

HORTICULTURAL CROPS DEVELOPMENT AUTHORITY ORDER, 2011

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HORTICULTURAL CROPS DEVELOPMENT AUTHORITY ORDER, 2011

[L.N. 190/2011.]

PART I – PRELIMINARY

1. Citation

This Order may be cited as the Horticultural Crops Development Authority Order, 2011.

2. Interpretation

In this Order, unless the context otherwise requires—

“**agent**” means a person appointed in writing by the Authority to collect levies, charges, fees and remit it to the Authority and includes a market superintendent in a specified market;

“**Authority**” means the Horticultural Crops Development Authority established under paragraph 3;

“**Board**” means the Board of the Authority established under paragraph 4;

“**Committee**” means the Horticultural Crop Nursery Committee established under paragraph 17;

“**dealer**” means a person, a company or a firm engaged in buying horticultural produce for resale in the local or export market and includes a ship chandler, an exporter, an importer, a processor or a marketing agent;

“**Minister**” means the minister for the time being responsible for agriculture;

“**mother block**” means selected plants established for the purpose of obtaining clean grafting or budding material;

“**rootstock**” means the part of a plant which forms the root system of the plant, and into which a *scion cultivar* is grafted or budded;

“**scion**” means a detached shoot or bud used in vegetative propagation in the process of grafting or budding;

“**ship chandler**” means a person registered and authorized by the Authority to supply horticultural produce to a ship or an aircraft.

PART II – ESTABLISHMENT OF THE HORTICULTURAL CROPS DEVELOPMENT AUTHORITY

3. Establishment of the Authority

(1) There is established an Authority to be known as the Horticultural Crops Development Authority.

(2) The Authority 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 and disposing of movable and immovable property;
- (c) borrowing money;
- (d) entering into contracts; and

- (e) doing or performing all such other things or acts necessary for the proper discharge of its functions under this Order, which may be lawfully done or performed by a body corporate.

4. Composition of the Board of the Authority

- (1) There shall be a Board of the Authority consisting of the following members—
 - (a) a Chairman appointed by the President;
 - (b) the Permanent Secretary in the ministry for the time being responsible for agriculture;
 - (c) the Permanent Secretary in the ministry for the time being responsible for finance;
 - (d) the Agriculture Secretary;
 - (e) the Managing Director;
 - (f) six members appointed by the Minister one member representing—
 - (i) fruit growers;
 - (ii) flower growers;
 - (iii) vegetable growers;
 - (iv) horticultural nursery operators;
 - (v) horticultural produce processors;
 - (vi) horticultural exporters associations, who shall possess a degree or other relevant qualification or experience.

(2) The members appointed under paragraph 4(f) shall serve for a three year term, renewable once.

5. Cessation of membership

A member of the Board shall cease to be a member if the member—

- (a) resigns his office in writing to the Minister;
- (b) is, without reasonable cause, absent from three consecutive meetings of the Board;
- (c) is adjudged bankrupt;
- (d) is incapacitated by prolonged physical or mental illness;
- (e) ceases to represent the interest in respect of which he was nominated to the Board;
- (f) is convicted of criminal offence and is sentenced to imprisonment for a term exceeding six months or to a fine exceeding two thousand shillings; or
- (g) is otherwise unable or unfit to discharge the functions of the office.

6. Functions and powers of the Board

The Board shall have the powers to promote, coordinate and facilitate the development of the industry but without prejudice to the generality of the foregoing, the Board may—

- (a) advice the Government and the industry on matters related to horticulture production and marketing;
- (b) collect and collate data, maintain a database and disseminate information on horticultural activities for planning purposes;
- (c) provide specialized horticulture extension services;

- (d) appoint agents for the implementation or performance of any function of the Authority under this Order;
- (e) directly or indirectly support the establishment of fruit tree mother blocks;
- (f) regulate the horticulture nurseries, production, post-harvest handling and marketing of horticultural crops and produce;
- (g) promote development and adoption of standards for labeling, packaging, grading, transporting and storing horticultural produce in compliance with local and international standards;
- (h) impose levies, fees or charges on producers, dealers and nursery operators as the Minister may approve;
- (i) promote the establishment and use of production, processing and marketing infrastructure for horticultural crops;
- (j) facilitate marketing of horticultural products in the local and international markets; and
- (k) provide for any other matter in furtherance of the development of horticultural crops or conducive to the exercise of any of its powers under this Order.

7. Meetings of the Board

(1) The Chairman shall preside at all meetings and in the absence of the Chairman, the members present at the meeting shall appoint one of the members to act as chairman at that meeting.

(2) The quorum at a meeting of the Board shall be two thirds of all the members.

(3) The Board may co-opt for a period as it may think fit, not more than five persons whose expertise or advice it may require.

(4) The persons co-opted under sub paragraph (3) shall not be counted as members for the purposes of forming a quorum.

(5) The matters of the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(6) Subject to this Order, the Board may regulate its own procedure.

8. Managing Director

(1) There shall be a Managing Director who shall be competitively recruited by the Board and appointed by the Minister on such terms as the Minister shall, in consultation with the Board, determine.

(2) The Managing Director shall be the chief executive officer and Secretary to the Board.

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

(4) The Managing Director shall possess a first degree and a postgraduate qualification.

9. Remuneration of Board members

The Board shall pay its members remuneration or allowances as it may, with the approval of the minister for the time being responsible for matters relating to finance, determine.

10. Appointment of staff

The Authority may employ, on terms and conditions as it considers fit, such other officers, staff or agents necessary for the discharge of its functions or duties under this Order.

11. Delegation of powers

Subject to this Order, the Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member or an agent of the Board, the exercise of any of its functions or powers.

12. Execution of Documents

(1) The seal of the Authority shall be authenticated by the signature of the Chairman and the Managing Director, or by either the Chairman or the Managing Director, together with one member other than an *ex officio* member of the Authority authorized in writing by the Authority in that behalf.

(2) Any document, other than a document which is required by any other law to be under seal, made and any decision of the Authority, may be given under the hand of the Chairman, or the Managing Director or any other member of the Authority authorized in writing by the Authority in that behalf.

13. Inspectors

(1) The Board shall appoint inspectors to carry out inspections under this Order.

(2) No suit, prosecution or other legal proceedings shall lie against an inspector for anything done in good faith and without negligence under this Order.

14. Financial year

The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

15. Accounts and audit

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

(2) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act (No. 12 of 2003).

16. Horticultural Research Fund

(1) There is established a fund to be known as the Horticultural Research Fund, which shall be administered by the Authority.

(2) The Fund shall consist of—

- (a) levies imposed on dealers under paragraph 33;
- (b) funds provided by bilateral or multilateral donors for the purposes of the Fund;
- (c) funds from any other source approved by the Authority.

(3) The Fund shall be used for the purpose of undertaking research on horticulture.

PART III – QUALITY ASSURANCE IN PRODUCTION AND MARKETING

17. Establishment of the Horticultural Crop Nursery Committee

(1) There shall be a Horticultural Crop Nursery Committee composed of—

- (a) the Agriculture Secretary;

- (b) the Managing Director of the Authority;
- (c) the Director, Kenya Agricultural Research Institute;
- (d) the Managing Director, Kenya Plant Health Inspectorate Service;
- (e) a duly appointed representative of the Commissioner of Prisons;
- (f) the Centre Director, National Horticultural Research Centre, Thika;
- (g) one representative of registered private sector nursery operators.

(2) The Committee shall from time to time prescribe the minimum requirements for establishing and operating an horticultural crop nursery.

(3) The Agriculture Secretary shall chair the Committee.

(4) The Committee may co-opt for such period as it may think fit, any person whose assistance or advice it may require.

18. Registration of nursery and mother blocks

(1) A person shall not establish or operate a horticultural crop nursery or a mother block in any area unless that crop nursery or mother block is registered by the Authority.

(2) A person who intends to operate a nursery or a mother block shall make an application for registration to the Authority in the prescribed form accompanied by a non-refundable fee of five hundred shillings.

(3) Subject to paragraph 19, the Authority shall issue a certificate of registration to any successful applicant.

(4) The certificate of registration for a nursery or a mother block shall be as set out in Form A of the First Schedule, renewable annually and shall only be applicable to the site inspected.

19. Conditions before registration

A person shall not be issued with a certificate of registration as a nursery or a mother block operator unless an inspector—

- (a) has visited and inspected the site and confirmed it as suitable for a horticultural crop nursery; and
- (b) is satisfied that the operator or his agent has adequate knowledge of nursery management and horticultural techniques in respect of horticultural crops to be grown.

20. Certificate not transferable

(1) A person to whom a certificate of registration is issued shall not sell, lend, transfer or otherwise dispose the certificate without the prior written permission from the Authority.

(2) An operator of an horticultural crop nursery shall display the certificate of registration for inspection at all times.

21. Revocation of certificate of registration

(1) The Authority may revoke a certificate of registration issued to a nursery or a mother block operator if that operator contravenes the provisions of paragraph 18, 20, 22, 23, 24 and 25.

(2) The operator of an horticultural crops nursery or mother block whose certificate of registration is revoked under subparagraph (1) may re-apply for registration after a period of two years.

22. Inspectorate Service

A person shall not transfer or distribute horticultural planting materials from one part of the country to another unless that person has Restriction on transfer or distribution of an accompanying plant health certificate from Kenya Plant Health planting material.

23. Approved source of planting materials

A nursery operator shall not procure rootstock, scion, or seed planting material from sources not approved by the Committee.

24. Certification and recertification of planting material

A nursery operator who has in his nursery certified planting material which has not been distributed during the certification season shall ensure that the undistributed planting material is re-certified after every six months.

25. Nursery records

(1) A nursery operator shall keep accurate records of distributed planting materials indicating the buyer's name, district, location, sub location and postal address, varieties purchased and shall produce such records on demand for the purposes of inspection.

(2) A nursery operator shall submit annual records to the Authority in the prescribed manner.

26. Offences

(1) A person who contravenes the provisions of paragraphs 18, 20, 22, 23, 24 and 25 commits an offence.

27. Production, produce handling and packhouses

Unless otherwise provided for in this Order—

- (a) the production sites, produce traceability, produce handling, the minimum conditions applicable to pack houses and waste disposal shall be done in accordance with the Kenya Bureau of Standards on Horticulture Industry Code of Practice (KS 1758 2004) and any other national horticulture standards in force from time to time;
- (b) the minimum conditions applicable to pack houses shall in addition to subparagraph (a), be as set out in the Third Schedule.

28. Safe use of pesticides

All procurement, distribution, safe storage, usage and disposal of agro-chemicals shall be in accordance with the provisions of the Pest Control Products Act.

29. Registration for produce dealers

(1) A dealer shall not process, import, export, or act as a marketing agent of horticultural produce unless that dealer is registered by the Authority.

(2) An application for a registration certificate shall be prescribed by the Authority from time to time and shall be accompanied by the prescribed fee.

(3) A registration certificate issued under this paragraph shall be as set out in Form B of the First Schedule.

(4) The registration certificate shall remain valid for a period of one calendar year.

(5) The Authority may revoke the certificate of registration if a person contravenes the provisions of paragraphs 30 and 31.

30. Restrictions on registration

- (1) A registered dealer shall not—
- (a) sponsor the growing of horticultural crops for trading without informing the Authority in writing and any production schemes so sponsored shall be regulated by a contract;
 - (b) collect produce from sponsored production schemes unless authorized in writing to do so by the sponsoring firm; or
 - (c) return produce collected from the farmers or suppliers contrary to the contract agreement.
- (2) A registered dealer shall—
- (a) ensure conformity to food safety and quality standards as prescribed by the Kenya Bureau of Standards from time to time;
 - (b) sign a contract with the producer and register the contract with the Authority;
 - (c) indicate in the contract the produce price, quantity and quality requirements;
 - (d) strive to attain the highest produce quality standards and ensure that all produce for market shall be pre-cooled;
 - (e) adopt and use the specified national horticulture logo prescribed by the Authority on packaging as set out in the Second Schedule;
 - (f) notify the Authority of any dealer who contravenes any contract or order within thirty days after the date of default;
 - (g) furnish the Authority with quarterly production and marketing data by fifteenth of the month following the end of the quarter as shall be prescribed; and
 - (h) allow an inspector at all reasonable times to enter to premises where horticultural produce are under cultivation, processing, warehousing, storage, collection or transportation.

31. General provisions on conformity for produce

Horticultural produce shall be harvested, sorted, graded, packaged, transported, and stored in accordance with guidelines as set out in the Third, Fourth, and Fifth Schedules and the specific national horticulture produce standards.

32. Penalty

A person who contravenes the provisions of paragraphs 30 and 31 commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding six months or both.

33. Imposition of levies

(1) A levy is hereby imposed on all the horticultural crops destined for export other than those canned, bottled, preserved, dehydrated or delivered to operators for canning and processing factories payable on volumes dealt with at the rate of thirty cents per kilogram.

(2) A levy is hereby imposed on all the horticultural crops delivered for canning and processing to all canning and processing factories at the rate specified in the Sixth Schedule.

(3) The levy due under subparagraph (2) shall be remitted to the Authority not later than the tenth day of the month following the month during which the levy was due.

(4) The Authority shall remit thirty per cent of the levies collected under this paragraph to the Horticultural Research Fund.

(5) Any levy imposed by the Authority under this Order, unless the manner of remitting is specifically provided for, shall be payable to the Authority or its agents by a dealer on whom it is imposed in such a manner and within such time as the Authority may direct, and shall be a civil debt due from the dealer to the Authority.

34. Submission of returns

A dealer shall maintain accurate records of transactions relating to horticulture and shall submit quarterly returns to the Authority in a manner as the Authority may prescribe.

35. General penalty

A person who contravenes the provisions of this Order for which no specific penalty is provided for, commits an offence and is liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three months or both.

36. Revocation of L.N. 228/1995, L.N. 229/1995, L.N. 230/1995, L.N. 231/1995, L.N. 232/1995

The Horticultural Crops Development Authority (imposition of Fees and charges) Order, 1995, the Horticultural Crops Development Authority (Imposition of Levy) Order, 1995, the Horticultural Crops Development Authority Order, 1995, the Horticultural Crops Development Authority (Export) Order, 1995 and the Horticultural Crops Development Authority (Fruit Tree Nurseries) Order, 1995, are revoked.

FIRST SCHEDULE

FORM A (para. 18(4))

HORTICULTURAL CROPS DEVELOPMENT AUTHORITY

Certificate of Registration of (Crops Nursery/Mother Block)

Messrs

of P.O. Box Telephone No.

is/are registered to operate a Horticultural crop nursery for the year 20

located at sub location

LR No.

The following planting materials will be produced

Crop/Varieties Number of seedlings

.....

.....

Registration No.

Signed
(Managing Director)
Horticultural Crops Development Authority

Date:

FIRST SCHEDULE, FORM A—continued

CONDITIONS

1. This certificate is valid for 1 year from date of issue.
 2. This certificate is not transferable to any other person, or nursery site.
 3. All seed and scion must be from approved sources.
 4. No sale of planting material before final inspection and certification.
 5. All certified planting materials which are not distributed during the certification's period will be subject to certification after six (6) months.
- The application for renewal of this certificate shall be made to the Managing Director, HCDA, P.O. Box 42601-00100, NAIROBI, Fax: 020-827264 so as to reach at least 3 months before expiry date.

FORM B

(para. 29(3))

HORTICULTURAL CROPS DEVELOPMENT AUTHORITY CERTIFICATE OF
REGISTRATION OF HORTICULTURAL PRODUCE DEALER

Registration No.
Name
Address: Tel. No.
L.R. No.
Street:
is hereby registered as a dealer of horticultural produce.
The registration expires on
Date of registration
Signed
Name

.....
Managing Director
Horticultural Crops Development Authority

SECOND SCHEDULE

[Paragraph 30(2)(e).]

HORTICULTURAL CROPS DEVELOPMENT AUTHORITY INDUSTRY LOGO

THIRD SCHEDULE

[Paragraphs 27(b) and 31.]

HORTICULTURAL CROPS DEVELOPMENT AUTHORITY
FIELD HANDLING AND GRADING MINIMUM REQUIREMENTS

1. High standards of field hygiene shall be maintained during harvesting operations.
2. All harvested produce SHALL be at the right stage of maturity for intended use.

3. Produce shall be harvested during the cool part of the day and kept cool preferably under shade.
4. Harvested produce shall be protected from adverse weather conditions and where necessary pre-cooled and a cold chain maintained.
5. Appropriate harvesting equipment shall be used for each crop.
6. Produce unfit for marketing shall be separated from marketable produce at the field level.

7. All produce shall be sorted and graded as appropriate.
8. Physical handling of produce shall be minimized at all stages.
9. A collection shed shall be constructed for receiving produce at field level.
10. The collection shed shall—
 - (a) be accessible to both buyers and farmers;
 - (b) be designed to allow for a store, an office, working area and an appropriate cooling facility;
 - (c) have floors, doors, wall surfaces made of impervious, nontoxic, washable materials, which are easy to clean and disinfect;
 - (d) be constructed to allow for adequate ventilation, lighting, effective produce inspection and made of acceptable materials;
 - (e) have potable water and adequate toilet facilities;
 - (f) have waste disposal facilities; and
 - (g) have clear documentation procedures and document control systems.

FOURTH SCHEDULE

[Paragraph 31.]

HORTICULTURAL CROPS DEVELOPMENT AUTHORITY MINIMUM
CONDITIONS APPLICABLE TO PACKHOUSES PRODUCE HANDLING FACILITY

1. All processing and packaging must be carried out in a clean, hygienic and safe conditions as set out under the provisions of the Public Health Act and the Occupational Safety and Health Act, 2007 (Cap. 242).
2. The working areas and premises shall be kept free of waste materials.
3. Any person in the produce handling facility shall wear protective clothing at all times.
4. All hand used equipment and grading tables shall be rust proof and easily cleaned.
5. The floor layout shall allow for smooth flow of produce with adequate separation of raw materials and finished products.
6. The floors, doors and wall surfaces shall be made of impervious, non-absorbent, non-toxic washable materials which are easy to clean and disinfect.
7. The produce handling facility shall have adequate ventilation, temperature control and lighting.
8. All machinery used in the produce handling facility shall conform to the provisions of Occupational Safety and Health Act, 2007.
9. The produce handling facility shall be designed and constructed to prevent entry of domestic animals, rodents, insects, birds, dust and any other unwanted animals.
10. Prominent signs shall be displayed forbidding smoking, eating or drinking within the facility.
11. All packaging materials shall be kept off the floor in clean dry storage areas free from risk of contamination.
12. All produce shall move through the facility operation in the order that it is received, First in First out.
13. The traceability of all produce shall be documented throughout the process chain.

FIFTH SCHEDULE

[Paragraph 31.]

HORTICULTURAL CROPS DEVELOPMENT AUTHORITY PACKAGING,
TRANSPORTATION AND STORAGE MINIMUM REQUIREMENTS

1. The packaging shall protect the produce from mechanical and physiological damages to minimize loss of quality.
 2. The packaging shall be designed to suit the transport handling system and have capacity to meet market requirements.
 3. The packaging material used shall be able to contain the produce, enabling the required quantity to be handled as one unit.
 4. Horticultural produce shall during storage and transport be kept at the prescribed temperature and humidity levels for each produce.
 5. Horticultural produce and products shall not be stored or transported together with other produce, which may contaminate them or otherwise adversely affect their quality.
 6. Vehicles for transport shall be built and equipped to ensure maintenance of optimal temperatures to prevent damage and spoilage of produce.
 7. Persons handling the produce must be healthy, protected and trained on produce handling.
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SIXTH SCHEDULE

[Paragraph 33(2).]

HORTICULTURAL CROPS DEVELOPMENT AUTHORITY
HORTICULTURAL CROPS LEVY (PROCESSING)

	<i>Crop Rate per metric tonne</i>	<i>KSh</i>
Pineapples		10
Other fruits		30
Vegetables		15
