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THE SUGAR BILL, 2022**A Bill for**

AN ACT of Parliament to provide for the development, regulation and promotion of the sugar industry, to provide for the establishment, powers and functions of the Kenya Sugar Board, and for connected purposes

ENACTED by Parliament of the Republic of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Sugar Act, 2022.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“agreements” means the agreements specifying the standard provisions governing the rights and obligations of growers, millers and out-grower institutions in the sugar industry;

“Board” means the Kenya Sugar Board established under section 3;

“by-product” means any substance, other than sugar, produced incidentally during the process of manufacturing sugar;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to agriculture in the respective County;

“farm gate” means prices received by farmers for their sugarcane at the location of farm;

“Fund” means the Sugar Development Fund established under section 35;

“guidelines” means the guidelines for agreements between parties in the sugar industry set out in the Third Schedule;

“grower” means a person who produces sugar-cane or

any crop in Kenya for the manufacture of sugar;

“industry” means the sugar industry in Kenya and includes the growing of sugar-cane and any other sugar producing crop, the manufacturing, refining, warehousing, marketing, transportation of sugar and disposal of sugar and its by-products;

“Institute” means the Kenya Sugar Research Institute established under section 23;

“licence” means a licence issued by the Board to a miller;

“member” means a member of the Board appointed under section 6;

“mill gate” means a site where sugarcane varieties are grown under strictly controlled agronomic conditions for eventual establishment of the sugarcane crop;

“miller” means a person licensed to operate a sugar mill or a jaggery mill in Kenya for the production of sugar including refined sugar and other by-products;

“outgrower” means a person who has a sugarcane farm in a catchment area and who has in force a cane supply contract in respect of the sugar-cane grown on such farm and registered by the Board;

“refined sugar” means sugar, which complies with the specifications set by the body for the time responsible for setting standards;

“sugar” means crystalline or liquid sucrose in any of its recognized commercial forms, intended for human consumption or other uses and includes raw sugar and industrial sugar;

“sugar-cane” means any plant or part of a plant of the genus *saccharum* or any of its hybrid;

“sugar catchment area” means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board under the First Schedule;

“sugarcane growers apex body” means a national sugarcane farmers and out grower organisation under a cane supply contract and in catchment areas under the First Schedule gazetted as such by the Cabinet Secretary for the

time being responsible for agriculture;

“stakeholder” means a person with significant interest in the sugar industry and includes government, millers, growers and out-grower institutions;

“Tribunal” means the Sugar Arbitration Tribunal established under section 40.

PART II—ESTABLISHMENT, POWERS AND FUNCTIONS OF THE KENYA SUGAR BOARD

3. (1) There is established a board to be known as the Kenya Sugar Board.

Establishment and incorporation of the Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. (1) The Board shall—

Functions of the Board.

- (a) regulate, develop and promote the sugar industry;
- (b) co-ordinate the activities of individuals and organizations within the industry; and
- (c) facilitate equitable access to the benefits and resources of the industry by all interested parties.

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

- (a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;
- (b) act as an intermediary between the industry and the Government;

- (c) facilitate the flow of research findings to interested parties through the provision of effective extension services;
- (d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;
- (e) facilitate the arbitration of disputes among interested parties;
- (f) facilitate the export of local sugar;
- (g) promote and encourage the use of environmentally friendly technologies in the industry;
- (h) provide advisory services to growers, out-grower institutions and millers;
- (i) facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines;
- (j) represent the industry in such organizations as are relevant for the promotion of the industry;
- (k) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties;
- (l) collect, collate and analyze industry statistics and maintain a data base for the industry;
- (m) licence sugar mills;
- (n) enforce and monitor compliance with standards along the sugar value chain;
- (o) facilitate value addition and product diversification in the sugar sub-sector;
- (p) formulate and implement a strategic plan for the sugar sub-sector at least once every five years;
- (q) formulate guidelines on an efficient and economical transportation of sugar;
- (r) conduct local and international sugar market

intelligence and advise stakeholders accordingly;

- (s) establish linkages with various government agencies and research institutions to enhance quality assurance and research;
- (t) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and
- (u) perform such other functions as may, from time to time, be assigned by the interested parties.

5. The County Government shall—

Functions of
county
governments.

- (a) issue sugar cane nursery certificates;
- (b) offer and coordinate extension services on sugar production and milling in the respective county;
- (c) in collaboration with the Board and law enforcement agencies, enforce regulations within the county;
- (d) monitor and report incidences of pests and disease outbreaks and take appropriate action in collaboration with the Board and other relevant government agencies; and
- (e) establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry.

6. (1) The Board shall comprise—

Composition of
the Board.

- (a) a non-executive Chairperson elected by the Board from among the representatives of growers on the Board and appointed by the Cabinet Secretary;
- (b) five representatives elected by growers from each sugar catchment area as per the First Schedule;
- (c) one representative elected by sugar millers who is knowledgeable in sugar technology and value addition;
- (d) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or a representative nominated by the

Principal Secretary in writing;

- (e) one person nominated by the Council of County Governors who is knowledgeable in extension services and management of farmer institutions;
- (f) the Principal Secretary for the time being responsible for National Treasury or a representative nominated by the Principal Secretary in writing;
- (g) the Chief Executive of the Board appointed under section 14 who shall be an *ex-officio* member and the secretary to the Board.

(2) The members under subsection (1) (b), (c) and (e) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(3) A person shall not be appointed as a chairperson of the Board of Directors unless the person holds at least a degree or its equivalent in any discipline from an institution recognized in Kenya and has relevant experience in the sugar sector.

7. (1) A person appointed as chairperson or a member of the Board under section 6(1) (b), (c) and (e) shall serve for a term of three years renewable for one further term.

Term of appointment.

(2) Members of the Board under section 6(1)(b), (c) and (e) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times.

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

Vacation of office.

- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
- (b) becomes an officer, agent or member of staff of the Board;
- (c) resigns in writing addressed to the Cabinet Secretary;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months

without the option of a fine;

- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

9. The Board shall have all the powers necessary for the proper performance of its functions under this Act, including the power to—

Powers of the Board.

- (a) impose a levy or levies upon growers and millers for the purposes of giving effect to the provisions of this Act;
- (b) control, supervise and administer the assets of the Board in such manner and for such purpose as best promotes the purpose for which the Board was established;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (e) lay down policy guidelines for the operations and management of all the funds collected by the Board;
- (f) access all such relevant information as may be necessary for the efficient administration of the industry;
- (g) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Board is established; and
- (h) open a banking account or banking accounts for the funds of the Board.

10. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Second Schedule.

Conduct of business and affairs of the Board.

(2) Except as provided in the Second Schedule, the Board shall regulate its own procedure and the procedure of

any of its committees.

11. (1) The Board may establish such committees as it may consider necessary for the efficient performance of its functions and the exercise of its powers under this Act.

Committees of the Board.

(2) The Board may co-opt to sit in the committees established under subsection (1), such other persons whose knowledge and skills are necessary for the performance of the functions of the Board.

12. The Board may, either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

Delegation of powers of the Board.

13. The Board shall pay to its members, such remuneration, fees or allowances for expenses as determined by the Cabinet Secretary on the advice of the Salaries and Remuneration Commission.

Remuneration of Board members.

14. (1) There shall be a Chief Executive Officer of the Board who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

Chief Executive Officer.

(2) A person shall be qualified for appointment under this section if the person—

- (a) holds a relevant degree from a university recognized in Kenya;
- (b) has at least ten years knowledge and experience from a relevant field;
- (c) has at least five years' experience in a position of senior management; and
- (d) meets the provision of Chapter Six of the Constitution.

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

(4) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day

management of the affairs of the Board.

15. The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine.

Staff of the Board.

16. A member, officer, employee or agent of the Board shall not be held personally liable to any action, claim or demand for a matter or thing done *bona fide* for the purpose of executing the functions, powers or duties of the Board.

Protection from personal liability.

17. Section 16 shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

Liability of the Board for damages.

PART III—LICENSING AND REGISTRATION

18. (1) A person shall not operate a sugar mill or a jaggery mill unless he or she is a holder of a current licence issued by the Board upon recommendation by the relevant County Government for that purpose.

Requirement of a licence to operate mill.

(2) A person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of a licence granted under this Act commits an offence and shall be liable on conviction, to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or to a fine not exceeding ten million shillings, whichever is the higher, or to imprisonment for a term not exceeding five years, or to both.

19. (1) A person shall apply to the Board for a licence to operate a sugar mill or a jaggery mill in the prescribed form.

Issue of licence and licence fees.

(2) The Board shall not issue a licence under this Act unless—

- (a) it is of the opinion that the applicant is a fit and proper person to hold such a licence; and
- (b) it is satisfied that the applicant has sufficient knowledge, experience and capacity to enable him conduct business or that he has, amongst his staff,

a person with such knowledge and experience.

(3) Every licence shall specify the premises upon which the milling of sugar may be carried on.

(4) Every licence shall, unless earlier revoked, expire on the 30th June next following the date of issue.

(5) There shall be payable for the issue of a licence, such fees as the Board, after consultation with the Cabinet Secretary, may prescribe.

(6) An application for the renewal of a licence shall be made to the Board not later than the 1st June in the year in which the current licence is due to expire.

(7) The issuance of a licence to an applicant under this section shall not be withheld without reasonable cause.

(8) A person shall not import or export sugar without a valid licence issued by the Board.

20. (1) A person who imports sugar into Kenya shall, prior to importation —

Sugar import.

(a) provide evidence that the sugar they intend to import is not available in the local market;

(b) provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and

(c) obtain pre-import approval from the Board.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

(3) This section shall apply to importation of sugarcane.

21. (1) A licenced sugar miller shall be licenced by the Board to carry out the business of processing industrial sugar.

Industrial sugar.

(2) The Board shall regulate the processing of industrial sugar.

22. (1) A person shall not conduct the business of a miller unless he or she is registered by the Board and the premises in which the business is conducted is specified in

Registration of millers.

the register.

(2) The Board shall issue to every miller registered under this section, a certificate of registration specifying the premises at which milling may be carried on by the miller.

(3) No fee shall be charged in respect of any registration or certification of registration made or issued under this section.

(4) In issuing certificates of registration under subsection (3), the Board shall satisfy itself that the premises upon which milling may be carried out meets the environmental standards set by the National Environmental Management Authority and the miller has been issued with a certificate of safety by the relevant county government.

(5) A miller may offer extension or other services to growers.

(6) Every miller registered under this section shall conduct business in accordance with this Act and any regulations made thereunder.

(7) A person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

PART IV- ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE

23. (1) There is hereby established a body to be known as the Kenya Sugar Research Institute.

Establishment
of the Kenya
Sugar Research
Institute.

(2) The Institute is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts

necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

24. (1) The Institute shall—

Functions of the Institute.

- (a) promote, co-ordinate and regulate research in sugar and sugar diseases; and
 - (b) expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the development of sugar.
- (2) For the purpose of carrying out its functions, the Institute shall—
- (a) formulate policy and make policy recommendations to the Cabinet Secretary on sugar research;
 - (b) prioritise areas for, and co-ordinate, sugar research in Kenya in line with the national policy on sugar;
 - (c) determine and advise the Government on the resource requirements for sugar research in Kenya both at the national and county level;
 - (d) regulate, monitor and ensure that all sugar research undertaken by other institutions or persons undertaking sugar research is consistent with the national priorities specified in the relevant policy documents;
 - (e) formulate or approve medium and long term research plans, strategies and budgets of the Institute;
 - (f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Institute;
 - (g) support and promote the training and capacity building in relation to agricultural research;
 - (h) liaise with and ensure the co-ordination of institutions, agencies and persons involved in sugar research;

- (i) establish platforms for the purposes of sharing research information, advancing research and transfer of technology and dissemination of information relating to advancements made in sugar research;
- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of sugar research;
- (l) breed sugarcane varieties suited for various agro-ecological areas of Kenya;
- (m) conduct research on nutritional requirements of sugarcane in order to provide recommendations on the appropriate fertilizers;
- (n) appraise technologies on land preparation, drainage and water management for economical cane production;
- (o) study and monitor pests and diseases that affect sugarcane and recommend appropriate control strategies;
- (p) develop agronomic packages for sugarcane maintenance and management;
- (q) institute socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;
- (r) test, design and evaluate farm machinery and factory equipment for efficient sugar production;
- (s) promote the transfer of sugar technology based on applied research through relevant extension mechanisms;
- (t) foster research on sustainable productivity, environmental issues, human safety at field and factory levels;
- (u) collaborate with the Government, the industry, universities and other national and international organizations for the purpose of furthering the Institute's mission;

- (v) analyse soil and plant samples for advisory purposes;
- (w) offer modular courses on various aspects of cane management and practices; and
- (x) perform such other function as may be conferred on it by this Act or any other written law.

25. The Management of the Institute shall vest in a Board which shall consist of—

Management of the Institute.

- (a) a chairperson appointed by the Cabinet Secretary who shall have a background in agricultural research or related field;
- (b) five persons elected by growers from each of the sugar catchment areas under the First Schedule;
- (c) the chief executive officer of the Board;
- (d) the Principal Secretary for the time being responsible for the National Treasury or a representative appointed in writing;
- (e) the chief executive officer of the Kenya Agricultural Livestock and Research Organization; and
- (f) the Director General who shall be an ex officio member.

26. The provisions of sections 8, 9, 10, 11 and 12 shall apply to the Board of the Institute with necessary modification.

Application.

27. The funds of the Institute shall consist of-

Funds of the Institute.

- (a) monies remitted by the Board from the sugar development levy;
- (b) any monies received by the Institute from grants and donations; and
- (c) monies from any other source as approved by the responsible Ministry.

28. (1) There shall be a Director General of the Institute who shall be appointed by the Board of the Institute whose terms and conditions of service shall be determined by the Board of the Institute in the instruments

Director General of the Institute.

of appointment or otherwise in writing from time to time.

(2) A person shall be qualified for appointment under this section if the person-

- (a) holds a degree from a university recognized in Kenya in agricultural research, soil and seed research, soil science or related field;
- (b) has at least five years' experience in managerial capacity; and
- (c) meets the provisions of Chapter six of the Constitution.

PART V- APPOINTMENT OF CROP INSPECTORS

29. (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

Appointment of
crop inspectors.

(2) For purposes of subsection (1), the Board may, by regulations, prescribe the qualifications for appointment as a crop inspector.

30. An inspector or a person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

Entry and
inspection.

- (a) enter any land or buildings occupied by the holder of a licence issued under this Act, or a person registered under this Act;
- (b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence are being complied with; and
- (c) may require any person found thereon to give such information as the person may require.

31. (1) For the purposes of this Act, an inspector who has reasonable grounds may—

Powers of entry.

- (a) at any reasonable time, enter upon any land, premises or vehicle;
- (b) take such persons and things as the inspector considers necessary;

- (c) perform the functions or exercise the powers conferred by this Act or any other written law;
- (d) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (e) demand the production by a licence holder of the licence for examination;
- (f) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
- (g) do any other thing authorized under this Act.

(2) The owner or occupier of any land or a person in control of any premise or a vehicle which an inspector has entered under subsection (1) shall render such reasonable assistance as may be required by the inspector.

(3) A person who refuses, unreasonably delays or fails to comply with a requirement under subsection (2) commits an offence.

32. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

Obstruction of inspectors.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or both.

PART VI—FINANCIAL PROVISIONS

33. The funds of the Board shall comprise—

Funds of the Board.

- (a) such monies as may be appropriated by the National Assembly for the purposes of the Board;
- (b) such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided for or donated or lent to the Board.

34. (1) The Cabinet Secretary shall, in consultation with the Board, by order in the Gazette, impose a levy on

Sugar Development Levy.

domestic sugar and a ten per centum of CIF value on imported sugar to be known as the Sugar Development Levy.

(2) The levy shall be payable at such rate as may be specified in the order.

(3) An order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.

(4) All moneys received in respect of the levy shall be paid to the Board and if not paid on or before the date prescribed by the order, the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Board.

(5) If a person fails to pay any amount payable by him or her by way of the levy on or before the date prescribed by the order, a sum equal to five per centum of the amount shall be added to the amount due for each month or part thereof during which the amount due remains unpaid.

(6) The Board shall apply the money received under this section for the furtherance of the objects of the Board.

(7) The Sugar Development Levy collected under subsection (2) shall be apportioned as follows—

- (a) fifteen per centum shall be applied by the Board for income or price stabilization for sugar growers;
- (b) twenty per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;
- (c) twenty per centum shall be remitted directly to the Institute; and
- (d) forty five per centum shall be applied for infrastructure development in the sugar subsector on a pro rata basis.

(8) The funds provided for under subsection (7)(a) shall be used to provide for sustainable, affordable credit and advances to farmers for all or any of the following purposes—

- (a) farm improvement;
- (b) farm inputs;
- (c) farming operations; and
- (d) price stabilization.

35. (1) There is established a Fund to be known as the Sugar Development Fund which shall be administered by the Board.

Sugar
Development
Fund.

- (2) The Fund shall consist of—
 - (a) the Sugar Development levy;
 - (b) any funds provided by bilateral or multilateral donors for the purposes of the Fund;
 - (c) any moneys provided by the National Assembly for the purposes of the Fund;
 - (d) any moneys provided by a county assembly for the purposes of the Fund; and
 - (e) moneys from any other source approved by the Board.

36. The financial year of the Board shall be the period of twelve months ending on the thirtieth June in every year.

Financial year.

37. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Board for that financial year.

Annual estimates.

(2) The annual estimates shall make provision for all the estimated expenditure of the Board for the financial year concerned and in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Board;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Board;
- (c) the proper maintenance of the buildings and grounds of the Board;
- (d) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Board; and

- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

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

Accounts and
audit.

(2) Within a period of three months from the end of the financial year, the Board shall submit to the Auditor General or to an auditor appointed under subsection (3), the accounts of the Board together with—

- (a) a statement of the income and expenditure of the Board during that year; and
- (b) a statement of the assets and liabilities of the Board on the last day of that year.

(3) The accounts of the Board shall be audited by the Auditor General or by an auditor appointed by the Board with the written approval of the Auditor General.

(4) The appointment of an auditor under subsection (3) shall not be terminated by the Board without the prior written consent of the Auditor General.

(5) The Auditor General may give general or specific directions to an auditor appointed under subsection (3) and the auditor shall comply with such directions.

(6) An auditor appointed under subsection (3) shall report directly to the Auditor General on any matter relating to the directions given under subsection (5).

(7) Within a period of six months after the end of each financial year, the Auditor General shall report on the examination and audit of the accounts of the Board to the Cabinet Secretary and where an auditor has been appointed under subsection (3), such auditor shall transmit a copy of

the report to the Auditor General.

(8) The fee payable to an auditor, appointed under subsection (3) shall be determined and paid by the Board.

(9) Nothing in this Act shall be construed to prohibit the Auditor General from carrying out an inspection of the records and accounts of the Board whenever it appears to him desirable.

(10) Notwithstanding anything in this Act, the Auditor General may transmit to the Cabinet Secretary a special report on any matters incidental to his power under this Act and section 19(3) and (4) of the Exchequer and Audit Act (Cap. 412) shall, with necessary modifications, apply to any report made under this section.

39. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Board for the immediate preceding year.

Annual report.

(2) The Cabinet Secretary shall lay the report submitted to him under subsection (1) before the National Assembly within three months of the day the Assembly next sits after the receipt of the report.

PART VII- ESTABLISHMENT OF THE SUGAR ARBITRATION TRIBUNAL

40. (1) There is hereby established a Tribunal to be known as the Sugar Arbitration Tribunal.

Establishment of
the Sugar
Arbitration
Tribunal.

(2) The Tribunal shall consist of—

(a) a chairperson appointed by the Chief Justice who shall be a person qualified to be appointed as a judge of the High Court; and

(b) four other members, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct material interest in the sugar industry, all of who shall be appointed by the Chief Justice in consultation with the Attorney-General and the Council of County Governors.

(3) The Chairperson and members of the Tribunal

shall serve on a part-time basis.

(4) The members of the Tribunal appointed under subsection (2) shall hold office for such period, not exceeding three years, on such terms and conditions as shall be specified in the instrument of appointment but shall be eligible for re- appointment for one further term of a period not exceeding three years.

(5) A person shall not be qualified to be appointed as a member of the Tribunal if that person is a public servant or takes an active part in the activities of a political party.

(6) A person shall not qualify for appointment under this section unless the person has met the requirement of Chapter Six of the Constitution.

(7) The provisions set out in the Fourth Schedule shall have effect with respect to the meetings and procedure of the Tribunal.

(8) Except as provided in the Fourth Schedule, the Tribunal shall regulate its own procedure as to the conduct of meetings.

41. (1) The Tribunal shall determine—

Jurisdiction of the
Tribunal.

- (a) disputes between sugarcane farmers;
- (b) disputes between sugarcane farmers and the following-
 - (i) out grower institutions;
 - (ii) millers;
 - (iii) growers; or
 - (iv) other interested party;
- (c) disputes relating to cane pricing; and
- (d) disputes relating to contract farming.

Determination of
disputes.

42. (1) The Tribunal shall determine any dispute before it expeditiously, but in any case, shall determine a dispute within a period of three months from the date the dispute is lodged.

(2) An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and

on points of law to the Court of Appeal.

(3) A decision of the Tribunal shall be enforced in the same manner as a decision of a Magistrates Court.

(4) The Tribunal shall apply the rules of evidence and procedure under the Evidence Act (Cap. 80) and the Civil Procedure Act (Cap. 21), with the necessary modifications, while ensuring that its proceedings do not give undue regard to procedural technicalities.

43. The Tribunal shall have the powers of the High Court—

Powers of the Tribunal.

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents;
- (c) to order the payment of costs; and
- (d) to order that the provisions of the law relating to Commissions of Inquiry in Kenya with respect to—
 - (i) the protection of the members of the Tribunal from suit;
 - (ii) the form of summonses to witnesses;
 - (iii) to giving or fabricating of false evidence;
 - (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
 - (v) the appearance of advocates;

shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

44. A member of the Tribunal may be removed if the member—

Removal of members of the Tribunal.

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence and sentenced to imprisonment for a period exceeding six months without the option of a fine;

- (c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;
- (d) violates the Constitution; or
- (e) is otherwise unable or unfit to discharge the functions of the office.

45. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal and such member shall serve for his or her full term.

Vacancy.

46. The Chief Justice shall appoint a Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

Secretary of the Tribunal.

47. (1) The remuneration of the staff of the Tribunal and the expenses of the Tribunal shall be paid out of monies allocated by the National Assembly to the Judiciary Fund.

Remuneration of members and staff of the Tribunal.

(2) The Chairperson and members of the Tribunal shall be paid such allowances and be reimbursed such expenses as shall be determined by the Judicial Service Commission on the recommendation of the Salaries and Remuneration Commission.

PART VIII—MISCELLANEOUS PROVISIONS

48. (1) The Board shall, at least once in every year, convene an annual general meeting of representatives of millers and growers for the purposes of considering the annual report and accounts of the Board and for the purposes of transacting such other business of which notice shall be given.

Annual general meeting.

(2) The Board may convene special meetings in addition to the meetings mentioned in subsection (1) for such purposes and at such times as it may deem fit.

(3) Subject to this Act and any regulations made thereunder, the Board may make rules for the regulation of the conduct of business and procedure at the general meetings convened pursuant to this section.

49. (1) All sugar millers and importers shall ensure that all sugar produced locally or imported into the country

Quality, safety and health control

meets—

measures.

- (a) safety and quality standards as set by the body for the time being responsible for setting standards;
- (b) safety and health standards for food handlers as set by the body for the time being responsible for public health; and
- (c) environmental issues as set by the body for the time being responsible for environment.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, upon conviction—

- (a) to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding seven years, or to both; and
- (b) the court may where a person is convicted for an offence make a further order that the person's licence be withdrawn.

50. (1) The Board shall carry out physical inspection of premises licenced under section 19 quarterly to ensure that safety and health standards are followed.

Inspection for
quality and safety.

(2) Every person licenced under this Act shall—

- (a) not discharge any affluent, dangerous materials, substances, oil or oil mixtures into land, water, air, or aquatic environment;
- (b) not release smoke or any air pollutant to the air that pollutes the environment;
- (c) manage any hazardous waste and materials;
- (d) not import any hazardous waste;
- (e) not mislabel any sugar or jaggery; and
- (f) not aid or abet illegal trafficking of sugar or related substances.

(2) When an offence under this section, is committed by a body corporate, the body corporate and every director or officer of the body corporate who ought to have had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to

ensure compliance with this Act, commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to an imprisonment for a term not exceeding five years.

(3) In addition to the sentence under subsection (2), the Court may order for the revocation of a licence.

51. (1) The Board shall ensure, subject to such regional and international trade agreements to which Kenya is a party, that all sugar imports into the country are subject to all the prevailing import duties, taxes and other tariffs.

Safeguard
measures.

(2) Despite subsection (1), the Board shall ensure that—

- (a) sugar shall be imported in the country only when there is sugar deficit on a quarterly basis and for a specific tonnage; and
- (b) importers report to the Board on their imports, sales and stock on daily basis.

(3) The Government shall introduce other safeguard measures as may be necessary to protect the industry from unfair trade practices.

(4) A person who contravenes the provision of this section commits an offence and shall be liable, on conviction, to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or two million shillings, whichever is the higher, or to imprisonment for a term not exceeding ten years, or to both.

52. (1) The Board may direct any organization or person in the industry to produce any document or information, or submit any returns which it reasonably considers necessary for the proper performance of its functions under this Act.

Offences and
penalties.

(2) Any person who—

- (a) fails to comply with any direction given by the Board under this Act; or
- (b) furnishes to the Board any information or produces any document which is false or misleading in any material particular; or

(c) obstructs an officer of the Board in the performance of his functions under this Act; or

(d) diverts or abets the diversion of transit sugar into the domestic market,

commits an offence.

(3) A person convicted of an offence under paragraph (d) of subsection (2) shall be liable to a fine not exceeding three times the domestic value of the sugar in respect of which the offence is committed, or two million shillings, whichever is the higher, or to imprisonment for a term not exceeding ten years, or to both.

(4) A person who contravenes any of the provisions of this Act commits an offence.

(5) A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

53. (1) There shall be, for the purposes of this Act, agreements to be known as the sugar industry agreements negotiated between growers and millers, growers and out-grower institutions, and millers and out-grower institutions.

Sugar industry agreements.

(2) The agreements referred to in subsection (1) shall conform to the guidelines set out in the Third Schedule.

(3) Without prejudice to the generality of subsection (2), the matters to be provided for in the agreements shall include—

(a) the designation of any agricultural crop from which it is possible to manufacture sugar which is subject to the agreement;

(b) a sugar-cane farming contract providing for the terms and conditions of the production of sugarcane and sugar and prescribing the rights and obligations of growers and millers;

(c) a formula for determining the price to be paid by millers to growers for sugarcane or any other designated agricultural produce in consultation with stakeholders, which may include any factor related to the sale or other disposal of sugar

industry products;

- (d) the functions to be executed by the Board in the execution of the agreement;
- (e) the granting of powers to the Board to enforce penalties prescribed in the agreement for the contravention of, or failure to comply with any term of the agreement; and
- (f) the enforcement of levies upon growers and millers for the purpose of enabling the Board to fulfill any obligation incurred by it in accordance with its constitution.

54. Notwithstanding any other provision in this Act or any other written law to the contrary, growers shall be entitled to at least—

Rights of growers in a privatized company.

- (a) 51% shareholding of all privatized sugar factories; and
- (b) 51% representation on the Boards of Directors of a privatized company.

55. (1) Notwithstanding the provisions of any other Act, each private sugar milling company shall have a representative of the growers in its board of directors.

Representative of a grower in a private milling company.

(2) In appointing a director representing the growers under subsection (1), the milling company shall consider in the first instance, the leaders of the out-grower institutions within the sugar-cane catchment area in which the sugar mill is located.

(3) A person appointed as a director under subsection (1), shall serve for a term not exceeding two years.

56. The Cabinet Secretary may, on the recommendation of the Board, by order in the *Gazette*, amend the Third Schedule.

Amendment of Third Schedule.

PART IX –PROVISIONS ON DELEGATED POWERS

57. (1) The Cabinet Secretary shall in consultation with the Board make regulations generally for the better carrying into effect of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), may make regulations prescribing—

- (a) the regulation and control of the production,

manufacturing, marketing, importation or exportation of sugar and its by-products;

- (b) the forms of licences to be issued under this Act, and the form and manner of application for the licences; and
- (c) the fees which may be charged for any activity relating and incidental to the development, products, marketing and distribution of sugar and its by-products.
- (d) the establishment of weigh bridges;
- (e) standards on grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of sugar and sugar by-products to ensure safety and proper trading;
- (f) production and import of sugar to ensure adequate sugar availability in the country;
- (g) guidelines on general industry agreements between growers and millers and between parties in the sugar industry;
- (h) minimum period within which farmers are to be paid for sugar crop delivered and penalties for delayed payments; and
- (i) cane harvesting and transportation

(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act and to enable the Board to discharge its functions more effectively;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;
- (c) the principles and standards applicable to the regulations made under this section are those set

out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap 2.
No. 23 of 2013.

(4) Without prejudice to the generality of this section, the Cabinet Secretary shall make the regulations necessary to operationalize this Act within twelve months from the date of commencement of this Act.

PART X —CONSEQUENTIAL AMENDMENTS

58. The Agriculture and Food Authority Act, 2013 is amended in the First Schedule by deleting paragraph 1(ii).

Amendment of the First Schedule to No. 13 of 2013.

59. The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the words “Sugar.....Saccharum spp”.

Amendment of the First Schedule to No. 16 of 2013.

PART XI —SAVINGS AND TRANSITIONAL PROVISIONS

60. (1) Upon the commencement of this Act, a person who was a member of the staff of the former Sugar Board of Kenya before the commencement of the Agriculture and Food Authority Act, 2013 and current staff of the Sugar Directorate not being under any notice of dismissal or resignation shall upon commencement of this Act and subject to subsection (2) become a staff of the Board on their current improved terms and conditions of service.

Transfer of Staff.

No. 13 of 2013.

(2) The pensions of staff under the provident fund of Agriculture and Food Authority- Sugar Directorate shall on the commencement of the Act vest in the Board.

61. All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Sugar Directorate of the Agriculture and Food Authority, shall, on the date of commencement of this Act, vest in the Board subject to all interests, liabilities, charges, obligations and trusts affecting that property.

Transfer of assets and liabilities.

62. All legal proceedings and claims pending in respect of actions and activities to which this Act apply shall be continued or enforced by or against the Board in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority

Pending proceedings and claims.

had this Act not been enacted.

FIRST SCHEDULE

[S. 2, 6(1)(b) and 25(b)]

DELINEATION OF SUGAR CATCHMENT AREAS

SUGAR CATCHMENT AREA	COUNTIES
Rift Region	Kericho, Nandi and Uasin Gishu
Upper Western	Bungoma, and Trans Nzoia
Lower Western Region	Busia, Kakamega, Siaya and Vihiga
Southern Region	Homa Bay, Kisumu, Migori and Narok
Coastal Region	Kwale, Lamu, and Tana River

SECOND SCHEDULE [Section 10]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. A member of the Board, other than the Chairperson or an *ex-officio* member, may—

Vacation of office.

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office*by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is incapacitated by prolonged physical or mental illness;
 - (iv) is adjudged bankrupt; or

- (v) is otherwise unable or unfit to discharge his functions.

2. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon request in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be two thirds of the members of the Board provided that in the case of a tie, the chairperson shall have a casting vote.

(5) The chairperson shall preside at every meeting at which he or she is present but, in his or her absence, the members shall elect one of their members to preside who shall with respect to that meeting and the business transacted thereat have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to paragraph (4), no proceeding of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

3. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the

Disclosure of interest.

contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

4. The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson and the Chief Executive Officer:

The common seal.

Provided that the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the Chairperson or the Chief Executive Officer.

5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorised by the Board for that purpose.

Contracts and instruments.

THIRD SCHEDULE [Section 53]

GUIDELINES FOR AGREEMENTS BETWEEN PARTIES IN THE SUGAR INDUSTRY

PART I—INTRODUCTION AND SCOPE OF AGREEMENTS

1. The guidelines define the linkages among the different institutions in the industry and govern the operations of interested parties in the industry and any disputes arising in relation thereto shall be referred to the Tribunal.

Scope of Agreement.

2. In these guidelines, unless the context otherwise requires—

Interpretation.

“cane supply contract” means a contract for the supply

of sugar-cane to a miller;

“cane farming contract” means a contract between a grower and an out-grower institution or miller;

“*force majeure*” means events that cannot be reasonably anticipated or controlled and includes acts of war or enemies, riots, strikes, embargoes, acts of God, acts of the Government or of any authority or agency thereof;

“grower member” means a member of an out-grower institution;

“Kenya Sugar Manufacturers Association” means the Kenya Sugar Manufacturers Association registered under the Societies Act;

“Kenya Sugar Research Institute” means the Kenya Sugar Research Institute established under Part IV of this Act; and

“sugar lobby group” means a registered group of people comprising of farmers and growers from the sugar catchment areas championing the rights of sugar stakeholders.

PART 2—ROLES OF INSTITUTIONS IN THE INDUSTRY

3. The role of the Kenya Sugar Board is to—

The role of the Kenya Sugar Board.

- (a) co-ordinate the activities of the various organizations concerned with the industry, both in the private and the public sector;
- (b) support the general development of out-grower institutions and enable them become effective intermediaries for providing financial assistance and extension services to growers;
- (c) review, on a regular basis, the economic and financial performance as well as the problems and prospects of the industry;
- (d) promote a more extensive use of sugar and its by-products;
- (e) promote the manpower development of farmers and employees in the industry through establishment and co-ordination of a central training institute;

- (f) facilitate negotiations on cane pricing between growers, out-grower institutions and millers;
- (g) facilitate studies and investigations in respect of any specific or general issue affecting the industry;
- (h) facilitate long-term master plans for the rehabilitation, rationalization of factories and marketing of sugar, with due regard to the interest of all parties concerned;
- (i) collect information and evaluate any fixed investment to be made in the sugar sector by any individual.
- (j) examine and advise on the operating costs of any organization concerned with the industry;
- (k) monitor the production, importation and consumption of sugar and its by-products with a view to ensuring a viable industry; and
- (l) ensure that millers and out grower institutions look into the welfare of its members and infrastructural development of the regions where they are situated.

4. The functions and role of out-grower institutions include—

The role of out grower institutions.

- (a) promoting and representing the interests of growers;
- (b) negotiating or arranging, on behalf of such grower members, the terms of supply of sugar-cane to the factory and the co-ordination of the production, harvesting and transport thereof;
- (c) providing financial credit or otherwise arranging finance for such grower members in connection with the production of their sugar- cane, including land clearance and preparation, planting, cultivation and tending, harvesting, transport and the supply of goods and services relating thereto;
- (d) providing or procuring services, advice and assistance for such grower members as may be required, to carry out or procure the carrying out of such operations for such members;
- (e) providing or procuring accounting services and

books or records for members in respect of their individual operations;

- (f) purchasing, selling or otherwise dealing in, securing or providing such goods, materials, supplies and services as may be required by members;
- (g) make representations to the Sugar Cane Pricing Committee; and
- (h) effectively participating in lobbying for favourable Government policies in the industry through the registered sugar lobby groups.

5. The role of the miller is to—

The role of the miller.

- (a) harvest, weigh at the farm gate, transport and mill the sugar-cane supplied from the growers' fields and nucleus estates efficiently and make payments to the sugar-cane growers as specified in the agreement;
- (b) maintain and develop adequate milling capacity for sugar-cane planted on the basis of agreed planting plans with the growers and the out-grower institution;
- (c) mill the sugar-cane efficiently so as to realize maximum returns for the millers and the growers;
- (d) pay the sugar-cane farmer within 15 days of accepting delivery or otherwise pay interest on the sum due at market rates, plus a penalty of 3 per cent per month on late payment;
- (e) participate in lobbying for favorable Government policies in the industry through the Kenya Sugar Manufacturers Association;
- (f) maintain accurate weighbridges to ensure correct weight of sugar-cane;
- (g) ensure that mobile weighbridges are closer to growers; and
- (h) install and maintain appropriate systems and technologies for sampling sucrose content in sugar-cane delivered.

PART 3—SUGARCANE FIRES AND CANE PRICING

6. (1) The out-grower institutions shall follow the harvesting programs strictly and be subject only to factory capacity.

Sugarcane fires.

(2) A miller may decline to accept burnt sugar-cane but where such sugar-cane is accepted, the following guidelines shall be adhered to—

- (a) the grower shall sign an authority to harvest his burnt sugar-cane prior to commencement of cutting which authority shall be different from any sugar-cane farming contract and shall set out conditions under which the miller may accept the burnt sugar-cane;
- (b) sugar-cane shall be delivered to the mill weighbridge within a period of up to seven days, inclusive of the day of burning, according to specific factory zones;
- (c) only sugar-cane of an acceptable quality shall be harvested; and
- (d) a payment for burnt sugar-cane shall be made one month from the date of the scheduled harvest of the sugar-cane.

7. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as “the Committee”).

Sugar Cane Pricing Committee.

(2) The Committee shall comprise of—

- (a) the Chief Executive Officer of the Board;
- (b) two persons nominated by the Kenya Sugar Manufacturers Association;
- (c) three persons nominated by the sugar cane growers from the sugar catchment region;
- (d) one representative from the sugar lobby groups;
- (e) the Principal Secretary responsible for matters related to agriculture or a representative appointed in writing; and
- (f) one representative from county government nominated by the Council of Governors.

(3) The main objectives of the Committee shall be

to—

- (a) review sugar cane prices;
 - (b) provide a mechanism that remunerates farmers for other products delivered from the processing of cane;
 - (c) ensure adherence to negotiated cane pricing formula;
 - (d) transition to payment based on quality; and
 - (e) enforcement of contracts between farmers and millers.
- (4) The Committee shall come up with the pricing formula and in doing so shall take into account the—
- (a) pricing mechanisms for all other cane related charges paid by the farmer;
 - (b) an index that takes into consideration delayed harvesting; and
 - (c) transportation cost per tonne per kilometre of sugarcane.
- (5) The Board shall offer Secretariat services to the Committee.
- (6) The sugar-cane prices set by the committee under sub paragraph (3) shall be reviewed after every thirty six months provided that the Committee may, with the prior approval of the Board, undertake an early review of the sugar-cane pricing.

PART 4—RELATIONSHIP BETWEEN THE OUT GROWER INSTITUTION AND THE MILLER

8. (1) Except as otherwise agreed, a miller shall—

- (a) subject to the provisions of a supply contract, buy all sugar-cane of requisite quality harvested from the area specified in the supply contract in accordance with the program provided for herein;
- (b) notify the out-grower institution in advance of any

Out-grower and
miller Agreement.

planned closure of the mill for any reason;

- (c) advise the grower of any change in planned activities as soon as the need for such change becomes apparent;
- (d) reject any sugar-cane found not to be of the requisite quality based on parameters established by the Kenya Sugar Board;
- (e) pay the out-grower institution within thirty days of sugar-cane delivery: Provided that the sugar-cane will be harvested not later than twenty- four months for plant crops and not later than twenty-two months for subsequent ratoons.

(2) If a miller fails to pay the out-grower institution as specified, the miller shall be liable to pay interest charges on the outstanding grower loan accounts of the affected growers up to the time it completes payment so as to safeguard the grower's ability to repay the funds borrowed to finance cane production.

(3) The out-grower institution shall—

- (a) before the start of each financial year prepare a cultivation and planting program covering all growers and showing acreage, approximate timings and production quantities anticipated for each grower;
- (b) at the appropriate time, prepare a harvesting program showing the approximate expected time of harvesting the crop of each grower;
- (c) furnish the miller with copies of such programs as soon as they are completed, and consult with the growers regarding any significant changes therein that the miller may subsequently consider necessary to make;
- (d) furnish the miller with a list of all growers showing the acreage of each grower's sugar-cane area as specified in his sugar-cane supply contract:

Provided that the programs referred to in subparagraph (a), (b) and (c) shall be tentative and their implementation shall be to the exigencies of subsequent operations and

circumstances.

(4) Neither the out-grower institution nor the miller shall be obliged to perform their respective obligations under an agreement if and to the extent that they or either one of them may be hindered or prevented from so doing directly or indirectly by an event of force majeure.

(5) Any event of force majeure shall be reported by the affected party to the other party within seven days from the date of its occurrence and the said event shall be certified by the competent authorities of both parties.

(6) The obligations of the parties under the specified agreement shall remain suspended for the period during which the said event of force majeure persists.

(7) The provisions of this Part shall apply mutatis mutandis to the relationship between the grower and the miller.

PART 5—RELATIONSHIP BETWEEN THE OUT-GROWER INSTITUTION AND THE GROWER

9. (1) A grower may appoint an out-grower institution as his representative in all matters of sugar-cane development and the financing of sugar-cane supply, including negotiations for the price of sugarcane, costs of farm inputs and related services.

Out-grower institution and grower agreement.

(2) The out-grower institution and the grower may agree on a specific period of maturity for purposes of harvesting, delivery and payment which shall be eighteen to twenty months for plant crop, and sixteen to twenty-two months for first and second ratoon crops:

Provided that by mutual consent the said term may be extended to include the harvesting of one or more ratoon crops or by such period as may be agreed upon, with or without modifications of the terms and conditions herein contained, by a memorandum of extension endorsed hereon not less than three months before the date of the anticipated commencement of harvesting of what would otherwise have been the last ratoon crop under the contract or six years which ever shall be the earlier.

(3) Where a grower decides to discontinue the production of sugar-cane or terminate the relationship with an out-grower institution he shall give a three months'

notice of his intention to do so and shall pay all his dues before the expected time of harvest and the out-grower institution will then harvest cane in the normal harvesting manner:

Provided that such notice shall only be effective if the grower shall, within the period of notice, repay in full all loans received by him from the out-grower institution.

(4) Any such termination of the contract shall be without prejudice to all rights accrued and obligations incurred to or by either party prior to the date of termination and shall not prejudice any claim for damages for such breach of contract.

(5) Any question or dispute as to the responsibility to fulfill the terms of the specified agreement due to the reasons stated above shall be referred to the Sugar Arbitration Tribunal.

10. The grower shall—

Obligations of the grower.

(a) plant or cultivate the most suitable variety of cane recommended by the Kenya Sugar Institute;

(b) allow the cultivation of seed cane nurseries, if the out-grower institution desires, for the multiplication of seed sugar-cane material to be supplied to other growers:

Provided that such sugar-cane may be used for milling when it is no longer required for seed cane;

(c) allow the cutting of commercial sugar-cane of both plant and first ratoon only to supply seed to other growers in the absence of suitable nurseries:

Provided that the age of the seed cane shall be not less than ten but not more than fourteen months;

(d) at all times allow the out-grower institution to enter upon his land together with any vehicles, machinery or livestock which the out-grower institution may require to—

(i) inspect the land and the cane growing thereon;

(ii) sample the sugar-cane;

- (iii) gain access to other grower's land, including such construction of access tracks as may be required for the transport of sugar-cane produced by the grower or other growers; and
- (iv) do anything required to be done by either party in terms hereof:

Provided that, if the grower fails to facilitate the harvesting of his sugar-cane at the appointed time, the out-grower institution shall refer the matter to the Sugar Arbitration Tribunal;

- (e) maintain his sugar-cane cultivation in a manner which will enhance a satisfactory yield by—
 - (i) maintaining the sugar-cane crop weed-free;
 - (ii) applying at the recommended time and in the recommended amounts all fertilizers and other material recommended by the out-grower institution and the Kenya Sugar Research Institute;
 - (iii) undertaking the planting and gapping of sugar-cane area at the times recommended by the out-grower institution in order to ensure a high plant population; and
 - (iv) applying all services and goods, which he may have obtained from the out-grower institution for the benefit for the sugarcane crop solely for that purpose;
 - (v) undertaking stubble shaving, inter-row cultivation and trashlining within one month after harvesting;
 - (vi) inspecting sugar-cane crops for pests and diseases periodically and removing diseased or infested sugar-cane and disposing them off in a manner prescribed by extension agents;
 - (vii) planting the sugar-cane inter-row, one row only of common beans, soyabeans, potatoes, tomatoes, onions, cabbages or carrots;

Provided that:

if the out-grower institution so requires, in the case of a default, the grower shall allow all or any such work to be carried out at his cost by the out-grower institution and its agents or employees working in conjunction with the grower; and

within seven days of receipt of a written notification from the out-grower institution that such operations are necessary to achieve a satisfactory yield of sugar-cane, allow unimpeded access to the out-grower institution and his equipment for the purpose of carrying out any or all operations which the grower has failed to carry out and that notification shall have either been served to the grower or his representative and acknowledged, or shall have been posted to the grower by registered mail.

- (f) offer for harvest and transport by the out-grower institution all such cane as is derived from his contracted sugar-cane plot and no other for use either as seed cane or mill sugar-cane;
- (g) not sell his sugar-cane through a middleman nor dispose of it or any interest therein to any other parties without the written permission of the out-grower institution specifying the tonnage of sugar-cane which may be sold, the date on which the sale may take place and destination of the sugar-cane;
- (h) either attend himself or send an authorized representative to the buying point to witness the condition of the sugar-cane at the time of delivery and to obtain a ticket showing the value of sugar-cane delivered in the absence of an official representative appointed for the purpose;
- (i) bear all direct and indirect costs of the works, goods and services supplied by the out-grower institution as specified in the agreement and unless the same are paid earlier allow such costs to be deducted from payment for sugar-cane supplied by the grower;
- (j) be responsible for maintaining suitable permanent boundary marks and cleared firebreaks for his

sugarcane crop;

- (k) be liable to pay the cost of any damage suffered by other growers as a result of failure to comply with the terms hereof;
- (l) take precautions against fire according to the advice of the out-grower institution;
- (m) not assign his land or any interest therein or any of his rights or obligations under the agreement without the written consent of the out-grower institutions; and
- (n) attend meetings and field days convened by the out-grower institution for the purpose of learning the proper sugar-cane husbandry, operation and application of goods and services obtained from the out-grower institution for the satisfactory yield of sugar-cane.

11. The out-grower institution shall—

Obligation of out-grower Institutions.

- (a) during each harvest period, deliver to the miller from the grower, sugarcane in the quantities and on the dates agreed upon between the miller and the out-grower institution;
- (b) within the limits imposed by the condition of the roads, provide and operate an efficient system of transport from the field to the mill;
- (c) cause the grower's sugar-cane to be weighed and tested on arrival at the buying point, allow the grower or his representative access to the weighbridge to check the weight, maintain in duplicate a written or printed record of the value of each load of sugar-cane delivered and give to the grower or his representative on the day of delivery one copy of such record.
- (d) establish seed cane 'B' Nurseries on growers plots for bulking of seed cane to be supplied to other farmers, and for this purpose to purchase, harvest and transport such seed cane after certification by the out-grower institution's agronomist as to its suitability for planting; seed cane which fails to be

used for seed will be used for milling:

Provided that the grower whose sugar-cane is cut for seed will be paid at the price not less than that of mill cane and will not be charged the cost of transport;

(e) have absolute charge and control of all equipment, machinery, staff and labour concerned with operations on the growers land:

Provided that the out-grower institution shall exercise due care to ensure that the operational costs to be charged to the grower shall be kept at a reasonable level;

(f) be entitled, in the event that the grower does not prepare, plant and maintain his land and sugar-cane in accordance with the agreement, to carry out all and any such operations on the grower's land which the out-grower institution shall consider necessary to ensure that the grower's quota of sugar-cane of satisfactory quality will be delivered on the due date, in which case the out-grower institution shall be further entitled to deduct the cost, including a penalty for these operations, from the payment to be made for the grower's sugar-cane.

(g) charge interest on any credit that may be granted by the out-grower institution to the grower, such credit being only granted in exceptional circumstances at such rate as may, from time to time, be notified by the out-grower institution and be entitled to deduct such interest from the payment due to the grower in respect of the first cane harvest from the grower's land subsequent to the grant of the credit.

(h) be entitled to charge the grower for all works, goods and services supplied to the grower by the out-grower institution in accordance with the out-grower institution's schedule of charges from time to time in force at the date the agreement signed:

Provided that:

(i) the said charges shall at all times be as agreed

with the grower;

- (ii) the out-grower institution shall consult with the grower regarding any proposed changes in the said charges before such charges are proposed to take effect and shall maintain such records as are necessary to show the growers that the charges from time to time are as agreed in (i) above;
- (iii) the out-grower institution shall notify all changes to the grower at least thirty days before the charges are due to take effect; and
- (iv) where a grower ends up with a debit balance, the out-grower institution shall immediately write to the grower for arrangements of recovery of the said debt.

12. (1) Neither the out-grower institution nor the miller shall be obliged to perform their respective obligations under an agreement if and to the extent that they or either one of them may be hindered or prevented from so doing directly or indirectly by an event of force majeure.

Force majeure.

(2) Any event of force majeure must be reported by the affected party to the other party within seven days from the date of its occurrence and the said event be certified by the competent authorities of both parties.

(3) The obligations of the parties under an agreement shall remain suspended for the period during which the said event of force majeure persists.

PART 6—SUGAR INDUSTRY CONTROL MEASURES

13. (1) The sugar industry agreement shall recognize the measures already undertaken to deal with constraints to development which include the setting of a committee comprising the Kenya Sugar Authority, Kenya Ports Authority and the Kenya Bureau of Standards to co-ordinate the inspection and certification of imported sugar.

Industry control.

(2) In dealing with the illegal diversion of unaccustomed transit sugar, there will be control measures put in place from time to time.

(3) In addition to existing taxes on imported sugar the

antidumping duty and countervailing duty have been imposed.

(4) The Cabinet Secretary for finance shall, by notice in the Gazette, establish a five person advisory committee to investigate cases of dumping or subsidization of goods exported to Kenya and to report its findings to the Cabinet Secretary.

14. The following are the specifications for mill white and refined sugar as per the Kenya Bureau of Standards specifications (KS:05-38):

Sugar specification.

Parameters	Raw Sugar	Mill White	Refined Sugar
Colour (ICUMSA)	1200 (max)	400 (max)	60 (max)
Moisture %	0.25 (max)	0.10 (max)	0.70 (max)
Polarimeter(s)	97.5 (min)	99..5 (min)	99.8 (max)

FOURTH SCHEDULE [Section 40.]

PROVISIONS AS TO THE MEETINGS AND PROCEDURE OF THE TRIBUNAL

1. Any member of the Tribunal may, at any time, by notice in writing to the Chief Justice, resign his office.

Resignation.

2. (1) If a member of the Tribunal becomes a member of the Board or, in any case where a member other than the Chairperson is appointed to the service of the Government his or her office shall become vacant.

Vacation of office.

(2) The Chairperson or a member of the Tribunal may be removed from office by the Chief Justice if the member is—

- (a) unable to discharge the functions of his office by reason of mental or physical infirmity; or
- (b) an undischarged bankrupt; or
- (c) convicted of an offence involving fraud or dishonesty; or
- (d) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or

to a fine exceeding ten thousand shillings.

(3) In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the Chief Justice may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy caused the appointment.

3. If any member of the Tribunal has any interest in any particular proceedings before the Tribunal, he or she shall so inform the Chief Justice and the Chief Justice may, after considering that interest, appoint another member in his place for the purpose of the particular proceedings.

Disclosure of interests.

4. The decision of the Tribunal shall be that of the majority and shall be signed by the members thereof agreeing thereto.

Majority decisions.

5. The quorum of the Tribunal shall be three members.

Quorum.

6. No proceedings of the Tribunal shall be invalid by reason only of a vacancy among the members thereof.

Proceedings to be valid.

7. The Tribunal shall sit at such place as it may consider most convenient having regard to all the circumstances of the particular proceedings.

Venue.

8. Subject to the provisions of this Schedule, the Tribunal shall have power to make rules governing its procedure.

Rules.

9. A document purporting to be a copy of any order of the Tribunal, and certified by the Chairperson to be a true copy thereof, shall in any legal proceedings be *prima facie* evidence of the order.

Proof of document.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to reinstate the Sugar Act which was repealed through the enactment of the Crops Act, 2013. The enactment of the Bill shall restore the roles of the Kenya Sugar Board currently undertaken the Sugar Directorate of the Agriculture and Food Authority established under the Agriculture and Food Authority Act, 2013.

Since 2013, ineffective stewardship of the sugar industry by the Agriculture and Food Authority has contributed to—

- (a) non-payment of farmers by public sugar companies;
- (b) increased costs of sugar production;
- (c) declining land acreage under sugar;
- (d) lack of markets for sugar;
- (e) failure to control imports and exports of sugar;
- (f) poor management of sugar companies; and
- (g) lack of research and cane development initiatives.

The reestablishment of the Kenya Sugar Board, the Sugar Development Levy and the Sugar Development Fund and the establishment of the Kenya Sugar Research Institute shall address these challenges.

PART I (Clause 1-2) of the Bill contains preliminary provisions.

PART II (Clause 3 to 17) of the Bill contains provisions on the establishment, powers and functions of the Kenya Sugar Board. Clause 4 provides the Board with the overall task of regulating, developing and promoting the sugar industry as well as facilitating the equitable access to the benefits derived from the industry. Clause 5 provides for the functions of the county government which include issuance of sugarcane nursery certificates, offering and coordinating extension services on sugar production and milling in the respective county, collaboration with the Kenya Sugar Board and law enforcement agencies, enforcing regulations with the county, among others.

PART III (Clause 18-22) of the Bill contains provisions on licensing and registration of sugar and jaggery millers. Clause 20 provides for the requirements to be fulfilled by a person who imports sugar into Kenya. Clause 21 provides for licensing of processing of industrial sugar.

PART IV (Clause 23-28) of the Bill provides for the establishment, functions and management of the Kenya Sugar Research Institute. Clause

24 provides for the functions of the Institute which include promoting, coordinating and regulating research in sugar and sugar diseases and expediting equitable access to research information, resources and technology and promote the application of research findings and technology in the development of sugar, among others. Clause 25 provides for the Board of the Institute. Clause 27 provides for sources of funds of the Institute whereas Clause 28 provides for the Director-General of the Institute.

PART V (Clause 29-32) of the Bill provides for the appointment and functions of crop inspectors.

PART VI (Clause 33-39) of the Bill contains financial provisions. Clause 34 establishes the Sugar Development Levy to be paid at such rate as is specified by the Cabinet Secretary responsible for matters related to Agriculture by order in the Gazette. Clause 35 establishes the Sugar Development Fund.

PART VII (Clause 40- 47) of the Bill provides for the establishment of the Sugar Arbitration Tribunal to arbitrate disputes between sugarcane farmers; disputes between sugarcane farmers and out grower institutions, millers, growers, or other interested party; disputes relating to cane pricing and disputes relating to contract farming.

PART VIII (Clause 48-56) of the Bill contains miscellaneous provisions.

PART IX of the Bill contains provisions on delegated power. Clause 57 delegates legislative powers to the Cabinet Secretary responsible for matters related to Agriculture to make regulations for the better carrying into effect of the provisions of the Bill.

PART X (Clause 58-59) of the Bill contains consequential amendments to the Agriculture and Food Authority Act, 2013 and the Crops Act, 2013 in so far as they relate to the sugar industry.

PART XI (Clause 60-62) of the Bill contains savings and transitional provisions. Clause 60 and 61 transfers all the staff and the assets and liabilities of the Sugar Directorate of the Agriculture and Food Authority to the proposed Kenya Sugar Board, respectively. Clause 62 saves all pending proceedings and claims relating to the sugar industry currently handled by the Agriculture and Food Authority and transitions them to the proposed Kenya Sugar Board.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the Cabinet Secretary responsible for matters related to Agriculture to make regulations for the

better carrying into effect of its provisions. It does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill affects the functions of the county governments as it deals with the functions of Agriculture assigned to county governments under paragraph 1 of Part 2 of the First Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 5th October, 2022.

EMMANUEL WANGWE,
Member of Parliament.

