

5th October, 2012

LEGAL NOTICE NO. 111

THE COFFEE ACT
(No. 9 of 2001)

IN EXERCISE of the powers conferred by Section 44 of the Coffee Act, the Minister for Agriculture in consultation with the Board, makes the following Rules:—

THE (NAIROBI) COFFEE (EXCHANGE TRADING) RULES, 2012.

Citation.

1. These Rules may be cited as the (Nairobi) Coffee (Exchange Trading) Rules, 2012.

Interpretation.

2. In these Rules, unless the context otherwise requires-

“auction levy” means such fee per sixty kilogram bag of coffee sold at the Nairobi Coffee Exchange as shall be determined by the Exchange Committee, payable equally by growers and dealers;

“bid” means an offer to pay a particular amount of money for a given lot of coffee being offered for sale at the Nairobi Coffee Exchange;

“certified coffees” means coffee produced under tenets of a registered certification scheme bearing a certification mark;

“coffee warrant” means a negotiable instrument prepared by a licensed warehouseman;

“confirmed bid” means the bid price accepted by a grower for a particular lot of coffee offered at the Nairobi Coffee Exchange;

“Exchange” means the central coffee auction which is the trading floor of coffee;

“Exchange Committee” means the Nairobi Coffee Exchange Management Committee established under Rule 3;

“Executive Officer” means the person appointed under Rule 14;

“net warrant weight” means the net weight of coffee at the point of sale per lot after allowing for all required samples;

“no bid” means a lot that has not attracted any bids at the auction;

“noted bid” means the bid price which is not accepted by a grower for a particular lot of coffee offered at the Nairobi Coffee Exchange;

“prompt date” means the date specified in the sales catalogue on which coffee sales proceeds are to be received by a marketing agent from the dealers or buyers;

“reserve price” means the price set as the minimum price before the auction by the grower in consultation with the commercial marketing agent;

“sample deposit” means a deposited fee payable by dealers as security for collecting offer samples at the exchange, being an amount equivalent to at least 0.0020% of the total value of coffee sold at the exchange in the previous crop year or such other amount as may be determined from time to time by the exchange;

“sample fee” means the price payable by a dealer for the offer sample collected at the sample room, based on the average price of coffee traded at the exchange in the month that the sample was collected;

“sample room” means the physical space provided by the exchange for reception, display, exhibition and distribution of coffee samples;

“sweepings” means the entire balance of coffee samples in the sample room not distributed as samples to the buyers including the reference samples received from the board after six months from the date of sale;

“trading floor” means the physical space made available for trading at the exchange.

Establishment of the Exchange Committee.

3. There is established a committee to be known as the Nairobi Coffee Exchange Management Committee.

Functions of the Committee.

4. (1) The purpose for which the Exchange Committee is established is to manage the operations of the Exchange for the benefit of the coffee industry in an efficient, prudent, and professional manner.

(2) Without prejudice to the generality of subsection (1), the Exchange Committee shall—

- (a) manage all the operations of the Exchange including the trading floor and the sample room;
 - (b) formulate policies, conditions of sale and set regulations and any other instruments or regulations deemed necessary for the operations of the Exchange in consultation with stakeholders in the coffee industry and with the approval of the Board;
 - (c) promote and participate where necessary in all matters relating to or affecting trading at the Exchange;
 - (d) promote efficient, innovative and transparent marketing arrangements at the Exchange, including coffee auctions and commodity exchange;
 - (e) comply with such rules and directives made or given by the Board pursuant to section 44 (2) (d) of the Act.;
 - (f) determine coffee volumes for each auction and other price discovery mechanisms in accordance with the Act;
 - (g) provide all the necessary facilities for the management, administration and operations of the Exchange;
 - (h) perform all or such other acts as may be necessary for the proper performance and operations of the Exchange.
- (3) In the exercise of its powers and performance of its functions, the Exchange Committee shall act in accordance with any general or special directions as may be given by the Board.

Composition of the Committee.

5. (1) The Exchange Committee shall comprise of—

- (a) five grower representatives who trade through the Exchange nominated as follows;
 - (i) one person nominated by a co-operative society from the Eastern, North Eastern and Coast region.;
 - (ii) one person nominated by a co-operative society from the Central and Nairobi region.
 - (iii) one person nominated by a co-operative society from the Rift Valley, Western and Nyanza region.
 - (iv) one person nominated by small and medium coffee estate owners; and
 - (v) one person nominated by large estate owners.
 - (b) two dealer representatives, one nominated by small or medium dealers and the other nominated by large dealers;
 - (c) one person representing commercial millers, marketing agents and warehousemen;
 - (d) one person representing the Coffee Board of Kenya;
 - (e) the executive officer of the Exchange Committee.
- (2) The specific counties for regions referred to in 5 (1) (a) (i), (ii) and (iii) are set out in the First Schedule.
- (3) An associated company or other entity shall not nominate more than one representative.
- (4) The Board shall review the names of the persons nominated under subrule (1) (a) (b) and (c) and forward the names to the Minister for appointment.

Qualifications for appointment.

6. A person shall qualify for appointment to the Exchange Committee if that person meets the relevant requirements set out in the Second Schedule.

Conduct of Business and affairs of the Committee.

7. The conduct and regulation of the business and affairs of the Exchange Committee shall be as set out in the Third Schedule under these Rules.

Nomination of members.

8. (1) Interested and eligible persons under rule 5 (1) (a) (b) and (c) shall be nominated by their respective

registered associations.

(2) Where there is more than one association in any category, the nominee from the association commanding the largest volume of coffee sold through the Exchange for the immediately preceding three years in that respective category shall be nominated.

(3) An association eligible to nominate a representative under Rule 5 (1) (a), (b) and (c) shall enlist with the Board for a period of at least twelve months before the nomination date.

(4) The registered association to be enlisted with the Board shall have the following requirements:

(a) a physical principal office;

(b) current audited accounts;

(c) registration documents;

(d) a membership register with national representation;

(e) any other requirement that may be prescribed by the Board from time to time.

(5) The Board shall by notice in writing require the enlisted associations to nominate their representatives to the Exchange Committee three months prior to the end of the term of the sitting Exchange Committee.

Tenure of office.

9. (1) The members of the Exchange Committee shall elect a Chairperson and Vice Chairperson from amongst the members appointed under Rule 5 (1) (a) and (b)

(2) The Chairperson and the Vice-Chairperson shall not be from the same category.

(3) The position of the Chairperson shall alternate every three years between the said categories 5 (1) (a) and (b).

Chairperson of the Committee.

10. The members of the Exchange Committee other than the ex-officio members shall hold office for a term of three years and shall be eligible for re-appointment for a further final term of three years.

Removal from office.

11. A person shall cease to be a member of the Exchange Committee, if that person—

(a) resigns from office by notice in writing to the chairperson of the Committee;

(b) is absent from three consecutive meetings without the permission of the Exchange Committee

(c) is incapacitated by physical or mental illness;

(d) ceases to represent the interest in respect of which he or she was nominated;

(e) is otherwise unable or unfit to discharge the functions of his or her office;

(f) ceases to be a director, an employee or a duly nominated official of the company or society that nominated him or her;

(g) commits an offence under the Coffee Act;

(h) is convicted of an offence punishable by imprisonment for at least six months;

(i) conducts himself or herself in a manner deemed by the Cabinet Secretary to be inconsistent with the business of the Exchange;

(j) is adjudged bankrupt or if the nominating organization is placed under receivership; or

(k) dies;

Notification of vacancy.

12. The Exchange Committee shall notify the Board in writing of any vacancy occurring in the Committee and the Board shall require the respective association to nominate a replacement for appointment by the Cabinet Secretary to serve the remaining term.

Staff of the Exchange.

13. (1) The Exchange Committee shall employ, on such terms and conditions as it may from time to time

determine, such officers and staff as it may consider necessary for the proper and efficient administration of the work of the Exchange.

(2) The Exchange Committee may hire or otherwise engage, on such terms and conditions as it may determine, agents to carry out any of its functions.

Executive Officer

14. There shall be an Executive Officer of the Exchange who shall be competitively recruited by the Exchange Committee.

Functions of the Executive Officer

15. (1) The Executive Officer shall be—

- (a) accountable to the Exchange Committee;
- (b) responsible for the day to day management of the affairs of the Exchange;
- (c) responsible for managing the operations of the sample room; and
- (d) responsible for the security, storage, dissemination and archiving of data generated by the Exchange.

(2) The Executive Officer shall be the Secretary to the Exchange Committee.

Delegation of powers.

16. (1) The Exchange Committee may by resolution delegate any of the powers conferred on it by these Rules to any of its members, officers or staff or to any committee, whether constituted wholly of members of the Committee or jointly with members of any body established and having responsibilities similar to those of the Exchange.

(2) The Exchange Committee may constitute the following standing sub committees:

- (a) marketing, standards and quality committee;
- (b) staff and finance committee;
- (c) mediation and contracts committee.

Protection from personal liability

17. (1) No member of the Exchange Committee shall be personally liable for any act of commission or omission of the Exchange Committee done in good faith and without negligence in the course of the operations of the Exchange.

(2) Notwithstanding subrule (1), Members of the Exchange Committee shall exercise due prudence and diligence and shall be held jointly and severally responsible for any losses incurred due to any act of commission or omission by them and which is contrary to the Act, Rules or the regulations of the Exchange.

Ownership and Oversight of the Exchange

18. (1) Ownership of the Exchange is vested in the Board and held in trust for the coffee industry.

(2) The Board shall have regulatory oversight role over the operations of the Exchange.

Financing of the Exchange

19. The funds of the Exchange shall comprise—

- (a) auction levy;
- (b) registration fees payable by commercial marketing agents and dealers at the Exchange at rates determined from time to time by the Exchange Committee;
- (c) donations from the public, national and international organizations or agencies or any other lawful source;
- (d) government grants, endowments or donations;
- (e) such other sources as may be decided by the Exchange Committee in consultation with the Board.;
- (f) any other earnings of the Exchange.

The Exchange Sample Room

20. The Exchange shall maintain a central sample room where samples of various coffee lots to be offered for sale shall be stored for distribution to dealers, for display and archiving.

Sample deposit

21. (1) A dealer trading at the Exchange shall be required to pay to the Exchange a sample deposit.
- (2) The Exchange shall open and operate a coffee sample deposit account in a bank to be determined by the Exchange Committee and in which all the sample deposits paid by dealers shall be deposited.
- (3) Interest earned or accruing from the deposits shall form part of the earnings of the Exchange and provided further, that the only permitted drawings from this account shall be—
- (a) sample deposit forfeited by dealers defaulting in payment of sample fees.;
- (b) refunds to dealers ceasing to trade;
- (c) such interest earned or accruing from the sample deposit account.
- (4) Any refunds under sub-rule (3) (b) shall be made without interest and net of any indebtedness by the dealer to the Exchange or the Board.
- (5) No interest shall accrue to the benefit of the dealers in respect of the sample deposit.

Sample Fees

22. An offer sample of two hundred and fifty grams per lot of coffee presented for sale at the exchange or such other amount as may be determined from time to time by the Exchange Committee shall be availed by the Exchange to qualified dealers prior to the auction.

Offer sample

23. Every dealer shall within fourteen days of receipt of an invoice from the Exchange pay a sample fee in respect of all the selling samples collected.

Default in payment of sample fees

24. (1) The Exchange Committee shall suspend a dealer who fails to pay the sample fees within the stipulated period and shall notify the Board of such suspension.
- (2) A suspended dealer shall be given thirty days' notice to pay the outstanding sample fee and in default thereof, the sample deposit shall be forfeited.
- (3) A dealer suspended under subrule (1) may apply to the Exchange Committee to lift the suspension subject to payment of the outstanding sample fee and sample deposit.
- (4) The Board may cancel a dealer's license if the dealer is suspended more than twice within a period of twelve months.
- (5) The Exchange shall deduct the sample fee invoiced from the forfeited sample deposit and remit it to the relevant marketing agents for onward remittance to the growers on lot prorated basis.
- (6) The balance of the forfeited sample deposit from subrule (2) above shall become earnings of the Exchange

Representative Sample.

25. Commercial marketing agents shall deliver to the sample room, Representative Samples of fourteen kilograms per lot of coffee being offered for sale at the Exchange, or such other quantity as may be determined from time to time by the Exchange Committee in consultation with the Board, in accordance with the prevailing procedures as determined by the Exchange Committee from time to time.

Samples to be drawn.

26. (1) A sample of two hundred and fifty grams referred to as Reference Sample, shall be drawn from the representative sample from each lot and forwarded to the Board by the Exchange Committee for archival storage, for at least six months from the date of the sale for verification in case of a dispute.
- (2) A sample of seven hundred and fifty grams referred to as a Buying Sample shall be drawn from the representative sample from each lot of coffee purchased at the auction to be availed to the Dealer who has purchased the lot for verification.
- (3) A Display Sample of two hundred and fifty grams shall be drawn for display in the Sample Room.

Records.

27. The Executive Officer shall maintain records relating to—
- (a) receipt of coffee samples from the marketing agents;
- (b) distribution of coffee samples to dealers and the Board;

(c) release of Sweepings to the marketing agents on a lot prorated basis for sale.

Sweepings sale.

28. Sale proceeds of sweepings shall be remitted to growers on a lot prorated basis and shall have unique codes.

Returns.

29. (1) The marketing agent shall submit monthly returns to the Exchange Committee and the Board on remission of monies received from samples and sweepings to the growers.

(2) The Exchange Committee shall make weekly, monthly and biannual auction returns to the Board.

(3) The Exchange Committee shall prepare monthly reports on the performance of the Exchange and forward the same to the Board, dealers and commercial marketing agents.

Holding of Auctions at the Exchange.

30. (1) In the event of a dispute arising out of coffee traded at the Exchange, and at the request of a complainant made to the Exchange, a random representative sample of two hundred and fifty grams shall be redrawn from the lot or consignment in dispute for comparison with the Reference Sample.

(2) The instructions to draw each sample shall be lodged at the Exchange which shall in turn instruct the licensed warehouseman to allow redrawing of samples by the aggrieved party and any interested party may witness the exercise.

(3) In the event of a marked difference between the Reference Sample and the redrawn sample, additional samples of two hundred and fifty grams per bag shall be drawn from each bag in the lot and such individual sample together with the bag from which it has been drawn shall be numbered correspondingly.

(4) In the event that the dispute is unresolved, it shall be referred to the Mediation and Contracts Committee of the Exchange Committee.

Dispute Resolution.

31. (1) Only licensed dealers and commercial marketing agents shall participate on the Trading Floor.

(2) The said participants on the Trading Floor shall be required to pay to the Exchange the applicable auction levy.

Participation at the Trading Floor.

32. The Exchange shall in consultation with commercial marketing agents and dealers, arrange the dates, times and conditions for holding of coffee auctions, provided that no suspension or cancellation of any auction shall be done without the express and written authority of the Board.

Sales Catalogue.

33. (1) The Exchange shall indicate the order of the Sales Catalogues for every sale.

(2) A Sales Catalogue shall be prepared by the commercial marketing agent in accordance with the Second Schedule of The Coffee (General) Rules, 2002.

(3) A draft of the Sales Catalogue of each Commercial Marketing Agent shall be made available to Dealers in accordance with the prevailing procedures as determined by the Exchange Committee from time to time.

(4) The final Sales Catalogue shall be made available to the Exchange by the commercial marketing agents in accordance with the prevailing procedures as determined by the Exchange Committee from time to time.

Conditions of Auction Sales.

L.N 123/2002.

34. (1) Trading at the auction shall be in United States dollars.

(2) The grower in consultation with the commercial marketing agent shall set the reserve price for each lot and the marketing agent shall register the same with the Exchange.

(3) The Exchange shall not disclose the reserve price to a dealer or any other party whatsoever.

(4) A bid shall be a confirmed bid where the highest bid for any lot is equal to or higher than the reserve price.

(5) A bid shall be a noted bid where the highest bid for any lot is lower than the reserve price and may be confirmed to the same bidder by 10.00 a.m the next day at a price not less than the "noted price".

(6) Noted bids not confirmed within the stipulated time shall be re-offered in subsequent auctions.

(7) If in the course of bidding the Commercial Marketing Agent makes an erroneous entry into the auctioning

electronic system or if there is an error in the said system, the auction shall be stopped and the relevant lot shall be re-offered manually at the same auction.

(8) A no bid lot shall be re-offered for sale at a subsequent auction.

(9) Certified coffees shall be declared by the commercial marketing agent in the sales catalogues and sold in accordance with Guidelines for the Sale of Certified Coffees as provided by the Exchange Committee.

Withdrawal of lots.

35. (1) A marketing agent may by written communication to the Exchange, made at least three working days prior to the date of sale, withdraw a lot that was destined for sale and such written communication shall also state the reasons for withdrawal.

(2) The Executive Officer shall communicate the withdrawal in writing, to all dealers at least two working days prior to the date of sale.

Prompt Date.

36. (1) The Prompt Date shall be specified in the sales catalogue and shall be seven calendar days following the date of the sale.

(2) All coffees shall be paid for within the Prompt Date against an invoice presented by the commercial marketing agent.

(3) Bank charges, if any, incurred by the dealer upon making payment shall be for the dealer's account, whilst those incurred by the commercial marketing agents upon receipt of funds shall be for the marketing agent's account.

Default in coffee payment by prompt date.

37. (1) A dealer who has not settled payments in full by the prompt date shall be considered a defaulter and interest on outstanding payments will accrue with effect from the day after the expiry of the prompt date at the prevailing mean commercial banks lending rate in United States Dollars.

(2) In the event of default by a dealer to pay by the prompt date, the marketing agent shall issue to the dealer and copy to the Exchange and the Board a written payment demand notice specifying the applicable rate of interest on the outstanding payments.

(3) If a dealer defaults in paying any outstanding amounts together with interest thereon within seven days from the prompt date, the executive officer shall in writing, with a copy to the Board, suspend such dealer from the Trading Floor and the coffee shall be re-offered for sale at a subsequent auction.

(4) In the event that after reselling the coffee, any shortfall in value from the original bid occurs, the marketing agent shall notify the Board and the Exchange of the shortfall, all accrued interest and any other related expenses and losses for the purpose of recovery of the entire amounts from the Performance Bond of the defaulting dealer.

(5) The Board may further act on the additional recommendations of the Exchange in the event of default by either the dealer or the marketing agent.

(6) Dealers and commercial marketing agents who fail to pay any outstanding obligations shall be suspended by the Exchange in consultation with the Board.

(7) The Exchange, in consultation with the Board, may on such terms and conditions as it may deem necessary lift a suspension upon settlement of outstanding obligations.

(8) The Exchange shall report any dealer, who has defaulted more than twice within a period of twelve months, to the Board for further action, which shall include but not limited to further suspension or cancellation of the license.

Release of Coffee Warrants.

38. The coffee warrants issued by a licensed warehouseman and endorsed by the marketing agents to the dealers shall be released to the dealers by the commercial marketing agent once paid for in full, immediately upon receipt of payment.

39. (1) If coffee warrants are not released to the fully paid up dealer within forty eight hours of receipt of payment, then the marketing agent shall be deemed to be in default.

(2) Commercial marketing agents who default shall be suspended from trading by the Exchange in consultation with the Board.

(3) The Exchange shall report any Commercial Marketing Agent, who has defaulted more than twice within a period of twelve months, to the Board for further action, which shall include but not limited to further

suspension or cancellation of the license.

Dispute Resolution.

40. (a) (i) Where a dispute arises in regard to coffee quality, a claim may be brought within sixty days of the date of sale.

(ii) the claim shall be based on samples drawn and sealed by a licensed warehouseman in the original storage location.

(iii) In the event of a quality difference between the offer and buying samples, and the actual coffee lot, the dealer shall make an immediate claim to the marketing agent within three working days and reference may be made to the reference samples.

(iv) If, following sampling, the coffee does not conform to the buying sample, then by mutual consent, a re-negotiated settlement may include sorting, bulking or price adjustment or full refund.

(v) Incorrect information on the packaging material used for a specific lot shall give the right to a dealer to charge the marketing agent for all the costs of re-bagging.

(vi) In the event that the dispute remains unresolved, it shall be referred to the Mediation and Contracts Committee of the Exchange.

(b) (i) All coffees are sold as per Net Warrant Weights.

(ii) All coffee lots shall be received, weighed and signed weight notes provided to a commercial marketing agent by a licensed warehouseman.

(iii) Upon purchase and payment of coffee by a dealer the commercial marketing agent shall issue a warrant to the dealer.

(iv) Before release of any coffee lot by a licensed warehouseman to a dealer, the coffee lot shall be weighed and signed weight notes provided to the dealer whose representative may be present to witness the weighing.

(v) A licensed warehouseman shall be responsible for any weight loss which shall be the difference between the weight indicated in the warrant and the weight indicated in the weight note provided to the dealer at the time of release of coffee.

(vi) The weight loss claim will be limited to a period of thirty days from the date of sale and shall be presented by the dealer to a licensed warehouseman except when such a claim on weight loss is within the acceptable tolerance levels as determined by the Exchange Committee from time to time.

(vii) The costs of weighing incurred by a licensed warehouseman, both in and out, shall be borne by the commercial marketing agent.

(viii) Failing amicable settlement, any dispute shall be referred to the Exchange Mediation Committee. In the event that an aggrieved party is dissatisfied with the decision of the Committee, the party shall refer the matter to the Board for resolution, failing which the Board shall put in motion the arbitration process.

Ownership.

41. Prior to payment of the purchase price by the dealer, the property in the coffee shall remain in the grower and it shall be upon the marketing agents to ensure that the coffee is insured at all times prior to receipt of payment.

Conditions for warehousing.

42. (1) All coffee being offered for sale at the Trading Floor shall be lying stored at a licensed warehouse packed in bags in accordance with the Kenya Coffee Packaging Standards.

(2) A specific lot of coffee shall be uniformly packed in only one type of packaging.

(3) All coffees received and released by a warehouseman shall be accompanied by a valid coffee movement permit issued by the Board and a record of the same shall be maintained by the said Warehouseman.

Coffee warrants.

43. (1) A licensed warehouseman shall issue warehouse warrants entered by the commercial marketing agent in respect of each consignment of coffee in their custody and such warrant shall be deliverable to the commercial marketing agent and shall be a legal negotiable instrument which may be endorsed or released by the commercial marketing agent only.

(2) It shall be lawful for a licensed warehouseman and a commercial marketing agent or grower to agree that

specified coffees shall be held temporarily without a warrant provided that:

(a) Such coffees are being held without warrant while the bulking or re-bagging is being undertaken and they are to be bulked and re-bagged prior to sale; and

(b) No coffees shall be offered for sale without warrants.

(3) A warrant shall contain the following information:-

(a) a serial, rotation and identification number;

(b) the date of entry of the coffee to the warehouse;

(c) the location and name of the coffee warehouse;

(d) the name of the person entering the information ;

(e) on account of whom it was entered;

(f) to whom the warrant is deliverable;

(g) the day on which the rental charge starts to accrue;

(h) the marks borne by the bags;

(i) the grade of the coffee;

(j) the percentage of moisture content at the time the coffee is received by the licensed warehouseman;

(k) the number of bags and their total warranted gross weight, as weighed in by the licensed Warehouseman;

(l) the type of bag in which the coffee is packaged;

(m) the total tare weight of the bag; and

(n) the total net weight of coffee.

(4) (a) A licensed warehouseman may decline to acknowledge the declared grade or qualify the same with the words 'Owner Grading' if, in his opinion, the grade is wrongly represented to the extent that it might damage the licensed warehouseman's reputation.

(b) For purposes of this subrule, 'grade' means such grade as declared by the person delivering the coffee to the warehouse.

(5) Every warrant shall contain a revenue stamp on which an authorized signatory of the licensed warehouseman shall sign the warrant.

(6) A licensed warehouseman shall maintain a register showing all the warrants they have issued and all the particulars of the coffees covered by those warrants in sufficient detail to reproduce any warrant that may be lost or destroyed and such register shall conform in all respects to the legislation affecting Public Warehouseman.

(7) The licensed Warehouseman shall be entitled to decline or defer the acceptance of any instructions unless and until the warrant is lodged.

(8) All deficiencies or losses on, or damage to coffee, must wherever possible, be notified in writing to the licensed warehouseman prior to the removal of the coffee from the licensed warehouseman's premises so as to afford an opportunity for checking by the licensed warehouseman.

(9) In cases where notification is not possible, such deficiencies, losses or damage must be notified in writing to the licensed warehouseman within three working days of the removal from the premises of the licensed warehouseman of the coffee concerned. If this condition is not complied with the licensed warehouseman shall in no case accept any liabilities whatsoever for such deficiencies, losses or damage however caused.

(10) Every warrant shall be transferable by endorsement and shall entitle the person named in the endorsement to the coffee specified therein, and the coffee so specified shall for all purposes be deemed to be his property.

(11) Upon lodging a warrant duly endorsed, the person thereunder entitled to the coffee may transfer or obtain possession of the coffee subject to payment of all appropriate charges to the licensed warehouseman.

(12) The contents of one warrant may be divided into others or smaller quantities at the request of the person entitled to the coffee subject to the payment of all appropriate charges.

(13) If a warrant is stolen or otherwise lost or misplaced, notice shall be given to the licensed warehouseman. In such a case, before delivery of the coffee can be made, the loss of the warrant must be advertised in the official gazette and in the local dailies, and a copy of such publication containing the advertisement, together with an engagement signed by the applicant and countersigned by a bank approved by the licensed warehouseman to indemnify the licensed warehouseman against any losses, claims or damages, must be lodged with the licensed warehouseman. A new warrant shall then be issued and in no circumstances will duplicate warrants be issued.

(14) A licensed warehouseman shall draw samples, as instructed by the owner of the coffee, and keep a record of the same.

(15) A weight warranted by the licensed Warehouseman is a minimum net weight guaranteed at the time of weighing after deducting the required samples. A weight note issued by the licensed Warehouseman is an exact gross weight at the time of weighing.

(16) A licensed Warehouseman is responsible for the accuracy of any shipping marks placed on a bag only until that bag passes into physical control or possession of the owner's agent in the first instance after being withdrawn from the warehouse.

(17) A licensed Warehouseman shall not accept any instructions which would entail the misrepresentation of coffee in contravention of any law.

Fiscal year.

44. The fiscal year which is also the crop year of the Exchange shall run from 1st October of one year to the 30th September of the following year, and all dues, budgets and other fiscal matters shall be operated and managed upon that basis.

Accounts and audit.

45. (1) The Exchange shall cause proper books of accounts to be kept with respect to:

(a) all sums received and expended by the Exchange and matters in respect to which the receipt and expenditure took place;

(b) all sales and purchase of goods by the Exchange;

(c) the assets and liabilities of the Exchange.

(2) The Exchange Committee shall open and operate all the necessary bank accounts in the name of the (Nairobi) Coffee Exchange, as determined from time to time.

(3) All funds of the Exchange shall be used solely for purposes of running the operations of the Exchange as determined by the Exchange committee.

(4) Officers authorized by the Exchange committee shall be signatories to the Exchange account(s).

(5) A full financial audit of the operations of the Exchange shall be conducted on an annual basis by an independent auditing firm recommended by the Exchange Committee and in consultation with the Board not later than four months after the end of every fiscal year. The result of such audit shall be made available to the Board and the Exchange promptly, but not later than one month after the audit.

Appeals.

46. Any person aggrieved by an act or omission of the Exchange, or by any decision of the Exchange Committee may within thirty days after being notified of such act, omission or decision, appeal to the Board.

Transitional provisions.

45. (1) Pending the constitution of the initial Exchange Committee in the manner provided under Rule 5 above, an interim Exchange Committee to serve as a Transitional Exchange Committee shall be constituted by the Minister in consultation with the Board.

(2) The Minister shall appoint the Transitional Exchange Committee members recommended by the Board.

(3) The Transitional Exchange Committee shall serve for a maximum period of ninety working days provided that the Minister may extend the period if the Exchange Committee has not been constituted.

(4) The Board shall initiate the process of nominating the first sitting Exchange Committee as hereunder;

(a) Within fourteen days after the Rules come into force, the Board shall notify associations in the coffee industry, in writing, to enlist with the Board within twenty one days from the date of notification.

(b) The Board shall within fourteen days after enlisting the registered association notify the respective associations to nominate their representatives within a period of thirty days after notification.

(c) The Board shall appraise the proposed nominees and communicate the outcome to the respective associations within ten days.

(d) The Board shall recommend successful nominees to the Minister for appointment.

FIRST SCHEDULE r.5(2)

REGIONS

1.0 EASTERN/ NORTH EASTERN /COAST

1.1 EASTERN
Meru County, Tharaka-Nithi County, Embu County, Kitui County, Machakos County, Makeni County.

1.2 NORTH EASTERN
Garissa County, Wajir County, Mandera County, Marsabit County, Isiolo County.

1.3 COAST
Mombasa County, Kwale County, Kilifi County, Tana-River County, Lamu County, Taita-Taveta County.

2.0 CENTRAL/NAIROBI

2.1 CENTRAL
Nyandarua County, Nyeri County, Kirinyaga County, Muranga County, Kiambu County.

2.2 NAIROBI
Nairobi City County.

3.0 RIFT VALLEY /WESTERN/ NYANZA

3.1 RIFT VALLEY
Turkana County, West-Pokot County, Samburu County, Transzoia County, Uasin-Gishu County, Elgeyo-Marakwet County, Nandi County, Baringo County, Laikipia County, Nakuru County, Narok County, Kajjado County, Kericho County, Bomet County.

3.2 WESTERN
Kakamega County, Vihiga County, Bungoma County, Busia County.

3.3 NYANZA
Siaya County, Kisumu County, Homabay County, Migori County, Kisii County, Nyamira County.

SECOND SCHEDULE r. 6

1. A Growers' Representative shall be qualified for appointment to the Exchange Committee if:

(1) The Nominating Co-operatives Society has—

(a) a valid Pulping Station Licence;

(b) continuously sold at least 90,000 kgs of clean coffee (1,500 bags of 60kgs) at the Exchange per crop (coffee) year for the immediately preceding 3 years;

(c) current Audited Books of Accounts; and

(d) not been licensed for commercial milling.

(4) The representative has-

(a) a minimum of Post-Secondary Education from a recognized institution;

(b) been duly appointed by the society's management committee, provided that the official has a minimum average production of two thousand kilograms of cherry, per crop (coffee) year for the immediately preceding three years;

(c) a Certificate of Good Conduct from the Criminal Investigation Department (CID) and the Ethics and Anti-Corruption Commission;

(d) a Certificate of Compliance from Kenya Revenue Authority (KRA); and

(e) unquestionable integrity.

(3) The Nominating Coffee Estate—

(a) is a small/medium grower with twenty hectares or less under coffee with an average production of seven hundred and fifty kilograms per hectare of clean coffee, per crop (coffee) year and has sold the same through the Exchange for the immediately preceding three years.

(b) is a large grower with above twenty hectares under coffee with an average production of one thousand kilograms per hectare of clean coffee, per crop (coffee) year and has sold the same through the Exchange for

the immediately preceding three years.

(c) is not related to a director or a shareholder or associated with a company conducting the business of a dealer, commercial marketing agent, commercial miller or licensed Warehouseman.

(4) The representative—

(a) has a minimum of Post-Secondary Education from a recognized institution;

(b) is the owner, partner or director;

(c) has a Certificate of Good Conduct from the Criminal Investigation Department (CID) and the Ethics and Anti-Corruption Commission;

(d) has a Certificate of Compliance from Kenya Revenue Authority (KRA);

(e) is of unquestionable integrity.

2. A Dealer's Representative is qualified for appointment to the Exchange Committee if—

(1) The Nominating Company:

(a) is a small/medium dealer which has purchased between 0.1 and 2% of the total coffee sold at the Exchange, per crop (coffee) year, for the immediately preceding 3 years;

(b) is a large dealer which has purchased more than 2% of the total coffee sold at the Exchange, per crop (coffee) year, for the immediately preceding 3 years;

(c) is not related to a director or a shareholder or associated with a company conducting the business of a Grower, Commercial Marketing Agent, and Commercial Miller or licensed Warehouseman.

(2) The representative—

(a) has a minimum of a Diploma Certificate from a recognized institution;

(b) is a director or an employee of a dealer;

(c) has a Certificate of Good Conduct from the Criminal Investigation Department (CID) and the Ethics and Anti-Corruption Commission

(d) has a Certificate of Compliance from Kenya Revenue Authority (KRA);

(e) is of unquestionable integrity.

3. A Commercial Marketing Agent, Miller or a Licensed Warehouseman is qualified for appointment to the Exchange Committee if:

(1) The Nominating Company—

(a) has handled at least 5 % of the total volumes sold at the Exchange, per crop (coffee) year for the immediately preceding 3 years, directly or indirectly.

(b) is not related to a director or a shareholder or associated with a company conducting the business of a Grower or Dealer.

(2) The representative—

(a) has a minimum of a Diploma Certificate from a recognized institution;

(b) is a director or an employee of a represented Commercial Miller/Marketing Agent/ licensed Warehouseman;

(c) has a Certificate of Good Conduct from the Criminal Investigation Department (CID) and the Ethics and Anti-Corruption Commission;

(d) has a Certificate of Compliance from Kenya Revenue Authority (KRA);

(e) is of unquestionable integrity.

THIRD SCHEDULE r. 7

CONDUCT OF MEETINGS OF THE EXCHANGE COMMITTEE

1. The Chairman shall convene and chair all meetings of the Exchange Committee.
2. In the absence of the Chairman from any meeting, the vice chairman shall convene and chair the meeting.
3. In the absence of the Chairman and the Vice Chairman from any meeting, a chairman for that meeting shall be chosen by the members from among those present.
4. The quorum for conduct of the business of the Exchange Committee shall be six members including the Chairman or the person presiding;
5. Provided that at least five of the members nominated under rule 5 (1) (a), (b) (c) and (d) shall be present and with at least one representative from rule 5 (1) (a) and (b).
6. The chairman of a meeting shall have a deliberative vote, and, in case of equality of votes, also a casting vote.
7. The Exchange Committee shall meet at least once in every three months.
8. The chairman, or, in his absence the vice-chairman, may, in his discretion, at any time convene a special meeting of the Exchange Committee and shall upon receipt of a written request signed by not less than three members of the Committee, convene a special meeting of the Exchange Committee within two weeks after such request.
9. If the chairman or the vice-chairman declines to convene a special meeting of the Exchange Committee, within a period of two weeks, upon written and signed request of any three members of the committee, the three members may convene such meeting within a period of one week.
10. The Exchange Committee may, with the approval of the Board, determine from time to time any sitting allowance or any other allowance payable to any Member.
11. The minutes of each meeting shall be kept by the Secretary and shall be confirmed by the Exchange Committee and signed by the Chairman or the person presiding at the next succeeding meeting.

Dated the 18th September, 2012.

SALLY KOSGEI,
Minister for Agriculture.