".

(c) by deleting sub rule (3) and substituting therefor the following new sub rule.

(3) Every miller, marketing agent, or dealer (shall engage a registered coffee liquorer.

(d) inserting the following new sub rule immediately after sub rule (3) –

(3A) A person intending to act as a coffee liquorer shall apply to be registered as a coffee liquorer by the Board.

(e) deleting sub rule (4) and substituting therefor the following new sub rule —

(4) The Board may demand evidence of engagement of a liquorer by a miller, marketing agent, or dealer.

40. The principal Rules are amended by inserting the following new rule immediately after rule 67-

Licences to be under seal.

67A. All licences issued by the Board shall be under seal.

41. The principal Rules are amended in rule 68 by-

(a)renumbering the existing rule 68 as sub rule (1);

(b)deleting all the words after the word "offence" ;

(c)by inserting a new sub rule (2) as follows-

(2) A person who commits an offence under these Rules shall be liable to a fine of not less than one hundred thousand shillings an.1 not exceeding five hundred thousand-shillings or to a term of imprisonment of not less than one year and not exceeding two years or to both fine and imprisonment

42. The principal Rules are amended by deleting the First Schedule and substituting therefor the following new schedule-

FIRST SCHEDULE (*r. 22*)

MILLING AGREEMENT

AGREEMENT made this..... day of..... two thousand and

BETWEEN

.....of..... a licensed miller [Licence No.

(hereinafter called the "miller", which expression shall where the context so admits include his or its successors and assignees) of the First Part;

AND

.....ofa registered grower of coffee [Registration No.....

(hereinafter called the "grower", which expression shall where the context so admits include his or its successors and assignees) of the Second Part

WHEREAS:

(a)the miller is duly licensed under the Coffee Act, 2001 and the rules made there under; and

(b)the grower has requested the miller to provide milling services and the miller has agreed to provide such services to the grower upon the terms and conditions appearing, hereinafter.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1.The grower shall deliver the parchment coffee and buni under the conditions herein stipulated in respect of moisture content, properly labeled bags, well sorted out to distinguish different grades and without foreign matter and the miller shall reserve the right to refuse to accept delivery or provide services if the grower fails to comply with the said conditions.

2.Transport services from the factories of the grower to the mills may be provided by the miller at such rate of charge per bag as may be agreed between the parties. The transport of milled coffee and buni to the marketing agent shall also be charged at such rate of charge per bag as may be agreed between the parties, all milled coffee and buni being securely transported as per the grower's delivery note and confirmation slips, the grower ensuring that all movements of coffee are covered by the Board's movement permits before transportation or as directed by the Board.

3. The grower shall ensure that all coffee in transit to mills is properly insured while the miller shall take out insurance against fire and burglary and any other risk for the coffee delivered for milling until the coffee is handed over to the marketing agent.

4. The grower agrees to pay:

(a)milling charges at the rate of..... US\$;

(b)transport charges at the rate of..... US\$;

(c)storage charges at the rate of..... US\$;

(d)drying charges at the rate ofUS\$.

(e)colour sorting charges at the rate of..... US\$; and

(f)hand sorting charges at the rate of..... US\$ per bag of parchment or buni milled.

5. Drying of coffee received at the mills will be charged according to the moisture content after consent to dry the coffee has been sought and obtained from the client before the drying process starts.

6. Milling shall be done on a first-in first-out basis and empty bags shall remain the property of the grower and shall be returned to him with or without charge.

7. The miller shall ensure that the coffee in his possession is properly stored and secured to protect it from any damage, pilferage or loss of quality.

8. The miller shall submit the milling out-turn statement to the grower as set out in Form F1 in the Coffee(Forms) Rules.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first hereinbefore mentioned.

SIGNED for or on behalf of the miller:

.....

in the presence of:

.....

SIGNED for or on behalf of the grower:

.....

in the presence of:

.....

43. The principal rules are amended by deleting the Third Schedule and substituting therefor the following new schedule-

THIRD SCHEDULE (r.32)

NOTICE OF APPOINTMENT OF MARKETING AGENT

The Managing Director

Coffee Board of Kenya

P.O. Box 30566

NAIROBI

NOTICE OF APPOINTMENT OF MARKETING AGENT

I/We hereby appoint..... of post office No..... Telephone No.
.....as my/our marketing agent for my/our coffee grown on land parcel reference
no..... situated at:

Sub-Location.....

Location.....

DivisionDistrict.

Grower's Address

Grower's Registration No

Grower's Name

Signature:.....

44. The principal Rules are amended by inserting the following new schedule immediately after the Third Schedule-

FOURTH SCHEDULE (*r.32A*)

REQUIREMENTS FOR LICENSING MARKETING AGENT

In considering an application for the registration of a marketing agent, the Board shall take into account the following matters-

- (i) demonstrated access to coffee markets and capacity to market coffee;
- (ii) demonstrated capacity to carry out market research and intelligence;
- (iii) bank guarantee in favour of the grower (one and half times the value of coffee transacted by the marketing agent);
- (iv) whether the applicant is registered as a marketing agent by the Board and has a certificate of registration;
- (v) appointment by a grower to be his or its marketing agent;
- (vi) conducts business in the premises as specified in the register;
- (vii) pass integrity test (vetting by appropriate authority as provided for by section 19 of the Act) and free from indebtedness to farmers or farmers' organizations;
- (viii) certificate of incorporation as a company or certificate of registration as the case may be;
- (ix) must have a qualified liquorer;
- (x) if a holding company, give a list of associated companies;
- (xi) must give a business referee;
- (xii) must have a tripartite agreement with a financier, grower and the marketing agent;
- (xiii) in case of a company, information of paid up capital;

(xiv)payment of annual licence fees;

(xv)evidence of own coffee in case of a grower by providing the following information: acreage, location of farm, LIZ. No., production records for the last three years.

(xi)must give a business referee;

(xii)must have a tripartite agreement with a financier, grower and the marketing agent

(xiii)in case of a company, information of paid up capital;

(xiv)payment of annual licence fees;

(xv)evidence of own coffee in case of a grower by providing the following information: acreage, location of farm, LR. No., production records for the last three years.

45. The principal Rules are amended by deleting the Fourth Schedule and substituting therefor the following new schedule-

FIFTH SCHEDULE (*r. 32*)

MARKETING AGENCY AGREEMENT

AGREEMENT made this..... day of two thousand and

BETWEEN:

.....of..... a marketing agent [Licence No..... and Registration No.....] (hereinafter called the "marketing agent", which expression shall where the context so admits include its successors and assignees) of the First Part;

AND

.....of..... a registered grower of coffee [Registration No.....] (hereinafter called the "grower", which expression shall where the context so admits include its successors and assignees) of the Second Part

WHEREAS:

(a)the marketing agent is duly licensed under the Coffee Act, 2001 and the rules made there under; and

(b)the grower has requested the marketing agent to provide the services referred to below and the marketing agent has agreed to provide such services to the grower upon the terms and conditions appearing hereinafter,

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. The grower appoints the marketing agent as the grower's sole marketing agent, for the duration of this Agreement, for the purpose of marketing and selling coffee on behalf of the grower in accordance with the provisions of the Coffee Act, 2001.

2. The marketing agent hereby agrees to take over any contractual obligations of the Coffee Board of Kenya arising under the irrevocable letter of instructions on payment of coffee proceeds issued by the grower to the Board pursuant to hypothecation of stock securities held by the financier.

3. In carrying out its obligations under this Agreement the marketing agent undertakes to conduct its business diligently and professionally at all times in the best interest of the grower.

4. The marketing agent shall sell the coffee at the auction or through direct sales and obtain the best price available in the particular crop year. Upon receipt of any proceeds, the same shall be paid directly to the grower's account as hereinafter provided.

5. The marketing agent shall keep proper and clean records of all coffee delivered to him and of any other services rendered to the grower, and shall in a timely manner render to the grower schedules of out-turns and of all statutory and other deductions made from the proceeds of sale of coffee on the grower's behalf.

6. Save as otherwise provided in the Act and any other applicable law, the marketing agent shall not have a general lien over the grower's payments due from any agency or source.

7. The marketing agent shall—

- (a) advise the grower on matters pertaining to sales of coffee;
- (b) receive coffee from millers on behalf of the grower;
- (c) warehouse, grade and classify coffee by liquoring or otherwise;
- (d) prepare the coffee sales catalogues after coffee has been delivered by the miller at the designated warehouses;
- (e) deliver coffee samples to the central trade sample room of the Nairobi Coffee Exchange;
- (f) set the reserve price in consultation with the grower;
- (g) reveal the price and agree with the grower for coffee sold through direct sales ;
- (h) monitor the sale of coffee at the Nairobi Coffee Exchange and international coffee exchanges;
- (i) facilitate the auctioning of coffee at the Nairobi Coffee Exchange and direct sale market;
- (j) receive the proceeds of sale of coffee and promptly remit the same after making statutory and other deductions;
- (k) prepare and issue coffee storage warrants;

(l) provide such advice from time to time as the grower may reasonably require in relation to milling out-turns and grading, proper financial management, liaison with the miller, financial services to be provided and interest rates and repayment schedules agreed upon with the grower;

(m) provide such advice from time to time as the grower may reasonably require in relation to coffee marketing and warehousing facilities, coffee processing, handling, storage, milling, grading and classification, sourcing funds, cherry or parchment advances and financing;

(n) appoint a reputable insurance company to insure the coffee in his possession.

(o) appoint a duly licensed auctioneer to auction the coffee in case of coffee sold through the Nairobi Coffee Exchange.

(p) The marketing agent shall ensure that the coffee in his possession is properly stored and secured to protect it from any damage, pilferage or degeneration in quality.

8. The grower shall pay to the marketing agent fees in an amount not exceeding three per cent (3%) of the gross coffee sale proceeds.

9. This Agreement shall bind the parties for a period of one year from the date of its coming into operation.

10. Either the grower or the marketing agent may terminate this Agreement by giving the other party • at least three months' notice in writing:

Provided that no such termination shall in any way affect any accrued right of either party hereunder.

11. Coffee sold by the marketing agent on the grower's behalf shall be sold on condition that ownership of coffee shall not pass to the buyer unless and until it has been paid for.

12.(1) All coffee proceeds received by the marketing agent, less the statutory deductions, milling costs, warehousing, insurance costs, auctioneer's fees and other proper charges, shall be paid directly to such bank account of the grower as the grower may from time to time in writing direct, such payments to be made—

(a) as soon as practicable but in any event not later than seven days from the prompt date, as provided by section 35 of the Act; and

(b) in United States dollars or such other hard currency as may from time to time be agreed and as the rules of the Coffee Exchange may permit.

(2) If the marketing agent shall fail to remit the balance of the proceeds of sale by the due date, he shall be liable to pay, on the outstanding balance from time to time of the un-remitted sum, interest at the prevailing commercial lending rate of the guaranteeing bank, compounded daily, from the date on which the payment was due until the date when the payment is made.

13. By this Agreement the grower irrevocably authorizes and directs the marketing agent to deduct the milling, other charges and any credit or advance hypothecated on the crop and after statutory deductions to remit the balance as hereinbefore provided.

14. The grower authorizes the marketing agent to deduct not more than—

(a)per cent (..%), being the total

marketing charges;

(b) one percent (1 %) being ad valorem levy due to the Board;

(c) two percent (2%) being ad valorem levy due to the Foundation;

(d) one per cent (1%) being the produce cess from coffee sales proceeds, and distributed in the ratio of 0.8 % to Kenya Roads Board and 0.2% to the county councils and to pay the said percentages to the parties entitled to them and remit the balance to the grower in the manner herein before provided.

15. The fees of any auctioneer appointed by the marketing agent shall not exceed "...(%)-per cent of the gross sales of the grower's coffee.

16. The marketing agent shall appoint an insurance company to insure the grower's coffee in his possession.

17. Delivery of coffee shall be the basis of payments or advances and loans to growers but the (marketing agent • shall give tariffs and rates for service and in case of any changes he shall advise the grower in writing at least three months before the effective date.

18. In his dealings with the grower, the marketing agent shall observe and comply with any requirements of the Coffee Act 2001 and of the rules made thereunder.

19. All the parties to this Agreement affirm and undertake to honour all obligations among them including, but not limited to, all irrevocable (payment instructions that may be issued by the grower to the Board or any other marketing agents from time to time.

20. Any disputes and differences which may arise between the parties hereto in connection with this Agreement shall be referred for arbitration to the Board as provided for in rule 63.

21. Any notice under this agreement shall be in writing and shall be deemed to have been duly given or made if delivered at the offices for the time being of the parties hereto or sent by pre-paid letter of post to the last known addresses of the parties hereto, and if sent by post such notice shall be effectual for all purposes four days after the date of posting thereof and in proving service by post it shall be sufficient to prove that the letter containing the notice was properly stamped, addressed and put into the Post Office.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the day and date first hereinbefore mentioned.

SIGNED for and on behalf of the marketing agent:

.....

in the presence of

.....

SIGNED for and on behalf of the grower

.....

in the presence of

.....

46.The principal Rules are amended by renumbering the Fourth Schedule as the Fifth Schedule and by renumbering the rest of the Schedules appropriately.

47.The principal Rules are amended by deleting the Fifth Schedule and substituting therefor the following new schedule-

SIXTH SCHEDULE (r.32.)

TRIPARTITE MARKETING

AGENCY AGREEMENT

AGREEMENT made the..... day oftwo thousand and

BETWEEN:

.....ofa marketing agent [Licence No..... and Registration No.....(hereinafter called the "marketing agent", which expression shall where the context so admits include its successors and assignees) of the First Part;

AND

.....ofa registered, grower of coffee \ [Registration No..... (hereinafter called the "grower", which expression shall where the context so admits include its successors and assignees) of the Second Part;

AND

.....of(hereinafter called the "financier", which expression shall where the context so admits include its successors and assignees) of the Third Part

WHEREAS:

(a) the marketing agent has been duly licensed under the Coffee Act, 2001 and the Rules made thereunder as a marketing agent;

(b) the grower has appointed the marketing agent as his or its marketing agent to market his or its coffee upon the terms and conditions hereinafter appearing;

(c) the Financier has provided and/or continues to provide finance and /or extend financial accommodation to the grower and/or marketing agent, upon terms and conditions hereinafter appearing;

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. The grower appoints the marketing agent as the grower's sole marketing agent, for the duration of this Agreement, for the purpose of marketing and selling coffee on behalf of the grower in accordance with the provisions of the Coffee Act, 2001.

2. The marketing agent hereby, agrees to take-over any contractual obligations of the Coffee Board of Kenya arising under the irrevocable letter of instructions on payment of coffee proceeds issued by the grower, to the coffee Board pursuant to hypothecation of stock securities held by the financier.

3. In carrying out its obligations under this Agreement the marketing agent undertakes to conduct his business diligently and professionally at all times in the best interest of the grower.

4. The marketing agent shall sell the coffee at the coffee auction or through direct sales and obtain the best price available in the particular crop year. Upon receipt of any proceeds, the same shall be paid directly to the grower's account with the financier as hereinafter provided.

5. The marketing agent shall keep proper and clean records of all coffee delivered to him and of any other services rendered to the grower, and shall in a timely manner render to the grower schedules of out-turns and of all statutory and other deductions made from the proceeds of sale of coffee on the grower's behalf.

6. Save as otherwise provided in the Act and any other applicable law, the marketing agent shall not have a general lien over the grower's payments due from any agency or source.

7. The marketing agent shall—

(a) advise the grower on matters pertaining to sales of coffee;

(b) receive coffee from millers on behalf of the grower;

(c) warehouse, grade and classify coffee by liquoring or otherwise;

(d) prepare the coffee sales catalogues after coffee has been delivered by the miller or his agent at the designated warehouses;

(e) deliver coffee samples to the central trade sample room of the Nairobi Coffee Exchange;

- (f) set the reserve price in consultation with the grower and the financier;
- (g) revealing the price and agreeing with the grower for coffee sold through direct sales;
- (h) monitor the sale of coffee at the Nairobi Coffee Exchange;
- (i) facilitate the auctioning of coffee at the Nairobi Coffee Exchange and direct sale market;
- (j) receive the proceeds of sale of coffee and promptly remit the same after making statutory and other deductions;
- (k) prepare and issue coffee storage warrants;
- (l) provide such advice from time to time as the grower may reasonably require in relation to milling out-turns and grading, proper financial management, liaison with the miller, financial services to be provided and interest rates and repayment schedules agreed upon with the grower;
- (m) provide such advice from time to time as the grower may reasonably require in relation to coffee marketing and warehousing facilities, coffee processing, handling storage, milling, grading and classification, sourcing funds, cherry or parchment advances and financing;
- (n) appoint a reputable insurance company to insure the coffee in his possession;
- (o) appoint a duly licensed auctioneer to auction the coffee in case of coffee sold through the Nairobi Coffee exchange;
- (p) the marketing agent shall ensure that the coffee in his possession is properly stored and secured to protect it from any damage, pilferage or degeneration in quality..

8. The grower shall pay to the marketing agent fees in an amount not exceeding three (3) per cent of the gross coffee sale proceeds.

9. This Agreement shall bind the parties for a period of one crop year from the date of its coming into operation but shall thereafter continue in force until determined in accordance with clause 11 hereof.

10. Either the grower or the marketing agent may terminate this Agreement by giving the other at least three months' notice in writing Provided that no such termination shall in any way affect any accrued right of either party hereunder;

11. Coffee sold by the marketing agent on the grower's behalf shall be sold on condition that ownership of coffee shall not pass to the buyer unless and until it has been paid for and the grower has received the balance of the proceeds of sale after statutory and other proper deductions.

12. By this Agreement the grower irrevocably authorizes and directs the marketing agent to deduct the milling, other charges and any credit or advance hypothecated on the crop and after statutory deductions to remit the balance as herein before provided.

13. (1) All coffee proceeds from coffee dealers received by the marketing agent, less the statutory deductions, milling costs, warehousing, insurance costs, auctioneers fees and other proper charges, shall be paid directly to such bank account of the growers as the grower may from time to time in writing direct, such payments to be made—

(a) as soon as practicable but in any event not later than seven days from the prompt date as provided by section 35 of the act;

and

(b) in United States dollars or such other hard currency as may from time to time be agreed and as the rules of the coffee Exchange may permit.

(2) If the marketing agent shall fail to remit the balance of the proceeds of sale by the due date, he shall be liable to pay, on the outstanding balance from time to time of the unremitted sum, interest at the prevailing commercial lending rate of the guaranteeing bank, compounded daily, from the date on which the payment was due until the date when the payment is made.

14. The grower authorizes the marketing agent to deduct not more than—

(a) per cent (..%), being the total marketing charges;

(b) one percent (1%) being ad valorem levy due to the Board;

(c) two percent (2%) being ad valorem levy due to the Foundation;

(d) one per cent (1%) being the produce cess from coffee sales proceeds, and distributed in the ratio of 0.8 % to Kenya Roads Board and 0.2% to the county councils

And to pay the said percentages to the parties entitled to them and remit the balance to the Grower in the manner hereinbefore provided.

15. The fees of any auctioneer appointed by the marketing agent shall not exceed (%) per cent the gross sales of the grower's coffee.

16. The marketing agent shall appoint an insurance company to insure the grower's coffee in his possession.

17. That the marketing agent may provide other field advisory services, transport, and training, coffee seeds or seedlings, storage of coffee or warehousing facilities.

18. Delivery of coffee shall be the basis of payments or advances and loans to growers but the marketing agent shall give tariffs and rates for service and in case of any changes he shall advise the grower in writing at least three months before the effective date.

19. In his dealings with the grower, the marketing agent shall observe and comply with any requirements of the Coffee Act 2001 and of the rules made thereunder.

20. The grower hereby irrevocably appoints the financier to be the attorney of the grower and in the name and on behalf of the grower to execute and do any assurances acts and things which the grower ought to execute and do under the covenants and agreements contained herein and in the Act and the rules made thereunder, including making claims under guarantees and other legal instruments issued in favour of the grower and generally to use the name of the grower in the exercise of all or any of the powers hereby or by law respectively conferred on the grower or its marketing agents.

21. All the parties to this Agreement affirm and undertake to honour all obligations among them including, but not limited to, all irrevocable payment instructions that may be issued by the grower to the Board or any other marketing agents from time to time.

22. Any disputes and differences which may arise between the parties hereto in connection with this Agreement shall be referred to arbitration in accordance with the provisions of the Arbitration Act.

23. Any notice under this agreement shall be in writing and shall be deemed to have been duly given or made if delivered at the offices for the time being of the parties hereto or seem by pre-paid letter of post to the last known addresses of the parties hereto, and if sent by post such notice shall be effectual for all purposes for

days after the date of posting thereof and in proving service by post it shall be sufficient to prove that the letter containing the notice was properly stamped, addressed and put into the Post Office.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the day and date hereinbefore mentioned.

SIGNED for and on behalf of the marketing agent:

.....

in the presence of:

SIGNED by or on behalf of the grower: in the presence of:

.....

SIGNED for and on behalf of the financier: in the presence of:

.....

48. The principal rules are amended in the Sixth Schedule by deleting the word "the" appearing immediately after the word "made" in the recital clause and substituting therefor the word "this".

49. The principal Rules are amended by inserting a new Schedule immediately after the Seventh Schedule as follows-

NINTH SCHEDULE (r.36)

DIRECT COFFEE SALES CONTRACT

PART I - PARTICULARS OF MARKETING AGENT

Name

Identity Card No/ Certificate of Incorporation No

Registration No

PIN No.....

VAT No

Postal Address Telephone

Email

Sub-location

Location

Division

District L.R. No. or Nos. where

applicable

Acreage

PART II — PARTICULARS OF OVERSEAS

BUYER

Name

Postal Address

Registered office.....

Street

Town/City

Country

E-mail

PART III — CONTRACT DETAILS

Contract Ref. No

Grades of coffee

No of Bags of coffee

Net weight (kgs)

Price per 60-kg bag..... US \$

Total ValueUS \$

PART IV — TERMS AND CONDITIONS

Shipment

Payment

Insurance.....

Sample

Shipper

Destination

Condition (f.o.b)

Special condition (if any)

Arbitration/Terms

I /We certify that the information given above is true to the best of my/our knowledge and information.

Made on the 17th July, 2006.

KIPRUTO ARAP KIRWA,

Minister for Agriculture