

Cocoa Regulation 1982

Unvalidated References:

Cocoa Act 1981

Banks and Financial Institutions Act 2000

This reprint of this Statutory Instrument incorporates all amendments, if any, made before 25 November 2006 and in force at 1 July 2001.

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Legislative Counsel

Dated 25 November 2006

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 388.

Cocoa Regulation 1982

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Cocoa Regulation 1982

MADE under the *Cocoa Act 1981*.

Dated 200 .

1. INTERPRETATION.

(1) In this Regulation, unless the contrary intention appears—

“broken bean” means a cocoa bean of which a fragment is missing;

“defective bean” means a cocoa bean that is affected by internal mould or internal insect infestation;

“double bean” means two or more cocoa beans strongly adhering to each other;

“flat bean” means a cocoa bean of which the cotyledons are too thin to cut to give the surface of a cotyledon;

“foreign matter” includes—

(a) any matter extraneous to cocoa beans; and

(b) any part of cocoa (other than cocoa beans) including broken beans, double beans, germinated beans, fragments and pieces of pod and placenta;

“foul or foreign odour” means a smoky odour or an odour that is foreign to good quality cocoa;

“fragment” means a piece of cocoa bean equal to or less than 50% of the original bean;

“germinated bean” means a cocoa bean, the shell of which has been pierced, slit or broken by the growth of the seed germ;

“identification mark” means the mark denoting—

(a) the grower; or

(b) the registered fermentary in which the cocoa beans were processed; or

(c) the registered exporter by whom the cocoa beans are being exported;

“inspection mark” means the mark on a bag of cocoa beans denoting that the contents have been examined and conform to Papua New Guinea export cocoa;

“licensed bank” means a bank licensed under the *Banks and Financial Institutions Act 2000*;

“the management levy” means the management levy imposed under Section 17 of the Act;

“slaty bean” means a cocoa bean that shows a slate colour on 50% or more of its surface exposed by a cut lengthwise through its centre;

“the stabilization levy” means the stabilization levy imposed under Section 21 of the Act;

“threshold price” means the threshold price calculated under Section 12.

2. SUPPLY OF INFORMATION TO BOARD.

(1) A person engaged in the cocoa industry shall promptly supply to the Board, when required by it, information verified by statutory declaration in respect of—

(a) the number of cocoa trees planted or intended to be planted by him; and

(b) details of contracts relating to the purchase or sale of cacao beans, cocoa beans or cocoa products to which he is a party including any contracts that, at the time of receipt of the requisition he proposes or intends to become a party, specifying the places at which delivery of the cocoa is to be effected; and

(c) details of all cacao beans, cocoa beans or cocoa products acquired, purchased, sold or exported by him during the period specified in the requisition not exceeding two years before the receipt of the requisition; and

(d) details of prices paid or to be paid by him for cacao beans, cocoa beans or cocoa products during the period specified under Paragraph (c); and

(e) estimates of the destination of cacao beans, cocoa beans or cocoa products that are held in store or are likely to be exported by him during a specified period not exceeding two years.

(2) A person who fails to supply information under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00 and in addition a fine not exceeding K50.00 for every day that the offence continues.

3. CARRIAGE OF CACAO BEANS, ETC.

(1) Where, under Section 35 of the Act, a restricted area has been declared, a person who is registered under Section 26(1)(a) of the Act or a grower of cacao beans may apply to the Board for the allocation of distinguishing letters, marks, figures or symbols to the vehicle he operates for the purpose of carriage of cacao beans or partly processed cocoa within the restricted area.

(2) The distinguishing letters, marks, figures or symbols referred to in Subsection (1) shall—

- (a) be on a plate provided by the Board or in such other form as approved by the Board; and
- (b) be preceded by the words “Cocoa Dealer”; and
- (c) be clearly and prominently displayed on the front of the vehicle in such manner as approved by the Board.

(3) A person who transports cacao beans or partly processed cocoa or permits them to be transported by road—

- (a) except in a vehicle bearing the distinguishing letters prescribed under this section; and
- (b) without the prior written consent of the Board—between the hours of 6.30 pm of any day and 5.30 am of the following day,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

Default penalty: A fine not exceeding K50.00.

4. MANNER OF SAMPLING.

(1) Cocoa beans or cocoa products intended for export shall be examined by a Cocoa Inspector in accordance with this section.

(2) The Cocoa Inspector shall—

- (a) estimate the total weight of cocoa in each consignment by weighing at least one container containing cocoa beans or cocoa products in that consignment; and
- (b) draw samples of cocoa beans or cocoa products from each consignment in accordance with Subsection (3).

(3) Where—

- (a) a flow sampler is available the sample shall be obtained by tipping into the flow sampler the contents of—
 - (i) in the case of a consignment consisting of not more than three containers—all containers; and
 - (ii) in any other case—the containers taken at random in accordance with Schedule 2,

and from this shall be extracted sub-samples each being in size 10% by weight of the cocoa beans or cocoa products forming the sample; and

(b) a flow sampler is not available, a sample shall be obtained by taking 25% of the containers in the consignment at random and the containers shall be sampled by extracting at random from each container not less than 0.25kg of cocoa beans or cocoa products by means of a stabber approved by the Board.

(4) The sub-samples shall be combined and the following tests made:–

(a) the Cocoa Inspector shall select 100 cocoa beans at random that shall–

(i) be cut lengthwise to expose a surface of cotyledon; and

(ii) be inspected to ascertain if they conform to the requirements of Section 5(a), (c), (d) and (e); and

(b) the balance shall be ground into powder and the Cocoa Inspector shall inspect the powder to ascertain if it conforms to the requirements of Section 5(b); and

(c) the Cocoa Inspector shall, where a moisture meter is installed, ascertain if the sub-sample conforms to the requirements of Section 5(e).

5. QUALITY STANDARD FOR EXPORT.

Cocoa beans intended for export as Papua New Guinea export cocoa shall–

(a) be beans that have been through fermenting and drying processes approved by the Board; and

(b) be free from foul or foreign odours; and

(c) contain–

(i) not more than 1% by count of slaty beans; or

(ii) not more than 5% by count of flat, double, broken or germinated beans; or

(iii) not more than 5% by count of defective beans; or

(iv) not more than 1% by weight of foreign matter; and

(d) be evenly dried; and

(e) contain a moisture content of between 5.5% and 7.5% by weight; and

(f) have not more than 1,000 cocoa beans per kilogram.

6. MARKING OF CONTAINERS.

(1) Marking of containers of cocoa beans or cocoa products intended for export shall be in black indelible ink, each letter or symbol being not less than 60mm and not more than 80mm high, and 6mm thick.

(2) A container of cocoa beans or cocoa products intended for export shall be clearly marked in accordance with Subsection (1) with the following in separate lines one beneath the other at a space of 26mm:–

(a) the letters “PNG”;

(b) the words “Cocoa Beans” or “Cocoa Products”, as the case may be;

(c) the identification mark.

(3) A clear space of 150mm shall be left between the top of the container and the mark specified in Subsection (2)(a) in which the inspection mark shall be applied by the Cocoa Inspector.

7. INSPECTION MARK.

(1) The inspection mark to be applied to containers of cocoa beans or cocoa products conforming to Papua New Guinea export quality shall—

(a) be in red indelible ink; and

(b) be in the form of a solid equilateral triangle, each side being not less than 100mm long; and

(c) be made with the apex of the triangle referred to in Paragraph (b) pointing to the top of the container.

(2) The inspection mark to be applied to containers of cocoa beans or cocoa products rejected as not conforming to Papua New Guinea export quality shall—

(a) be in green indelible ink; and

(b) be in the form of a stripe along the mouth of the container.

8. SEALING CONTAINERS.

(1) Containers of cocoa beans or cocoa products that have been passed as conforming to Papua New Guinea export quality shall be sealed by means of a metal plomb attached to the top of the container in a manner to prevent the container being opened without obviously disturbing the seal.

(2) The seal referred to in Subsection (1) shall have on one face the letters “PNG”.

(3) Where a container of cocoa beans or cocoa products intended for export is a bag, it shall be securely sewn.

9. QUALITY, ETC., OF CONTAINERS.

(1) Containers for cocoa beans and cocoa products intended for export shall be new, sound, clean, dry and insect free.

(2) Where a Cocoa Board Inspector or a Cocoa Inspector finds that a container for cocoa beans or cocoa products is damaged, unserviceable or not in accordance with the requirements of Subsection (1), the contents shall be transferred to a new container.

(3) Where the contents of a container have been transferred under Subsection (2), the cost of the transfer and of the new container are a debt due by the owner to the State.

(4) Where a container for cocoa beans or cocoa products intended for export is a bag, the gross weight shall be 63.5kg.

10. CERTIFICATE OF INSPECTION.

(1) After examination of a consignment of cocoa beans or cocoa products intended for export, the Cocoa Inspector shall issue to the registered exporter a certificate in Form 1.

(2) The certificate referred to in Subsection (1) shall be forwarded to the Comptroller of Customs.

(3) A certificate issued in respect of Papua New Guinea export quality cocoa beans or cocoa products under Subsection (1) shall cease to be valid after the expiration of three months from the date of examination unless a later date is specified by the Cocoa Inspector on the certificate.

11. CALCULATION OF MANAGEMENT LEVY.

(1) The Minister shall, by notice in the National Gazette, fix the rate for the management levy under Section 17 of the Act not exceeding—

- (a) in the case of cocoa beans and nibs—K40.00 per tonne; and
- (b) in the case of cocoa residue—K8.00 per tonne; and
- (c) in the case of cocoa products—K40.00 per tonne of bean equivalent of those products.

(2) A person who has not paid to the Board the levy fixed in accordance with Subsection (1) prior to exporting cocoa beans or cocoa products is guilty of an offence.

Penalty: A fine not exceeding K500.00 in respect of each consignment exported without payment of the levy.

(3) For the purposes of Subsection (1)—

- (a) the bean equivalent of cocoa products is the amount obtained by multiplying the weight of the cocoa product by the relevant conversion factor specified in Paragraph (b); and
- (b) conversion factors are—
 - (i) cocoa butter—1.33; and
 - (ii) cocoa cake and cocoa powder—1.18; and
 - (iii) cocoa liquor and cocoa nibs—1.25.

12. CALCULATION OF STABILIZATION LEVY AND BOUNTY.

(1) For the purposes of Sections 21 and 25 of the Act, an annual threshold price shall be calculated by ascertaining the annual average price of cocoa beans or cocoa products in constant terms for the past 120 months.

(2) Where the price of cocoa beans or cocoa products at the same stage in the process of marketing as that for which the threshold price is calculated, is above the threshold price, a stabilization levy shall be collected from the exporter unless the Minister makes payable a bounty.

(3) Where the price of cocoa beans or cocoa products, at the same stage in the process of marketing as that for which the threshold price is calculated, is below the threshold price, stabilization bounty shall be paid to the grower.

(4) For the purposes of Subsections (2) and (3), the price of cocoa beans or cocoa products may be for each delivery or consignment or for an average of all deliveries or consignments over a period specified by the Minister.

13. PAYMENT OF MANAGEMENT LEVY AND STABILIZATION LEVY.

(1) A registered exporter intending to export cocoa or cocoa products from the country shall lodge with a branch of a licensed bank—

- (a) the particulars of the cocoa proposed to be exported; and
- (b) an amount equal to the management levy on the cocoa; and
- (c) an amount equal to the stabilization levy on the cocoa.

(2) The manager of a branch of a licensed bank shall, as soon as practicable after receiving an amount referred to in Subsection (1), remit that amount to the Papua New Guinea Banking Corporation in Rabaul for crediting to the account of the Board.

(3) A copy of particulars required under Subsection (1)(a) shall be forwarded to the Board by the registered exporter.

14. CERTIFICATE OF PAYMENT OF MANAGEMENT LEVY AND STABILIZATION LEVY.

The manager of a branch of a licensed bank shall, as soon as practicable after receiving an amount referred to in Section 13(1)(b) or (c), or both, issue or cause to be issued, a certificate showing—

- (a) the amount of the management levy paid; and
- (b) the amount of the stabilization levy paid; and
- (c) the particulars of the cocoa in respect of which that levy has been paid.

15. FEES PAYABLE.

^1 In this section—

“major port” means a port from which more than 2,000 tonnes of cocoa was shipped in the year ending on the preceding 30 September;

“minor port” means any port other than a major port.

(2) The fee payable for registration under Section 26(1)(a) of the Act as a registered cocoa dealer is K60.00.

(3) The fee payable for registration under Section 26(1)(b) of the Act as a registered manufacturer of cocoa is K1,000.00.

(4) Subject to Subsection (5), the fee payable for registration under Section 26(1)(c) of the Act as a registered cocoa exporter shall be calculated at the rate of—

- (a) ^[2]K660.00 for each major port; and
- (b) ^[3]K270.00 for each minor port,

through which the cocoa exporter is permitted to export cocoa.

(5) The fee payable for registration under Section 26(1)(c) of the Act as a registered cocoa exporter by a person—

- (a) not previously registered as a cocoa exporter; or
- (b) registered as a cocoa exporter for not longer than the previous year,

shall be calculated at the rate of K200.00 for each port through which the cocoa exporter is permitted to export cocoa.

(6) The fee payable for registration of premises under Section 26(1)(d) of the Act as a registered cocoa fermentary is K30.00.

16. GENERAL PENALTY.

(1) A person who contravenes or fails to comply with a requirement of this Regulation, for which no other penalty is prescribed, is liable to a fine not exceeding K1,000.00.

(2) Where a person is convicted of an offence under this Regulation in relation to any cacao beans, cocoa beans or cocoa products, the court which convicts him may, in addition to, or instead of, imposing any other penalty, order that the cacao beans, cocoa beans or cocoa products, as the case may be, be forfeited to the Board.

(3) Cacao beans, cocoa beans or cocoa products forfeited to the Board under Subsection (2) are the property of the Board.

17. APPEAL AGAINST DECISION OF INSPECTOR.

A person aggrieved by the decision of—

- (a) a Cocoa Inspector under Section 29 of the Act; or
- (b) a Cocoa Board Inspector or a Cocoa Inspector under Section 30 of the Act,

may appeal against that decision by giving written notice to the Cocoa Appeals Committee within 21 days after notification to that person by the Cocoa Inspector or Cocoa Board Inspector, as the case may be, of his decision.

18. APPEAL AGAINST DECISION OF BOARD.

A person aggrieved by a decision of the Board under the Act may appeal against that decision by giving written notice to the Minister within 21 days after notification to that person by the Board of its decision.

SCHEDULE 1

PAPUA NEW GUINEA.

Cocoa Act 1981.

Form 1 – ^[4]Plant Protection Service of Papua New Guinea.

Reg., Sec. 10(1). Form 1.

This is to certify that the Plants, Parts of Plants or Plant Products described below or representative samples of them were thoroughly examined on (date) . . . by (name) . . . an Authorized Officer of the (service) . . . and were found to the best of his knowledge to be substantially free from injurious diseases and pests; and that the consignment is believed to conform with the current phytosanitary regulations of the importing country both as stated in the additional declaration hereon and otherwise.

Fumigation or disinfection treatment (if required by importing country):—

Date . . . Treatment . . .

Duration of exposure . . . Chemical and concentration . . .

Additional declaration

Plant Quarantine Officer

(Stamp of the Service)

DESCRIPTION OF THE CONSIGNMENT.

Name and address of exporter . . .

Name and address of consignee . . .

Number and description of packages . . .

Distinguishing marks . . .

Origin (if required by importing country) . . .

Means of conveyance . . .

Point of entry . . .

Quantity and name of produce . . .

Botanical name (if required by importing country) . . .

SCHEDULE 2 – SAMPLING.

Reg., Sec. 4(3)(a)(ii).

Number of containers in a consignment.	Number of containers to be sampled.
Not less than 4 and not more than 10	3
Not less than 11 and not more than 17	4
Not less than 18 and not more than 30	5
Not less than 31 and not more than 42	6
Not less than 43 and not more than 56	7
Not less than 57 and not more than 72	8
Not less than 73 and not more than 90	9
Not less than 91 and not more than 110	10
Not less than 111 and not more	11

than 132

Not less than 133 and not more than 156 12

Not less than 157 and not more than 182 13

Not less than 183 and not more than 210 14

Not less than 211 and not more than 240 15

More than 240

The number being the square root of the number of containers in the consignment taken to the nearest whole number.

Office of Legislative Counsel, PNG

^[1] Section 15 amended by 20 of 1984.

^[2] Section 15(4)(a) amended by *Cocoa (Amendment) Regulation* 1987 (No. 4 of 1987).

^[3] Section 15(4)(b) amended by *Cocoa (Amendment) Regulation* 1987 (No. 4 of 1987).

^[4] Form 1 Schedule 1 replaced by *Cocoa (Amendment) Regulation* 1988 (No. 6 of 1988).