

# Coffee Industry Corporation (Statutory Functions and Powers) Act 1991

No. 28 of 1991.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. 28 of 1991.

## ARRANGEMENT OF SECTIONS.

1. Compliance with constitutional requirements.
2. Interpretation.
3. Application.
4. Status of Coffee Industry Corporation.
5. Appointment of Directors of the Coffee Industry Corporation.
6. Powers of the Coffee Industry Corporation.
7. Export levy.
8. Prohibited exports.
9. Money collected to be paid into Coffee Industry Fund.
10. Coffee Industry Fund.
11. Appointment of Inspectors.
12. Powers of Inspectors.
13. Registration of dealers.
14. Registration of coffee exporters.
15. Registration of processing facilities.
16. Registration of manufacturing facilities.
17. Coffee not to be exported except by Coffee Industry Corporation.
18. Restrictions on dealing in unprocessed coffee.
19. Coffee Industry Corporation may require details of any arrangement involving coffee.
20. Declaration of restricted areas.
21. Dealings in restricted area prohibited except with consent.
22. Carriage of unprocessed coffee in a restricted area.
23. Application of grading provisions.
24. Grading and inspection conditions.
25. Marks, etc.
26. Distinguishing marks.
27. Regrading.
28. Samples.
29. Coffee Appeal Committee.
30. Right of appeal.
31. Provision of materials for re-marking and inspection.
32. Prohibited exports.
33. Forfeiture of coffee.
34. Indemnity.
35. Taxation.

36. Disclosure, etc., of information.
37. Regulations.
38. Repeal.
39. Interpretation.
40. Transfer of undertakings.
41. Transfer of Coffee Industry Fund.
42. Saving of contracts.
43. Actions not to abate.
44. Documents to remain evidence.
45. Application of Acts.
46. Evidence of vesting.
47. Inspector.
48. Registration.

## **INDEPENDENT STATE OF PAPUA NEW GUINEA.**

### **AN ACT**

entitled

Being an Act to—

- (a) provide for the conferral on the Coffee Industry Corporation of statutory powers relating to the control and regulation of the production, processing, marketing and export of coffee; and
- (b) transfer the undertakings of the Papua New Guinea Coffee Industry Board, the Coffee Development Agency and the Papua New Guinea Coffee Research Institute to the Coffee Industry Corporation; and
- (c) to repeal the Coffee Industry Act (Chapter 208),

and for related purposes.

### **PART I. – PRELIMINARY.**

#### **1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom conferred by Subdivision III.3.C (qualified rights) of the Constitution namely—

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the Constitution; and
- (b) the right to freedom of employment conferred by Section 48 of the Constitution; and
- (c) the right to privacy conferred by Section 49 of the Constitution,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 41 of the Organic Law on Provincial Governments and Local-level Governments, it is hereby declared that this law relates to a matter of national interest.

#### **2. INTERPRETATION.**

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

“agreement” means any agreement or arrangement whether or not it is intended in whole or in part to be enforceable (apart from any provision of this Act);

“bag” includes any container ordinarily used for the storage or carriage of coffee;

“buy” includes to acquire for a consideration other than money;

“citizen” includes—

(a) the State; and

(b) the Corporation; and

(c) a company if incorporated or deemed to be incorporated under the Companies Act 1997; and

(d) a business group incorporated under the Business Groups Incorporation Act 1974; and

(e) a land group incorporated under the Land Groups Incorporation Act 1974; and

(f) a corporation declared under Subsection (2);

“coffee” means the beans and cherries of the coffee tree, whether parchment, green or roasted, and includes ground, decaffeinated, liquid and soluble coffee and any product of coffee;

“Coffee Industry Corporation” means the Coffee Industry Corporation Limited, a corporation limited by guarantee incorporated under the Companies Act (Chapter 146);

“Coffee Industry Fund” means the Coffee Industry Fund established under the Coffee Industry Act (Chapter 208) and continued in existence under Section 10;

“coffee tree” means a tree belonging to the botanical species *Coffea arabica*, *Coffea canefora*, *Coffea liberica* or *Coffea stenophylla*;

“deal in unprocessed coffee” means, subject to Subsection (3), to conduct a business of buying or selling or buying and selling unprocessed coffee and includes offering or soliciting offers or otherwise negotiating to buy or otherwise acquire possession or custody of unprocessed coffee;

“export levy” means the levy imposed by Section 7;

“green coffee” means coffee in the raw bean form before roasting;

“Inspector” means an Inspector appointed under Section 11;

“manufactured coffee” means roast, decaffeinated or soluble coffee;

“manufacturing facilities” means facilities or proposed facilities used or proposed to be used for the further treatment of coffee into roast, decaffeinated or soluble coffee;

“objects” means the objects of the Corporation contained in its Memorandum and Articles of Association;

“processing facilities” means premises or proposed premises used or proposed to be used for the processing of unprocessed coffee into green coffee;

“property” means property, rights and assets of every description (whether present or future, actual or contingent), and includes property held on trust and securities, benefits and powers of every description;

“restricted area” means an area declared to be a restricted area under Section 20;

“security” includes a mortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignment by way of security, indemnity, right of set-off, undertaking or other means of securing payment or discharge of a liability (whether present or future, actual or contingent);

“sell” includes to dispose of for a consideration other than money;

“this Act” includes the Regulations;

“unprocessed coffee” means parchment coffee or coffee cherries.

(2) The Coffee Industry Corporation may, by notice in the National Gazette, declare a corporation to be a citizen for the purposes of this Act.

(3) For the purposes of this Act, a non-citizen shall not be regarded as dealing in unprocessed coffee by reason only that he—

(a) being a coffee grower, purchases unprocessed coffee grown by him; or

(b) being the owner or occupier of registered processing facilities, purchases unprocessed coffee at those processing facilities; or

(c) being a retailer, purchases unprocessed coffee as stock for sale by retail and sells that coffee in the ordinary course of retail as provisions; or

(d) in good faith agrees to provide finance or any other benefit on the security of unprocessed coffee (whether or not in existence at the time when the agreement is made) or, in the event of default by the party to whom the finance or benefit was provided, exercises in good faith a power of selling or otherwise disposing of the security.

### 3. APPLICATION.

(1) The provisions of this Act relating to coffee cherries do not apply to or in relation to coffee cherries used or intended to be used as seed material.

(2) The burden of proof that any coffee cherries are or have been used or intended for use at any particular time as seed material lies on the person alleging it.

(3) Nothing in this Act exempts the Coffee Industry Corporation from the provisions of any law regulating the carrying on of the business of the Coffee Industry Corporation.

### **PART II. – STATUS OF COFFEE INDUSTRY CORPORATION AND POWERS OF THE MINISTER.**

### 4. STATUS OF COFFEE INDUSTRY CORPORATION.

(1)<sup>[1]</sup> <sup>[2]</sup>Subject to Subsection 4A the Coffee Industry Corporation—

(a) is not the State and does not represent the State except by express agreement; and

(b) except as provided by this Act, is not exempt from any rate, tax, duty or other impost imposed by or under any law; and

(c) cannot render the State liable for any debts, liabilities or obligations,

unless this Act or any other law expressly so provides.

(2) Nothing in this Act shall prejudice the powers of the Coffee Industry Corporation to alter its Memorandum and Articles of Association or to dispose of, or deal with, its assets or to carry on or discontinue any part of its business, but any alteration to its Memorandum and Articles of Association shall be consistent with the paramount interest of the coffee industry.

### **PART III. – DIRECTORS OF THE COFFEE INDUSTRY CORPORATION.**

### 5. APPOINTMENT OF DIRECTORS OF THE COFFEE INDUSTRY CORPORATION.

<sup>[3]</sup>The Coffee Industry Corporation's nominees to the Board of the Corporation, which number of nominees shall not exceed the number of vacancies on the Board, shall be

appointed in accordance with the Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004.

#### **PART IV. – POWERS OF THE COFFEE INDUSTRY CORPORATION.**

#### **6. POWERS OF THE COFFEE INDUSTRY CORPORATION.**

(1) Subject to this Act, the Coffee Industry Corporation has power–

(a) by notice, to require a person to furnish to the Coffee Industry Corporation a return specifying details required by the Coffee Industry Corporation relating to–

(i) all coffee trees, planted or intended to be planted by him; and

(ii) all contracts relating to the purchase or sale of coffee to which he is a party (including any contracts into which at the time of receipt of the notice he proposes to enter) and the places at which delivery of the coffee is to be effected; and

(iii) all coffee purchased or sold by him during such period immediately before the giving of the notice, not exceeding two years, as is specified in the notice; and

(iv) the prices being paid or to be paid by him for coffee during a period specified in the notice; and

(v) the estimated amount of coffee likely to become available for disposal by him during a period specified in the notice; and

(vi) the estimated amount of coffee likely to be processed by him or his agent during a period specified in the notice; and

(vii) all coffee processed by him or his agent during such period immediately before the giving of the notice, not exceeding two years, as is specified in the notice; and

(viii) all stocks of coffee on hand or under the control of him or his agent at the beginning and end of any period for which a return is required; and

(ix) the estimated amount of coffee likely to be exported by him during a period specified in the notice and the places to which the coffee is likely to be exported; and

(x) all coffee exported by him during such period immediately before the giving of the notice, not exceeding two years, as is specified in the notice, and the places to which that coffee was exported; and

(b) to require any return referred to in Paragraph (a) to be verified by statutory declaration; and

(c) to prohibit, by notice in the National Gazette, the purchase or sale of parchment coffee or coffee cherries except where that coffee complies with minimum quality standards specified in the notice and to impose such conditions under the notice as the Coffee Industry Corporation thinks fit; and

(d) to fix, by notice in the National Gazette, maximum and minimum prices at which any kind or grade or classification of coffee produced in the country may be bought or sold, and the places or circumstances at or in which such prices shall apply.

(2) A person, who refuses or fails to comply with a notice under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

Default penalty: A fine not exceeding K500.00.

#### **7. EXPORT LEVY.**

(1) This Section applies to coffee or coffee products exported in quantities exceeding 10kg at any one time.

(2) The Coffee Industry Corporation may, by notice in the National Gazette, impose an export levy on any form or type of coffee or coffee product.

(3) Subject to Subsection (9), an export levy is applicable to all coffee or coffee products of the form or type on which it is imposed.

(4)<sup>[4]</sup> <sup>[5]</sup> An export levy, imposed under Subsection (3), shall be imposed by reference to the average price of the particular coffee or coffee product to which the levy applies calculated from the export contracts relating to that particular coffee or coffee product entered into over such period as is determined by the Board from time to time.

(5) An export levy may be imposed in respect of one form or type of coffee or coffee product at a scale of rates differing from the scale of rates applicable to another form or type of coffee or coffee product.

(6) Subject to Subsection (9), the notice imposing an export levy may provide that it is to apply to exports made on and from a date specified in the notice and a notice revoking such a notice may provide for the levy to cease applying in the same way.

(7) An export levy that is applicable to a quantity of coffee or coffee product must be paid before the coffee or coffee product is exported.

Penalty: A fine not less than K5,000.00 or imprisonment for a term not exceeding six months or both.

(8) Export levies shall be collected and paid as prescribed.

(9) Where—

(a) the Coffee Industry Corporation imposes an export levy (in this subsection called “the new levy”) in respect of a form or type of coffee or coffee product; and

(b) immediately before the date on which the new levy became payable another export levy (in this subsection called “the former levy”) had applied to that form or type of coffee or coffee product; and

(c) the Coffee Industry Corporation is of the opinion that coffee held for export at the time the new levy was imposed was purchased at prices influenced by the rate of the former levy and that in the circumstances it is desirable that the former levy should continue to apply in certain cases,

the Coffee Industry Corporation in its discretion, may, by notice to a registered exporter, determine—

(d) that the former levy shall continue to apply in relation to the coffee or coffee product the subject of the contract or contracts specified in the notice if the coffee or coffee product is exported (whether by one or more shipments) before a date specified in the notice; or

(e) that the former levy shall continue to apply in relation to all coffee or coffee products of that form or type until the coffee or coffee product the subject of the contract or contracts specified in the notice is exported (whether by one or more shipments),

and a determination under this subsection shall be subject to such conditions as the Coffee Industry Corporation in its discretion thinks fit.

(10) Where the coffee or coffee product the subject of a notice under Subsection (9)(d) is not exported before the date specified in the notice the levy applicable to that coffee or coffee product shall, unless the Coffee Industry Corporation is satisfied that the delay in export was beyond the control of the exporter, be the levy referred to in Subsection (9) as the new levy.

## **8. PROHIBITED EXPORTS.**

Where the levy imposed under Section 7 has not been paid on a quantity of coffee exceeding 10kg intended for export that coffee shall be deemed to be a prohibited export under the Customs Act 1951.

## **9. MONEY COLLECTED TO BE PAID INTO COFFEE INDUSTRY FUND.**

Money received by or on behalf of the Coffee Industry Corporation from—

- (a) the collection of the export levy; and
- (b) the collection of fees,

shall, unless resolved by the Board of Directors of the Coffee Industry Corporation to be used by the Coffee Industry Corporation in the performance of its other objects, be paid into the Coffee Industry Fund.

## **10. COFFEE INDUSTRY FUND.**

(1) The Coffee Industry Fund constituted under Section 25 of the Coffee Industry Act (Chapter 208) and transferred to the Coffee Industry Corporation by Section 40, shall continue in existence in accordance with this Act.

(2) The Coffee Industry Corporation—

- (a) shall be the trustee of the Coffee Industry Fund; and
- (b) shall invest the monies in the Coffee Industry Fund in authorized trustee investments only such investments to be in the interests of the coffee growers; and
- (c) may dispose of the investments or any part of the investments and use the proceeds for the purposes of the Coffee Industry Fund.

(3) The main purpose of the Coffee Industry Fund is to stabilize the coffee industry by giving the Coffee Industry Corporation the financial ability to implement schemes relating to—

- (a) stabilization and equalization of coffee prices; and
- (b) stock holding of coffee.

(4) The Coffee Industry Corporation may also use the Coffee Industry Fund in the exercise and performance of the other objects of the Coffee Industry Corporation.

(5) A person is not entitled to any interest in the Coffee Industry Fund or to receive any payment or benefit from the Coffee Industry Fund by reason only that he is liable to pay or has paid an amount of export levy.

(6) The rates at which the Coffee Industry Fund shall be used to stabilize and equalize coffee prices shall be as determined from time to time by the Coffee Industry Corporation.

## **PART V. – INSPECTION BY COFFEE INDUSTRY CORPORATION.**

### **11. APPOINTMENT OF INSPECTORS.**

The Coffee Industry Corporation may recommend to the Minister persons to be appointed Inspectors for the purposes of this Act and the Minister may, by notice in the National Gazette, appoint persons to be Inspectors for the purposes of this Act.

### **12. POWERS OF INSPECTORS.**

(1) For the purposes of this Act, an Inspector may, at any reasonable time and with or without assistants–

- (a) enter and inspect any place, premises, aircraft, vehicle or vessel; and
- (b) seize and detain, pending an order of a court, any coffee in respect of which he has reasonable grounds for suspecting that an offence against this Act has been or is being committed; and
- (c) in accordance with this Act, take samples, or cause samples to be taken, of any coffee; and
- (d) examine and take extracts from or copies of any delivery docket, waybill, book or other document evidencing the purchase, sale, delivery, ownership, place of production or destination of any coffee; and
- (e) require any person taking part or apparently taking part in the affairs of a business of buying or selling or buying and selling coffee to provide information relating to the affairs of that business; and
- (f) carry out such other powers as are given to him under this Act or any other law.

(2) A person in charge of any place, premises, aircraft, vehicle or vessel on or in which any coffee is produced, treated, handled, packed, stored or transported, who fails to give all reasonable assistance to an Inspector for the purpose of the exercise and performance of his powers, functions and duties under this Act, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

(3) A person who, without reasonable excuse (proof of which is on him)–

- (a) hinders or obstructs an Inspector in the exercise or performance of his powers and functions under this Act; or
- (b) fails or refuses, when requested by an Inspector, to provide any document in his possession or under this control for examination by an Inspector under Subsection (1)(d); or
- (c) fails or refuses to provide information when required under Subsection (1)(e),

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

(4) Where, in the opinion of an Inspector, any place, factory, premises, vehicle, aircraft, container or ship on or in which coffee is handled, packed or stored is or are unsuitable for that purpose, whether by reason of its or their construction or otherwise, he may order the



owner or occupier to take such steps as are, in the opinion of the Inspector, necessary to render it suitable for that purpose.

(5) Where an order is given under Subsection (4), until the order has been complied with, a person who uses the place, factory, premises, vehicle, aircraft, container or ship for the production, treatment, handling, packing or storing of coffee, or permits it to be so used, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

(6) An Inspector is not liable for any damage occasioned by carrying out the provisions of this Act unless the damage was occasioned maliciously or without reasonable cause.

#### **PART VI. – REGISTRATION OF DEALERS, ETC.**

### **13. REGISTRATION OF DEALERS.**

(1) The Coffee Industry Corporation may–

- (a) subject to such conditions and restrictions as it thinks fit and as are endorsed on the certificate of registration; and
- (b) on payment of the prescribed fee,

register a person as a registered coffee dealer.

(2) The Coffee Industry Corporation may refuse to register a person under this section on such grounds as it thinks fit.

(3) The Coffee Industry Corporation may cancel the registration of a person under this section on such grounds as it thinks fit.

(4) A registered coffee dealer, who fails to comply with any or all of the conditions or observe any or all of the restrictions endorsed on the certificate of registration, is guilty of an offence.

Penalty: A fine not less than K1,000.00 and not exceeding K5,000.00.

(5) Subject to Subsection (6), a person other than a registered coffee dealer, who conducts a business of buying or selling, buying and selling or trading in unprocessed coffee, is guilty of an offence.

Penalty: A fine not less than K1,000.00 and not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

(6) Subsection (5) does not apply to a coffee grower selling unprocessed coffee produced by him.

### **14. REGISTRATION OF COFFEE EXPORTERS.**

(1) The Coffee Industry Corporation may–

(a) subject to such conditions and restrictions as it thinks fit, and as are endorsed on the certificate of registration; and  
(b) on payment of the prescribed fee,

register a person as a registered coffee exporter.

(2) The Coffee Industry Corporation may refuse to register a person under this section on such ground as it thinks fit.

(3) The Coffee Industry Corporation shall refuse to register a person or renew the registration of a person under this section if that person—

(a) has incurred a debt with the Coffee Industry Corporation or the Board of an amount of K10,000.00 or greater; and

(b) has failed to make full repayment to the Coffee Industry Corporation or the Board of that debt within 28 days of being requested by the Coffee Industry Corporation or the Board to repay it.

(4) The Coffee Industry Corporation shall cancel the registration of a person under this section if that person—

(a) (a) has incurred a debt with the Coffee Industry Corporation or the Board of an amount of K10,000.00 or greater; and

(b) has failed to make full repayment to the Coffee Industry Corporation or the Board of that debt within 28 days of being requested by the Coffee Industry Corporation or the Board to repay it.

(5) The Coffee Industry Corporation may cancel the registration of a person under this section on such ground as it thinks fit.

(6) A registered exporter, who fails to comply with any of the conditions or observe any of the restrictions endorsed on the certificate of registration, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

(7) In this Section, “Board” means the Papua New Guinea Coffee Industry Board established under the Coffee Industry Act (Chapter 208).

## **15. REGISTRATION OF PROCESSING FACILITIES.**

(1) A person, who is the owner or occupier of premises or proposed premises used or proposed to be used for the processing of coffee, may apply to the Coffee Industry Corporation for the registration of those premises or proposed premises as registered processing facilities.

(2) The Coffee Industry Corporation may refuse to register processing facilities under this section on such ground as it thinks fit.

(3) Subject to this section, where the Coffee Industry Corporation is satisfied that additional processing facilities are required and that premises or proposed premises the subject of an application under this section are or will be constructed, equipped and operated to the satisfaction of the Coffee Industry Corporation, it may—

(a) subject to such conditions and restrictions as it thinks fit and as are endorsed on the certificate of registration; and  
(b) on payment of the prescribed fee,

register those premises or proposed premises as registered processing facilities.

(4) The Coffee Industry Corporation may, by written notice to the owner and occupier, cancel the registration of any premises or proposed premises under this section on such ground as it thinks fit.

(5) A person, who erects or alters premises with the intention of using those premises as facilities for processing coffee other than coffee produced by him, is guilty of an offence, unless the proposed premises, or the premises as proposed to be altered, as the case may be, have been registered under this Act as registered processing facilities.

Penalty: A fine not exceeding K5,000.00.

(6) A person, who processes coffee except in registered processing facilities, is guilty of an offence.

Penalty: A fine of K2,000.00 or of such amount as is represented by K2.00 per kg of coffee processed, whichever is greater, or imprisonment for a term of six months or both.

(7) The owner or occupier of registered processing facilities, who fails to comply with any of the conditions or observe any of the restrictions endorsed on the certificate of registration, is guilty of an offence.

Penalty: A fine not less than K5,000.00.

## **16. REGISTRATION OF MANUFACTURING FACILITIES.**

(1) A person, who is the owner or occupier of premises or proposed premises used or proposed to be used for the manufacturing of coffee, other than coffee grown on his own property for his own domestic consumption, may apply to the Coffee Industry Corporation for the registration of those premises or proposed premises as registered manufacturing facilities.

(2) The Coffee Industry Corporation may refuse to register manufacturing facilities under this section on such ground as it thinks fit.

(3) Subject to this section, where the Coffee Industry Corporation is satisfied that additional manufacturing facilities are required and that premises or proposed premises the subject of an application under this section are or will be constructed, equipped and operated to the satisfaction of the Coffee Industry Corporation, it may—

(a) subject to such conditions and restrictions as it thinks fit and as are endorsed on the certificate of registration; and  
(b) on payment of the prescribed fee,

register those premises or proposed premises as registered manufacturing facilities.

(4) The Coffee Industry Corporation may, by written notice to the owner and occupier, cancel the registration of any premises or proposed premises under this section on such ground as it thinks fit.

(5) A person, who erects or alters premises with the intention of using those premises as facilities for manufacturing coffee other than coffee produced by him, is guilty of an offence, unless the proposed premises, or the premises as proposed to be altered, as the case may be, have been registered under this Act as registered manufacturing facilities.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

(6) Subject to Subsection (7), a person, who manufactures coffee except in registered manufacturing facilities, is guilty of an offence.

Penalty: A fine of K5,000.00 or an amount equivalent to K20.00 per kg of coffee manufactured, whichever is the greater, or imprisonment for a term not exceeding six months or both.

(7) Subsection (6) does not apply to—

(a) a coffee grower manufacturing coffee grown by him only for his own domestic consumption; or

(b) a retail seller of provisions in relation to roasting or grinding coffee for the purpose of sale in retail quantities not exceeding 2kg at any one time; or

(c) the owner or manager of a hotel, restaurant, club or other similar establishment roasting or grinding coffee for conversion by him into a beverage.

(8) The owner or occupier of registered manufacturing facilities, who fails to comply with any of the conditions or observe any of the restrictions endorsed on the certificate of registration, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

#### **PART VII. – RESTRICTION ON EXPORT OF COFFEE.**

### **17. COFFEE NOT TO BE EXPORTED EXCEPT BY COFFEE INDUSTRY CORPORATION.**

(1) A person, other than the Coffee Industry Corporation who, without the consent of the Coffee Industry Corporation, exports coffee from Papua New Guinea in quantities in excess of the amount specified by the Coffee Industry Corporation by notice in the National Gazette for the purposes of this section at any one time, is guilty of an offence.

Penalty: A fine of K5,000.00 or an amount equivalent to K5,000.00 per kg exported, whichever is the greater amount.

(2) A consent under this section may operate in any one or more of the following ways:—

(a) in relation to a specified consignment or to coffee exported over a specified period;

(b) in relation to all or any exporters;

(c) in relation to all or any grades or classifications of coffee;

- (d) in relation to the export of coffee at, or above or below, a certain price;
- (e) absolutely or subject to such conditions as are specified in the consent.

(3) Where a consent under this section relates to coffee other than a specified consignment by a specified exporter, it shall as soon as practicable after it is given, be published in the National Gazette.

## **PART VIII. – RESTRICTIONS ON DEALING IN UNPROCESSED COFFEE.**

### ***Division 1.***

Dealings by Non-citizens.

#### **18. RESTRICTIONS ON DEALING IN UNPROCESSED COFFEE.**

(1) Subject to Sections 13, 21 and 22, a person other than a citizen who, either as principal or agent–

(a) deals in; or

(b) except with the consent of the Coffee Industry Corporation and subject to such conditions (if any) as the Coffee Industry Corporation fixes–transports or otherwise conveys,

unprocessed coffee, is guilty of an offence.

Penalty: A fine not less than K1,000.00.

(2) The burden of proof that a person charged with an offence under Subsection (1) is a citizen is on the person charged.

#### **19. COFFEE INDUSTRY CORPORATION MAY REQUIRE DETAILS OF ANY ARRANGEMENT INVOLVING COFFEE.**

(1) Where it is of the opinion that a non-citizen has entered into an arrangement, oral or in writing, with a citizen involving the buying or selling, buying and selling, transport handling, processing, manufacture or export of coffee, the Coffee Industry Corporation may require those persons to provide to it–

(a) all details of that arrangement; and

(b) all documents, books and records relating to that arrangement.

(2) All documents, books and records given to the Coffee Industry Corporation under Subsection (1) shall be returned to the person from whom they were obtained as soon as possible after examination by the Coffee Industry Corporation.

(3) A person, who fails to comply with a requirement of the Coffee Industry Corporation under Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

### ***Division 2.***

Restricted Areas.

## 20. DECLARATION OF RESTRICTED AREAS.

The Coffee Industry Corporation, may, by notice in the National Gazette, declare an area to be a restricted area for a fixed or an indefinite period.

## 21. DEALINGS IN RESTRICTED AREA PROHIBITED EXCEPT WITH CONSENT.

(1) A person who, except with the consent of the Coffee Industry Corporation, deals in unprocessed coffee in a restricted area or part of a restricted area, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months or both.

(2) A consent under Subsection (1) may be granted in any one or more of the following ways:—

- (a) an absolute consent or subject to conditions;
- (b) as a general consent or limited to a person or class of persons;
- (c) in respect of the whole or any part of the restricted area.

(3) Where the person to whom a consent applies does not comply with a condition of that consent he is guilty of an offence and, to the extent that it applies to him, the Board's consent shall cease to have effect.

Penalty: A fine not exceeding K2,000.00.

## 22. CARRIAGE OF UNPROCESSED COFFEE IN A RESTRICTED AREA.

(1) The Coffee Industry Corporation may, by notice in the National Gazette, declare that this section shall, from the date specified in the notice, apply in any or all restricted areas.

(2) The Coffee Industry Corporation may, on payment of the prescribed fee, allot to a registered coffee dealer a distinguishing letter or letters.

(3) A distinguishing letter or letters allotted under Subsection (2) preceded by the words "Coffee Dealer", shall be clearly and prominently displayed on a vehicle—

- (a) in such position and manner as are approved by the Coffee Industry Corporation on a plate or plates provided by the Coffee Industry Corporation; or
- (b) in such other form as is approved by the Coffee Industry Corporation,

at all times when the vehicle is being used for the carriage of unprocessed coffee by or on behalf of the registered coffee dealer.

(4) If a vehicle is used for the carriage of unprocessed coffee in contravention of Subsection (3), the dealer and the owner and the driver or person in charge of the vehicle are each guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

(5) A person other than—

- (a) a registered coffee dealer or a person acting on behalf of a registered coffee dealer; or
- (b) a coffee grower or a person acting on behalf of a coffee grower,

who carries unprocessed coffee, or causes or permits it to be carried, in a vehicle, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

- (6) The burden of proof that an accused person is a person referred to in Subsection (5)(a) or (b) is on him.

(7) A registered coffee dealer or person acting on behalf of a registered coffee dealer, who carries unprocessed coffee in a vehicle or causes or permits it to be carried in a vehicle, is guilty of an offence, unless that vehicle displays a distinguishing letter or letters in accordance with Subsection (3).

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

(8) The Coffee Industry Corporation may—

- (a) where a registered coffee dealer or a person acting on his behalf has been convicted of an offence under this Act; or
- (b) after giving not less than three months' written notice to the registered coffee dealer,

by written order served on the coffee dealer, recall any or all of the letters allotted to him under Subsection (2) and any or all of the plates issued to him under Subsection (3).

(9) A registered coffee dealer, who refuses or fails to obey an order made under Subsection (8), is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months or both.

Default penalty: A fine not exceeding K200.00.

#### **PART IX. – GRADING AND INSPECTION.**

### **23. APPLICATION OF GRADING PROVISIONS.**

The provisions of this Part relating to the grading of coffee apply to all coffee, unless otherwise provided by this Act.

### **24. GRADING AND INSPECTION CONDITIONS.**

(1) Green coffee shall not be shipped for export in amounts in excess of an amount specified by the Coffee Industry Corporation by notice in the National Gazette at any one time unless—

- (a) it is classified into a prescribed grade; and
- (b) the bags containing the green coffee are marked with the prescribed mark appropriate to

its grade and any other marks prescribed by the regulations; and  
(c) it contains a moisture content not exceeding an amount specified by the Coffee Industry Corporation by notice in the National Gazette; and  
(d) it is accompanied by the prescribed certificate of origin.

(2) An Inspector may at any time—

(a) examine coffee intended for export; and  
(b) classify it into a prescribed grade; and  
(c) if necessary, re-mark the bags containing the coffee with the prescribed mark appropriate to its grade,

by means which are reasonable and will not cause damage to the coffee, and the Inspector may issue a certificate of inspection in a form approved by the Coffee Industry Corporation.

(3) For the purposes of an examination under Subsection (2), an Inspector may take samples of the coffee.

(4) If coffee is wilfully or negligently shipped for export without marking as required by this section, the exporter and his agent are each guilty of an offence.

Penalty: A fine of K2,000.00 or an amount equivalent to K5.00 per kg of coffee shipped, whichever is the greater, or imprisonment for a term not exceeding six months, or both.

(5) A person other than an Inspector, who wilfully or negligently alters, defaces or obliterates a mark placed on a bag of coffee under this section, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding six months, or both.

(6) A person, who knowingly places on a bag of coffee for export a description of the coffee that is false or misleading in any material particular, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment of a term not exceeding six months, or both.

(7) Notwithstanding that any coffee has been examined by an Inspector under this section, an Inspector may at any time re-examine that coffee and this section applies as though the re-examination was the first examination.

## **25. MARKS, ETC.**

(1) A person, who exports coffee in amounts in excess of 10kg or an amount specified by the Coffee Industry Corporation by notice in the National Gazette at any one time unless the bags containing that coffee are marked in accordance with this Part, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

(2) A person who—



- (a) alters, defaces or adds to any marks or words placed on a bag of coffee beans under this Part; or  
(b) places on the bag of coffee a mark other than a mark required or permitted to be so placed under this Part,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

## **26. DISTINGUISHING MARKS.**

On receipt of an application and on payment of the prescribed fee, the Coffee Industry Corporation may allot to a coffee grower, registered coffee dealer, registered manufacturer, registered coffee exporter or the owner of registered processing facilities, a distinguishing mark.

## **27. REGRADING.**

Where an Inspector classifies coffee into a grade other than that denoted by the mark on the bag containing the coffee he shall furnish the owner or exporter or his agent with a written statement of the reasons for which he so classified it.

## **28. SAMPLES.**

Where a consignment of coffee is sold or contracted to be sold by sample, a person, who wilfully or negligently exports from Papua New Guinea on the basis of that sample, coffee that does not substantially conform with the sample, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months, or both.

## **29. COFFEE APPEAL COMMITTEE.**

- (1) For the purposes of this Part, there shall be a Coffee Appeal Committee.
- (2) The Committee shall consist of persons appointed by the Minister by notice in the National Gazette.
- (3) The Coffee Industry Corporation shall appoint a member of the Committee to be the Chairman of the Committee.
- (4) The time and place of, the procedure at and the manner of calling meetings of the Committee shall be as determined by the Coffee Industry Corporation.

## **30. RIGHT OF APPEAL.**

(1) A person, aggrieved by the classification of an Inspector of any coffee beans into a grade other than that into which the owner, exporter or other person has classified it, may appeal to the Committee against the Inspector's decision.

(2) The method of appeal is as determined by the Coffee Industry Corporation.

(3) On an appeal under this section, the Committee shall hear such evidence and inform itself in such manner as it thinks fit.

(4) The Committee is not bound to observe strict legal procedure or to apply technical rules of evidence.

(5) A decision of the Committee is, for all purposes, final.

### **31. PROVISION OF MATERIALS FOR RE-MARKING AND INSPECTION.**

(1) A bag found to be in a damaged condition or otherwise considered unserviceable by an Inspector may be condemned by him and the coffee in it transferred to a new bag.

(2) All costs, relating to the transfer of coffee and to the disposal of the condemned bag under Subsection (1) are recoverable by the Coffee Industry Corporation from the owner as a debt.

### **PART X. – MISCELLANEOUS.**

### **32. PROHIBITED EXPORTS.**

Coffee intended for export, in respect of which the provisions of this Part have not been complied with, is a prohibited export under the Customs Act 1951.

### **33. FORFEITURE OF COFFEE.**

(1) Where a person is convicted of an offence against this Act except under Part IX in relation to any coffee, the court which convicts him may, in addition to or instead of any penalty which it may impose, order that the coffee be forfeited to the Coffee Industry Corporation.

(2) Where a person is convicted of an offence against Part IX in relation to any coffee, the court which convicts him may, in addition to or instead of any penalty which it may impose, order that the coffee be forfeited to the State.

(3) Coffee which is forfeited to the Coffee Industry Corporation or the State under Subsection (1) or (2) is the property of the Coffee Industry Corporation or the State, as the case may be, and may be dealt with in such manner as the Coffee Industry Corporation or the State determines.

### **34. INDEMNITY.**

The Coffee Industry Corporation shall indemnify the State from and against all actions, claims, demands, proceedings, suits, damages, expenses and costs that may be brought against or incurred by the State at any time for or in respect of a debt, liability or obligation that the Coffee Industry Corporation is liable to pay, satisfy, observe, perform or discharge.

### **35. TAXATION.**

The Coffee Industry Corporation shall not be deemed to be a trading corporation in carrying out its lawful objects and the income of the Coffee Industry Corporation and of the Coffee Industry Fund in pursuit of those objects is exempt from income tax.

### **36. DISCLOSURE, ETC., OF INFORMATION.**

A director, secretary, officer or employee of the Coffee Industry Corporation who, except in the performance of his duty as such director, secretary, officer or employee, and either while he is or after he ceases to be such director, secretary, officer or employee—

- (a) makes a record of, or divulges or communicates to any person; or
- (b) uses for his personal gain or for the gain of another person,

any information acquired by him in the performance of his duty under this Act, is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding five years, or both.

### **37. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular—

- (a) for prescribing fees to be paid to the Coffee Industry Corporation for acts, matters and things under this Act; and
- (b) prescribing penalties of fines not exceeding K1,000.00 or default penalties of fines not exceeding K100.00 for offences against the regulations.

### **PART XI. – REPEAL.**

### **38. REPEAL.**

The Acts specified in Schedule 1 are repealed.

### **PART XII. – TRANSITIONAL AND SAVING.**

### **39. INTERPRETATION.**

In this Part—

“Coffee Development Agency” means the Coffee Development Agency established under the Companies Act (Chapter 146);

“Coffee Industry Board” means the Papua New Guinea Coffee Industry Board established under the repealed Acts;

“Coffee Research Institute” means the Papua New Guinea Coffee Research Institute established under the Companies Act (Chapter 145);

“the commencement date” means the date of coming into operation of this Act;

“the repealed Acts” means the Acts repealed by Section 38;

“undertakings” means the business and all existing assets, property and liabilities.

### **40. TRANSFER OF UNDERTAKINGS.**

The undertakings, immediately before the commencement date, of—

- (a) the Coffee Industry Board; and
- (b) the Coffee Development Agency; and
- (c) the Coffee Research Institute,

are, on the commencement date, transferred to and vested in the Coffee Industry Corporation.

#### **41. TRANSFER OF COFFEE INDUSTRY FUND.**

The Coffee Industry Fund is, on and from the commencement date, transferred to the Coffee Industry Corporation and shall be held, managed and used in accordance with this Act.

#### **42. SAVING OF CONTRACTS.**

All contracts, agreements, conveyances, deeds, leases, licences and other instruments entered into by, made with or addressed to—

- (a) the Coffee Industry Board; or
- (b) the Coffee Development Agency; or
- (c) the Coffee Research Institute,

and in effect immediately before the commencement date are, on the commencement date, to the extent that they were previously binding on and enforceable by or against the Coffee Industry Board, Coffee Development Agency or Coffee Research Institute, binding on and of full force and effect and enforceable by or against the Coffee Industry Corporation, as fully and effectually as if, instead of the Coffee Industry Board, Coffee Development Agency or Coffee Research Institute, the Coffee Industry Corporation had been a party to them, or bound by them or been entitled to the benefit of them.

#### **43. ACTIONS NOT TO ABATE.**

Where, immediately before the commencement date, any action, arbitration or proceeding, or any cause of action, arbitration or proceeding, was pending or existing by, against or in favour of—

- (a) the Coffee Industry Board; or
- (b) the Coffee Development Agency; or
- (c) the Coffee Research Institute,

it does not, on the commencement date, abate or discontinue or in any way be affected by a provision of this Act, but it may be prosecuted, continued and enforced by, against or in favour of the Coffee Industry Corporation as and when it might have been enforced by, against or in favour of the Coffee Industry Board, Coffee Development Agency or Coffee Research Institute if this Act had not been made.

#### **44. DOCUMENTS TO REMAIN EVIDENCE.**

Any book, document or other record which, immediately before the commencement date, would have been evidence of any matter for or against the—

- (a) Coffee Industry Board; or
- (b) Coffee Development Agency; or
- (c) Coffee Research Institute,

shall, on and after the commencement date, be admitted in evidence in respect of the same matter for or against the Coffee Industry Corporation as if the Coffee Industry Corporation were the Coffee Industry Board, the Coffee Development Agency or the Coffee Research Institute.

#### 45. APPLICATION OF ACTS.

Where—

- (a) any Act or subordinate enactment other than this Act; or
- (b) any document or instrument whenever made or executed,

contains a reference, express or implied, to—

- (c) the Coffee Industry Board; or
- (d) the Coffee Development Agency; or
- (e) the Coffee Research Institute,

that reference shall, on and after the commencement date, except where the context otherwise requires, be read and construed and have effect as a reference to the Coffee Industry Corporation.

#### 46. EVIDENCE OF VESTING.

(1) Where any property transferred to the Coffee Industry Corporation by Section 39 is land registered under the Land Registration Act 1981, the Registrar of Titles shall, without formal transfer, on application in that behalf by the Coffee Industry Corporation, enter or register the Coffee Industry Corporation in the register kept under that Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

(2) No stamp or other duty, tax or fee is payable on a registration made under Subsection (1).

(3) Where any property transferred to the Coffee Industry Corporation consists of shares in a company or other marketable securities, the company secretary or other responsible officer of the company shall, without formal transfer, on the application in that behalf by the Coffee Industry Corporation, enter or register the Coffee Industry Corporation in the register of members or security holders and upon the share certificate or other instrument evidencing title to the securities.

(4) No stamp or other duty, tax or fee is payable on a registration or transfer made under Subsection (3).

(5) The production of a copy of this Act certified by the First Legislative Counsel as a true copy shall be inclusive evidence of the vesting in the Coffee Industry Corporation of any assets, property and liability of—

- (a) the Coffee Industry Board; or
- (b) the Coffee Development Agency; or
- (c) the Coffee Research Institute,

in accordance with this Act.

(6) The vesting of an interest in land by or under this Part shall not–

(a) constitute a purchase, creation, assignment, transfer, devolution, alienation, parting with possession, dealing with or other disposition of that interest for the purposes of any bill or instrument concerning that interest; or

(b) give rise to any forfeiture or invalidate or discharge any contract or security or operate so as to merge any leasehold interest in the reversion expectant on it.

#### 47. INSPECTOR.

A person–

(a) appointed as–

(i) a Coffee Board Inspector by the Coffee Industry Board; or

(ii) an Inspector,

under the repealed Acts; or

(b) appointed as an Inspector by the Coffee Development Agency; or

(c) appointed as an Inspector by the Coffee Research Institute,

and holding office as such immediately before the commencement date shall, on and after the commencement date, be deemed to be an Inspector under this Act.

#### 48. REGISTRATION.

A registration of–

(a) a person as a registered coffee dealer; or

(b) processing facilities as registered processing facilities; or

(c) a person as a registered coffee exporter; or

(d) manufacturing facilities as registered manufacturing facilities,

under the repealed Acts, in force immediately before the commencement date, shall be deemed to be an equivalent registration under this Act and shall continue in force for the term for which it was granted and subject to the conditions under which it was granted, unless earlier terminated according to law.

#### SCHEDULE 1 – REPEALED ACTS.

Sec. 37.

Coffee Industry Act (Chapter 208)

Coffee Industry (Amendment) Act 1987

Coffee Industry (Amendment) Act 1990

Office of Legislative Counsel, PNG

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<sup>[11]</sup> Section 4 Subsection (1) substituted by No. 6 of 2003, s. 2.

<sup>[12]</sup> Section 4 Subsection (1) substituted by No. 6 of 2003, s. 2.

<sup>[13]</sup> Section 5 Substituted by No. 97 of 2006, Sched. 1.

<sup>[14]</sup> Section 7(4) repealed and replaced by *Coffee Industry Corporation (Statutory Functions and Powers) (Amendment) Act* 1996 (No. 7 of 1996).

<sup>[15]</sup> Section 7(4) repealed and replaced by *Coffee Industry Corporation (Statutory Functions and Powers) (Amendment) Act* 1996 (No. 7 of 1996).

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