

SPECIAL CROPS (TREE NUT AUTHORITY) ORDER

under s. 4

G.N. 129/1973

1. Citation

This Order may be cited as the Special Crops (Tree Nut Authority) Order.

2. Interpretation

In this Order unless the context otherwise requires—

“Authority” means the Tree Nut Authority established under paragraph 3;

“fruit” means the nut surrounded by the husk;

“kernel” means the oil bearing part of the nut;

“nut” means the kernel surrounded by the shell;

“tree nut” means any tree nut which may be declared as such under the “Special Crops Act”.

3. Establishment of Authority

There is hereby established an Authority to be known as the Tree Nut Authority (hereinafter referred to as “the Authority”) for promoting and fostering the development of tree nut industry in all areas of Malawi.

4. Composition of Authority

(1) The Minister shall, by notice published in the Gazette, appoint the members of the Authority other than the members representing the Tree Nut Growers’ Association.

(2) The Authority shall consist of—

(a) one member designated as Chairman by the Minister;

(b) one member representing the Agricultural Development and Marketing Corporation appointed by the Minister;

(c) six members representing the Tree Nut Growers’ Association (hereinafter referred to as the Association), appointed from a panel of ten individuals nominated by the said Association.

(3) The Minister may appoint to the Authority such additional members as he deems essential to the Authority in the exercise of its powers and functions.

(4) No person shall be appointed to the Authority who—

(a) is an undischarged bankrupt;

(b) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(c) has, during the preceding five years, been convicted of an offence involving fraud or dishonesty.

(5) Members of the Authority shall not by virtue only of their appointments to the Authority be deemed to be officers in the public service.

(6) Alternate members may, when not acting under the provisions of subsection (4), attend meetings of the Authority as observers only, but shall have no voice in the proceedings of, and no voting powers at, any such meeting.

(7) No person shall be appointed to the Authority who—

(a) is an undischarged bankrupt;

(b) has, during the preceding three years, been sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(c) has, during the preceding five years, been convicted of an offence involving fraud or dishonesty.

(8) Members of the Authority shall not by virtue only of their appointments to the Authority be deemed to be officers in the public service.

(9) The names of all members of the Authority as first constituted and every change in membership thereof shall be published in the Gazette.

5. Tenure of office of members

(1) Members of the Authority other than members representing the Association, shall, subject to this paragraph hold office for such period, being not less than two years, as may be specified in their respective appointments.

(2) Members of the Authority representing the Association shall hold office as such so long as they remain members of the said Association:

Provided that at the expiration of one year from the date of this Order and at the expiration of one year thereafter, three members shall retire by rotation, the order of which shall be decided by the Authority by ballot.

(3) The office of a member shall be vacated—

(a) upon the expiry of the period specified in his appointment;

(b) upon his death;

(c) if he is adjudged bankrupt;

(d) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;

(e) if he is convicted of an offence involving fraud or dishonesty;

(f) in the case of a member other than the Chairman if he is absent, without the permission of the Chairman, from three successive meetings of the Authority of which he has notice;

(g) upon the expiry of one month's notice in writing of his intention to resign his office given by him to the Minister;

(h) upon his being given notice by the Minister of the termination of his appointment;

(i) if, in the opinion of the Minister, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Authority;

(j) if the Minister, or the Association is satisfied that the private interests of the member conflict or are liable to conflict with his duties as a member and that consequently it is inexpedient for him to continue to hold office as a member.

(4) Upon the expiry of the period for which a member of the Authority is appointed, he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(5) A retiring appointed member shall be eligible for reappointment if not disqualified under paragraph 4 (4).

6. Remuneration of members

Any member of the Authority who is not an officer in the public service shall be paid by the Authority such remuneration and allowances, if any, as the Minister may in his case fix.

7. Meetings

(1) At the first meeting of the Authority, the members present shall elect a Vice-Chairman.

(2) The Authority may meet at such places and times as the Chairman may determine or as he may be directed by the Minister, and shall meet at least twice in every year unless, in the opinion of the Minister, there are valid reasons for not so doing.

(3) Meetings of the Authority shall be convened by at least seven days notice thereof in writing being given to the members by the Chairman.

(4) The Chairman shall preside at all meetings of the Authority or, in his absence from any meeting, the Vice-Chairman, who, for the purposes of that meeting, shall exercise all of the powers and perform all of the duties of the Chairman.

(5) The Chairman, or in his absence, the Vice-Chairman, together with four other members shall form a quorum.

(6) Meetings of the Authority shall be conducted in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as the Authority deems fit.

(7) Minutes of each meeting shall be kept by the Secretary and shall be confirmed at the succeeding meeting by the Chairman, or in his absence, by the Vice-Chairman.

(8) Decisions of the Authority shall be made by a majority of the members present at a meeting of the Authority; at all such meetings the person presiding shall have a deliberative vote, and, in the event of an equality of votes, shall also have a casting vote.

8. Member to declare pecuniary interest

(1) If a member of the Authority or his spouse, or any company of which he or she is a director or major shareholder, or any partner of such member or of his spouse, has or acquires any pecuniary interest, direct or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the Authority he shall, as soon as is practicable after becoming aware of such interest in such matter, disclose the facts relating thereto to the Chairman and to the Minister.

(2) A member referred to in sub-paragraph (1) shall not take part in the consideration of, or vote on, any question before the Authority which relates to the matter referred to in that sub-paragraph, without the written permission of the Chairman and the Minister.

9. Functions of the Authority

The Authority shall have the following functions—

(a) to promote the development of tree nut industry on commercial lines to the maximum benefit of the growers and the country;

(b) to prepare and carry out schemes for the development of the tree nut industry either directly or through the employment of agents;

(c) to control the sale of nuts, fruit or kernel sold either to the Authority directly or to its agents;

(d) to control the import and export of nuts, fruits, kernel or any tree nut products;

(e) to approve the methods of the marketing of nut oil by any agency;

(f) to register and license tree nut growers and tree nut buyers and factories for processing tree nut products;

(g) to determine and fix prices (annually) which shall be paid for tree nut products;

- (h) to purchase tree nuts from growers;
- (i) to process and market tree nuts;
- (j) to control and authorize the expenditure of money collected as levy;
- (k) to keep a record of tree nut sales of each grower;
- (l) to provide such other services and facilities as shall be conducive to the development of tree nut industry.

10. Powers of the Authority

The Authority shall have the following powers—

- (a) with the approval of the Minister to employ agents for the implementation of any tree nut schemes or for the performance of any function of the Authority under this Order on such terms as may be agreed;
- (b) to raise loans by bank overdrafts or otherwise on terms and for purposes approved by the Minister, subject to the Finance and Audit Act; Cap. 37:01
- (c) to promote and purchase shares in any company incorporated in Malawi for the purpose of growing, processing or marketing of tree nuts;
- (d) to establish or acquire, and to operate, factories for the processing of tree nuts and to enter into agreements with other persons operating factories for them to purchase or process tree nuts;
- (e) to invest or deposit at interest any moneys standing to the credit of the Authority;
- (f) to acquire land for the purpose of carrying out its functions under this Order;
- (g) with the approval of the Minister by order published in the Gazette—
 - (i) to impose a levy or levies on growers for the purpose of financing the operations of the Authority;
 - (ii) to provide for any other matter which is approved by the Minister as being in the furtherance of the development of the tree nut industry of incidental or conducive to the exercise of any of the functions or powers of the Authority;
 - (iii) to do any other thing which will assist in the development of the tree nut industry.

11. Collection of levies

Levies imposed by the Authority under paragraph 10 (g) shall be collected by way of deduction from payments made to growers for the sale of tree nuts and shall be made in such manner as the Authority shall direct.

12. Appointment of staff

(1) The Authority may appoint a Secretary and such other staff as it considers necessary.

(2) The terms and conditions of service of the persons employed by the Authority shall be determined by the Authority subject to the approval of the Minister.

(3) The power to dismiss, discipline and control persons in the employment of the Authority shall be vested in the Authority.

13. Common seal

The common seal of the Authority shall not be affixed to any instrument except in pursuance of a resolution of the majority of the members of the Authority present at any meeting and in the presence of the Chairman, and such member of the Authority as the Chairman shall appoint, both of whom shall sign every instrument to which the common seal is attached.

14. Signification of documents

All documents, other than those requiring seal, made by the Authority and all decisions of the Authority may be signified under the hand of the Chairman or Vice-Chairman, in the absence of the Chairman.

15. Financial year

The financial year of the Authority shall be from the 1st day of April in each year to the 31st day of March in the following year. G.N. 33/1979, 69/1989

16. Auditing of accounts

(1) The accounts of the Authority shall be audited annually by an auditor approved by the Minister.

(2) The Authority shall, within a period of four months after the end of its financial year, or such longer period as the Minister may approve, cause to be prepared, signed and transmitted to the auditor—

(a) a balance sheet showing in detail the assets and liabilities of the authority; and

(b) such other statements of accounts as the Minister may require.

(3) The auditor shall be entitled to examine all books and papers in the possession or control of the Authority, and may require from members, employees or agents of the Authority such information as is necessary for the performance of his duties.

(4) The Authority shall, within four months of the end of its financial year, or such longer period as the Minister may approve, submit to the Minister a report on its operations during the year, together with audited accounts.