

Tobacco Act (Chapter 237)

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SCHEDULE-Powers of the Tobacco Board of Zambia

CHAPTER 237 TOBACCO Act No. 64 of 1967, 13 of 1994

An Act to provide for the promotion, control and regulation of the production, marketing and packing of tobacco in the Republic, the promotion and control of the export of tobacco from and import of tobacco to the Republic, the direction and promotion of research in connection with tobacco, and for incidental matters. [1st April, 1968]

PART I PRELIMINARY

1. This Act may be cited as the Tobacco Act. Short title
2. In this Act, unless the context otherwise requires- Interpretation

"auction floor" means premises used for the sale by auction of auctionable tobacco;

"auctionable tobacco" means any class of tobacco which is prescribed as auctionable tobacco by the Minister pursuant to section fifty-nine and as such is required to be sold by auction on a licensed auction floor;

"Board" means the Tobacco Board of Zambia established under the provisions of section three;

"buyer" means any person who buys tobacco and includes any person who possesses land and who agrees with a third person to permit the said third person to produce tobacco on not more than ten acres of the said land in consideration of the receipt of a share of the said crop when produced or of a share of the proceeds of its sale;

"delivery quota" means the quantity of auctionable tobacco determined by the Board which may be delivered by or on behalf of a registered grower for sale on any licensed auction floor in each delivery quota period;

"delivery quota period" means any period during which the Board permits the delivery of delivery quotas by registered growers to licensed auction floors;

"export on consignment" means the consignment of tobacco to an agent, factor or commission agent for purposes of sale outside the Republic;

"external market" means the demand for tobacco in any country outside the Republic;

"external market minimum price" means the minimum price fixed by the Minister, pursuant to section seventy-four, for auctionable tobacco sold for the purposes of any external market;

"financial year", in relation to the Board, means any period of twelve months prescribed as such by the Minister;

"grader", in relation to tobacco, means any person who grades tobacco as a business or trade;

"grower", in relation to tobacco, means any person who grows tobacco for purposes of sale, or any person who is deemed to be a grower pursuant to section twenty-six;

"inspector" means an inspector appointed pursuant to subsection (1) of section eleven;

"internal market" means the demand for tobacco for the purposes of manufacture in the Republic;

"internal market minimum price" means the minimum price fixed by the Minister, pursuant to section seventy-four, for auctionable tobacco sold for the purposes of the internal market;

"licensed auction floor" means any auction floor licensed as such by the Board pursuant to Part VIII;

"licensed buyer" means any person licensed by the Board to buy tobacco pursuant to Part VII;

"licensed grader" means any person licensed by the Board to grade tobacco pursuant to Part VI;

"manufacture", in relation to tobacco, means to subject it to a process or treatment other than butting, thrashing, stripping or redrying, and cognate expressions shall be construed accordingly;

"marketing quota" means the weight of tobacco of a class, prescribed pursuant to section seventy-eight, which a registered grower may sell in the Republic or export on consignment during a period fixed by an order relating thereto made pursuant to that section;

"member" means a member of the Board;

"non-auctionable tobacco" means any class of tobacco which is prescribed as non-auctionable by the Minister pursuant to section fifty-nine, and as such is not required to be sold by auction on a licensed auction floor;

"Permanent Secretary" means the Permanent Secretary, Ministry of Agriculture;

"producer" means any grower not required to be personally registered as such under section twenty-six;

"Registrar" means the secretary to the Board;

"sale at a primary or rural level" means the sale of tobacco by an individual producer or group of producers to a licensed buyer where it is intended that the said tobacco shall later

be offered for sale to the trade by the buyer, whether as auctionable or non-auctionable tobacco, as the case may be;

"sales supervisor" means a person appointed by the Board, under the provisions of section seventy-one, to supervise the sale of tobacco by auction on a licensed auction floor;

"selling season" means the period in each year fixed by the Board during which auctionable tobacco may be sold;

"surplus tobacco" means tobacco produced by a registered grower in excess of the marketing quota allotted to him pursuant to section seventy-eight;

"tobacco" means unmanufactured tobacco (including tobacco stems) of a class prescribed by the Minister pursuant to section fifty-nine;

"tobacco research" means-

(a) research and investigation of any kind in connection with tobacco, tobacco ecology, insect pests of tobacco, bacterial, fungoid and virus diseases and other pests of tobacco; and

(b) experiments in the planting, handling and curing of tobacco;

"tobacco stem" means the midrib of the tobacco leaf;

"weight" means the weight which is known in the usage of the trade as wet weight.

PART II ESTABLISHMENT OF TOBACCO BOARD

3. There is hereby established a board to be known as the Tobacco Board of Zambia which shall be a body corporate with a common seal and capable of suing and being sued and, subject to the provisions of this Act, of doing all acts as a body corporate may by law perform. Establishment of Tobacco Board of Zambia

4. (1) The Minister shall appoint the members of the Board. Composition of Board

(2) The Board shall consist of-

(a) one member chosen by the Minister who shall be designated as Chairman;

(b) one member representing the growers of Virginia flue-cured tobacco chosen by the Minister;

(c) one member representing the growers of Oriental tobacco chosen by the Minister;

(d) one member representing the growers of Burley tobacco chosen by the Minister;

(e) not more than three members representing the buyers of tobacco chosen by the Minister.

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

(4) The Minister may permit the attendance of observers at any meeting of the Board, who shall have no voice in the proceedings of such meeting nor any voting powers.

(5) No person shall be appointed a member or alternate member of the Board-

(a) while he is an undischarged bankrupt; or

(b) while he is serving a sentence of imprisonment upon conviction of an offence involving fraud or dishonesty.

5. (1) The Minister may appoint to the Board as an alternate member to each of the members referred to in paragraphs (b), (c), (d) and (e) of subsection (2) of section four a person chosen from the same category as the member to whom he is alternate was chosen.
Alternate appointments to Board

(2) The Minister may appoint to the Board an alternate member to the Chairman.

(3) An alternate member referred to in this section-

(a) shall act as a member only when the member to whom he is alternate is unable to exercise his functions on the Board by reason of illness, absence from the Republic or other cause; and

(b) when acting as a member shall have all the powers and duties of the member to whom he is alternate including, in the case of an alternate member to the Chairman of the Board, the powers and duties of the Chairman.

(4) Alternate members may, when not acting under the provisions of subsection (3), attend meetings of the Board as observers only but shall have no voting powers at any such meeting.

(As amended by Act No. 46 of 1970)

6. (1) Members of the Board shall, subject to the provisions of this section, hold office for a period of two years. Tenure of office and vacancies

(2) A retiring member shall be eligible for reappointment.

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

(4) The office of a member or alternate member shall be vacated-

(a) upon his death;

(b) if he is adjudicated bankrupt;

(c) if he is absent from three consecutive meetings of the Board without the permission of the Board;

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

(e) upon the expiry of one month's notice in writing given to him by the Minister;

(f) if he becomes mentally or physically incapable of performing his duties as such;

(g) if he is convicted of an offence and sentenced to imprisonment without the option of a fine.

(5) Whenever representation on the Board of any two or more of the categories of membership thereof provided for by subsection (2) of section four becomes vacant, the Minister may perform all of the functions and duties of the Board until such time as, by appointment, such categories are duly represented, and all such appointments to the Board necessary to complete the representation of such categories shall, in such event, be made by the Minister within three months of the date of the vacancy last occurring before the Minister exercises his powers under this subsection.

(6) Any member or alternate member who is not a public officer shall be paid out of the funds of the Board such remuneration and allowances, if any, as the Minister may, in his case, fix.

7. (1) Meetings of the Board shall be held at such places and times as the Chairman of the Board may determine and shall be convened by notice given by him: Meetings of Board

Provided that the Chairman of the Board may, himself, at any time, and shall, at the request in writing of any two members of the Board, and within fourteen days after the receipt of such request, convene a special meeting of the Board.

(2) A notice convening a special meeting of the Board shall state the purpose of such meeting.

(3) In the absence from any meeting of the Board of the person entitled to act as Chairman pursuant to this Act, the members present at that meeting may elect one of their number to be Chairman of that meeting.

(4) All decisions at any meeting of the Board shall be by resolution by majority vote of the members present thereat, and in the event of an equality of votes the Chairman shall have a casting vote in addition to his deliberative vote.

(5) A majority of the members of the Board with voting powers shall form a quorum.

8. (1) The Board shall establish and appoint the members of such committees as the Minister may prescribe to implement any of the Board's powers and functions and shall delegate to any such committee such of its powers as the Minister may deem necessary. Committees of Board

(2) The Board may establish and appoint the members of committees, other than those prescribed pursuant to subsection (1), to carry out any special or general functions determined by the Board and may delegate to any such committee such of its powers as it may deem fit.

(3) (a) No person shall be appointed to any committee established under the provisions of subsection (1) if he would be disqualified for membership of the Board.

(b) The Board, or the Minister in the case of any committee established pursuant to subsection (1), shall appoint a chairman of each committee established under this section.

(c) Each committee may, with the approval of the Minister previously obtained, co-opt as members persons who are not members of the Board and who are not disqualified for membership of the Board.

(d) The Chairman of the Board shall be an ex officio member of all committees established pursuant to this section.

(4) Any committee appointed under the provisions of this section shall keep minutes of its meetings, and shall inform the Board and, in the case of a committee established pursuant to subsection (1), the Minister, of its activities, and shall conduct its proceedings in such manner as may be prescribed.

(5) The chairman of each committee may at any time and at any place convene a meeting of the committee of which he is chairman.

(6) The Chairman of the Board may at any time and at any place convene a meeting of any committee. (As amended by Act No. 46 of 1970)

9. (1) If a member or his spouse- Member to declare connection with companies and firms dealing with Board

(a) tenders for or acquires or holds any pecuniary interest in any contract with the Board; or

(b) knowingly acquires or holds any capital interest in a company or firm applying or negotiating for any contract with the Board; or

(c) owns any lands or any right or interest in, upon or over any lands or owns any other property whatsoever which ownership, because of any conflict of interest, or other circumstance, might be considered as prejudicial to the interests and rights of the Board or to his duties as a member: the member shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest to the Chairman of the Board.

(2) This section shall not apply to a contract with the Board for the delivery, sale or disposal of tobacco, entered into by a member or his spouse, in which the member or his spouse receives no special advantage or preferential treatment.

10. (1) Subject to the approval of the Minister, the Board shall appoint the Secretary to the Board.

Appointment of Secretary to Board

(2) The Secretary to the Board shall be the Registrar for the purposes of this Act.

11. (1) Subject to the approval of the Minister, the Board shall appoint tobacco inspectors, who shall be inspectors for the purposes of this Act. Tobacco inspectors

(2) The Board shall cause a certificate of authority to be issued to each inspector.

(3) An inspector shall produce for inspection his certificate of authority upon the demand of any person affected by the exercise by him of any of his powers under this Act.

12. An inspector may, for any of the purposes of this Act, and at all reasonable times, enter upon-

(a) any land, building, premises or vehicle which he has reasonable cause to believe is being used in the production, storage, grading, processing or sale of tobacco in contravention of this Act, and inspect the same and any tobacco growing thereon, and any harvested tobacco or any book, record or document found therein, and he may take, in the prescribed manner, samples of any such growing tobacco, and he may seize and detain any such vehicle, or harvested tobacco or any book, record or document found therein which would afford evidence of a contravention of this Act;

(b) any land, building, premises or vehicle of any registered grower, registered grader, licensed buyer or any licensed auction floor to inspect the same and, in the prescribed manner, to take samples of any tobacco growing thereon or of any harvested tobacco found therein if in his opinion any of the said growing or harvested tobacco is not of a prescribed variety and is being or has been grown on the said land or is being held in the said land, building, premises or vehicle in contravention of this Act and to report to the Board on his findings in that regard, and to inspect any book, record or other document found therein which would relate to any prescribed or required return furnished or to be furnished by any person by or under this Act, and to seize and detain any such book, record or other document which would afford evidence of a contravention of this Act. Powers of inspector

13. Subject to the provisions of section nine, an agreement contract or other instrument may be entered into or executed on behalf of the Board by any person or persons authorised by the Board generally or specially in that behalf. Contracts and instruments of Board

PART III FUNCTIONS, DUTIES AND POWERS OF THE BOARD

14. The functions and duties of the Board shall, subject to the provisions of this Act, be to-

(a) promote, protect and maintain the production, sale, preparation for subsequent use and export of tobacco grown in the Republic;

(b) control and regulate the production, marketing and export of tobacco;

(c) carry out tobacco research;

(d) obtain and collate statistics relating to the production, marketing, manufacture and consumption of tobacco inside and outside the Republic;

(e) provide and operate such services and other facilities as may be necessary or convenient for the tobacco industry;

(f) advise the Minister on all matters relating to tobacco; and

(g) do all things which the provisions of this Act require to be done by the Board.

Functions and duties of Board

15. (1) The powers of the Board shall include every power granted by any express provision of this Act and also every express power enumerated in the Schedule, together with all implied powers necessary to the exercise of any such express power. Powers of Board

(2) The Board may exercise any of its powers, functions or duties either absolutely or conditionally and either solely or in conjunction with other persons, and in so doing may deal differently with different persons, premises and areas of the Republic and with different classes of tobacco and with different grades and varieties of those classes of tobacco and with different classes of persons, premises and other things.

16. If at any time it appears to the Minister that the Board is in default in the performance of any duty or obligation of the Board under this Act or under any regulation or requirement made thereunder, he may, by notice in writing, require the Board to make good its default within a time fixed by the Minister in the said notice. Power of Minister on default of Board

17. (1) The Board shall, within six months after the end of each financial year, furnish to the Minister an annual report upon its work and operations during the year, and such report shall include a balance sheet, a complete statement of revenue and expenditure duly audited, the report of the auditors and such other information as the Minister may require. Reports of Board

(2) The Minister shall lay each such annual report before the National Assembly.

PART IV FUNDS OF THE BOARD

18. The funds of the Board shall consist of-

(a) such sums as may be payable to the Board from moneys appropriated by Parliament for the purpose;

(b) such sums as may be payable to the Board pursuant to this or any other Act; and

(c) such other moneys or assets as may accrue to or vest in the Board, whether in the course of the exercise of its powers or functions or the performance of its duties or otherwise. Funds of Board

19. If, at any time, the funds referred to in section eighteen are not sufficient to meet fully any lawful expenditure incurred by the Board in the exercise of its powers or functions or in the performance of its duties, the amount of such deficiency shall be met by advances made by the Minister out of moneys appropriated for the purpose by Parliament. Payments to Board from moneys appropriated by Parliament

20. The Board shall, before the commencement of each financial year, submit to the Minister a detailed statement of estimated revenue and expenditure for the following year for approval by the Minister. Statement of revenue and expenditure of Board to be submitted

21. The Board shall keep proper books of account and other records in relation to all its respective operations, undertakings and property and, in addition, such other particular accounts and records in respect of any of its respective operations, undertakings and property as the Minister may direct.

Accounts of Board

22. (1) The Board shall, with the approval of the Minister, appoint one or more persons who publicly carry on the profession of accountants, hereinafter referred to as auditors, to examine and report to the Board and to the Minister on its accounts not less than once in each financial year. Appointment of auditors and audit of accounts of Board

(2) In addition to the report referred to in subsection (1), the Minister may require the Board to obtain from its auditors such other reports, statements or explanations in connection with operations, undertakings and property of the Board as the Minister may consider expedient.

(3) The Board shall produce and lay before its auditors all its books and accounts with all vouchers in support thereof and all books, papers and writings in its possession or control relating thereto.

(4) The auditors of the Board shall be entitled at all reasonable times to require from all members and persons in the employ of the Board such information and explanations as may be necessary for the performance of their duties as auditors.

23. It shall be the duty of the auditors of the Board to certify not less than once in each financial year whether or not-

(a) they have received from the Board all the information and explanations which, to the best of their knowledge and belief, were necessary for the performance of their duties as auditors; and

(b) the accounts of the Board have been properly kept; and

(c) the accounts of the Board present a true and fair view of its financial position according to the information and explanations given and the books and records produced to them; and

(d) the Board has complied with the provisions of this Part with which it is its duty to comply and with their requirements. Duties of auditors

PART V REGISTRATION OF GROWERS

24. The Registrar shall cause such registers of growers to be kept as are prescribed by the Minister. Register of growers

25. The Minister may from time to time by regulation prescribe-

(a) registration periods in respect of classes of tobacco specified in such regulations within which growers or intended growers of any such specified classes of tobacco shall register under this Act;

(b) the duration of such registrations. Registration periods and duration of registration

26. (1) Subject to the provisions of this section, any grower or any person who bona fide intends to grow tobacco shall be registered as a registered grower, which registration may be in respect of the growing of any particular class or classes of tobacco and shall be for the

duration prescribed pursuant to paragraph (b) of section (twenty-five). Growers to be registered

(2) (a) Where the Government or any Government agency assists tobacco producers in any area in the marketing of their tobacco, the Permanent Secretary may define such area as a specific area and may nominate a person to act on behalf of all of the said assisted producers for the purposes of this Act, and such person shall be deemed to be the grower of all of the tobacco produced or to be produced by such assisted producers in the said specific area, and shall register as such under this section. For the purposes of this subsection, "Government agency" means the Board, the Bank of Zambia or any statutory body whose statutory objects include the giving of financial aid by way of grant or loan to farmers.

(b) Whenever any person is registered as a registered grower pursuant to paragraph (a), the assisted producers therein referred to shall be exempt from registration under this Part.

(3) Any grower who is not usually resident in Zambia and who produces or who bona fide intends to produce tobacco in the Republic shall nominate a resident of Zambia who shall apply for registration under this section and, upon such application being granted, such nominee shall be the registered grower of such tobacco for all of the purposes of this Act.

(4) Where tobacco is grown on a licensed buyer's land by a tenant producer under the terms of a contract whereby the tenant producer agrees to produce tobacco on not more than ten acres of the said land and further agrees either to share the crop with the licensed buyer or to pay to the licensed buyer a stated share of the proceeds of the crop in consideration for the tenant producer's use of the land for its production, the licensed buyer shall be deemed to be the grower of such tobacco for the purposes of this Act, and shall register as such under this Part.

(5) Where tobacco is grown by a producer who is a member of a co-operative society, the objects of which include the marketing of tobacco grown by its members, and under the terms of a contract between such producer and such co-operative society the tobacco to be produced by the said producer is to be marketed through the said co-operative society, the said co-operative society shall be deemed to be the grower for the purposes of this Act, and shall register as such under this Part.

(6) A licensed buyer shall be deemed to be grower solely for the purposes of any resale of auctionable tobacco purchased by him on a licensed auction floor and shall be registered accordingly for the purposes only of such resale, and the provisions of subsection (8) shall not apply to his application for such registration, which application may be made orally to the Registrar.

(7) A licensed buyer who has purchased tobacco at a primary or rural level shall, for the purposes of the resale of that tobacco, be deemed to be the grower thereof and shall be registered accordingly solely for the purposes of such resale, and the

provisions of subsection (8) shall not apply to his application for such registration, which application may be made orally to the Registrar.

(8) Application for registration as a registered grower shall be made to the Registrar in the form and manner prescribed.

(9) Separate applications shall be made for registration under this section in respect of each class of tobacco as prescribed under the provisions of section fifty-nine.

(10) Any grower who was formerly registered as a registered grower under this Part but whose registration was cancelled-

(a) under the provisions of section thirty-four, and is not restored; or

(b) under the provisions of section thirty-five, and the period, if any, of whose Ineligibility for registration has not expired;

shall not be registered under this section.

17. (1) If any application for registration under the provisions of section twenty-six is made within the registration period prescribed pursuant to paragraph (a) of section twenty-five, no fee shall be payable in respect of such registration. Registration fees

(2) If any application for registration under the provisions of section twenty-six is made after the termination of the registration period prescribed pursuant to paragraph (a) of section twenty-five, the applicant shall pay to the Board such fee for such registration as may be prescribed.

(3) The provisions of subsection (2) shall not apply where the applicant is a public officer and is nominated pursuant to subsection (2) of section twenty-six.

(4) The Board may waive the payment of the fee referred to in subsection (2) if the Board considers that there is a reasonable explanation for the failure of the applicant to make his application within the registration period.

28. (1) The Registrar shall allot one and not more than one registered number to each registered grower for each class of tobacco to be grown by that registered grower in each season: Allotment of registered numbers to growers, licensed buyers, etc.

Provided, however, that in the case of a registered grower registered as such under the provisions of subsection (4) of section twenty-six in respect of two or more tenant producers, the Registrar shall allot to such registered grower a registered number in respect of each such tenant producer for each class of tobacco to be grown by such tenant producer in each season.

(2) Subject to any regulation or rule in that behalf made pursuant to or under this Act, a sales supervisor may, from time to time for the purpose of resale of auctionable tobacco by any licensed buyer or by any holder of an auction floor licence, allot, in the name of the Registrar, a registered number to such licensed buyer or to such holder of an auction floor licence, as the case may be, and such licensed buyer or such holder of an auction floor licence shall be deemed to be the registered grower for the purposes of such resale.

(3) A registered number allotted pursuant to subsection (1) or (2) shall not be transferable save with the written consent of the registered grower to whom it is allotted and of the Registrar.

(4) Upon an application in that behalf by any registered grower, the Registrar may, with the approval of the Board, cancel any registered number of such registered grower and may allot to the said registered grower another registered number in lieu thereof, if in the opinion of the Board there is sufficient reason for such change of registered number to be made.

29. Any person who discloses to any other person the identity of the registered grower to whom any registered number allotted pursuant to section twenty-eight relates shall be guilty of an offence unless the disclosure is-

- (a) made to an official of the Board; or
- (b) necessary for the proper conduct of the sale of any tobacco; or
- (c) made by the owner of a bale of tobacco upon which that number appears; or
- (d) made with the permission of the owner referred to in paragraph (c); or
- (e) made with the authority of the Minister or of the Board. Prohibition against disclosure of identity of registered growers

30. Any grower who-

- (a) sells any class of tobacco for which he is not registered; or
- (b) exports on consignment or otherwise any class of tobacco for which he is not registered;

shall be guilty of an offence. Only registered growers to sell or export tobacco on consignment

31. (1) Every registered grower of auctionable tobacco shall mark his bales of auctionable tobacco in the manner prescribed by the Board. Marking of bales of auctionable tobacco

(2) Any registered grower who delivers for sale to a licensed auction floor any bale of auctionable tobacco which-

- (a) was grown by him and is marked with a number other than his registered number; or
- (b) was not grown by him and is marked with his registered number;

shall be guilty of an offence.

32. (1) Every registered grower of non-auctionable tobacco shall mark his bales of non-auctionable tobacco in the manner prescribed by the Board. Marking of bales of nonauctionable tobacco

(2) Any registered grower who sells or delivers for sale any bale of non-auctionable tobacco which-

(a) was grown by him and is marked with a number other than his registered number; or

(b) was not grown by him and is marked with his registered number;

shall be guilty of an offence.

33. (1) Every application for registration under this Part shall contain a clause, to become effective upon registration, whereby the registered grower empowers the Board, as agent of such registered grower in that behalf, to dispose of or destroy or cause to be destroyed or to order the disposal or destruction of any surplus or unsold tobacco belonging to such registered grower and remaining in his possession or under his control at the end of any selling season. Board agent of registered grower for disposal of surplus or unsold tobacco

(2) The Board may issue a permit in writing to any registered grower to retain until the next selling season any surplus or unsold tobacco belonging to such registered grower and remaining in his possession or under his control at the end of any selling season, and where the Board has issued such a permit, it shall not exercise the authority granted to it pursuant to subsection (1):

Provided that this subsection shall not be interpreted as limiting or restricting any power vested in any person under any written law at any time to destroy or order the destruction of tobacco which is infested with any living tobacco pest, fungus or disease of tobacco.

(3) The authority granted pursuant to subsection (1) shall not be exercised by the Board in respect of auctionable tobacco which-

(a) is grown by a registered grower; and

(b) is kept by the registered grower in his possession or under his control for the purpose of manufacture in accordance with an authority issued by the Minister in that behalf.

34. (1) If any registered grower fails to furnish to the Board within the period prescribed any prescribed return, completed to the satisfaction of the Board, the Registrar shall cancel the registration of the said grower, and, subject to the provisions of subsection (2), the said grower shall not be registered as a registered grower under this Part in respect of any duration prescribed under paragraph (b) of section twenty-five, subsequent to that in respect of which he was registered at the date of the cancellation.

Failure to furnish prescribed returns by registered grower

(2) The Registrar may, at any time, restore to the register the name of any grower whose registration was cancelled pursuant to subsection (1) if such grower-

(a) furnishes a late return completed to the satisfaction of the Board; and

(b) pays to the Board a registration fee, not exceeding one hundred and fifty fee units, prescribed by the Minister.

(3) The provisions of paragraph (b) of subsection (2) shall not apply in the case of a person nominated by the Permanent Secretary pursuant to paragraph (a) of subsection

(2) of section twenty-six as the grower for a specific area if such person is a public officer.

(4) The Board may waive the payment of the fee prescribed by paragraph (b) of subsection (2) if it accepts as reasonable any explanation given for the failure of the registered grower to render a return within the prescribed time.

(5) The Registrar shall notify the registered grower concerned of the cancellation or restoration, as the case may be, of his registration, and also-

(a) in the case of a grower of auctionable tobacco, the holders of all auction floor licenses; and

(b) in the case of a grower of non-auctionable tobacco, all licensed buyers licensed to buy that particular class of tobacco.

(As amended by Act No. 13 of 1994)

35. (1) The Registrar may order the registration of any registered grower to be cancelled if-
Cancellation of registration

(a) the said registered grower has been convicted of an offence under this Act; or

(b) having considered a report from any inspector or any person thereunto authorised by the Board or under this Act that the said registered grower has-

(i) furnished any false information to the Board in any return made under and for the purposes of this Act; or

(ii) failed to comply with any condition or perform any duty imposed by or under this Act;

and having afforded such registered grower an opportunity to be heard on any such report, the Registrar is satisfied that the said registered grower has furnished such false information or has failed to comply with such condition or perform such duty, as the case may be.

(2) Any registered grower whose registration has been cancelled under the provisions of subsection (1) shall be ineligible for registration as a registered grower for such period as the Registrar may fix in the order cancelling such registration.

36. (1) Any registered grower who is aggrieved by any order made pursuant to section thirty-four or thirty-five shall be entitled to appeal to the Minister. Appeal to Minister

(2) No appeal shall lie to any court from the decision of the Minister on any appeal pursuant to subsection (1).

PART VI LICENSING OF GRADERS

37. Any person who carries on the business of a grader and is not licensed as such under this Part shall be guilty of an offence. Licensing of graders

38. (1) Application for a grader's licence shall be made to the Board in the manner prescribed by the Board.

Application for grader's licence

(2) The Board may refuse any application for a grader's licence if it is of opinion that the applicant is not a proper person to hold such licence, or that the applicant is unable or unwilling to comply with any regulations as regarding premises to be used for grading or any other pertinent regulations prescribed under this or any other written law.

(3) An applicant who is aggrieved by the refusal of the Board to issue to him a grader's licence shall have a right of appeal to the Minister.

39. (1) The Board may cancel or suspend any grader's licence issued under this Part if-
Cancellation and suspension of grader's licence

(a) the licensed grader has been convicted of an offence under this Act; or

(b) having considered a report from an inspector or a sales supervisor that the said licensed grader has-

(i) furnished any false information to the Board or to any registered grower in any return made under and for the purposes of this Act; or

(ii) failed to comply with any condition or to perform any duty imposed on him by or under this Act;

and having afforded such licensed grader an opportunity to be heard on any such report, the Board is satisfied that the said licensed grader has furnished such false information or has failed to comply with such condition or perform such duty, as the case may be.

(2) Any licensed grader whose licence has been cancelled or suspended under the provisions of subsection (1) shall not be eligible to hold a licence as a licensed grader for such period as the Board may fix at the time of the cancellation or suspension of such licence.

(3) Any person whose licence as a licensed grader has been cancelled or suspended under the provisions of subsection (1) and who carries on business as a grader of tobacco while such licence is so cancelled or so suspended shall be guilty of an offence.

40. (1) Any person who is aggrieved by the cancellation or suspension of his grader's licence by the Board may appeal to the Minister. Appeal to Minister

(2) No appeal shall lie to any court from the decision of the Minister on any appeal pursuant to subsection (1).

PART VII LICENSING OF BUYERS

41. Any person, other than the Board, or an employee or agent of a licensed buyer nominated pursuant to section forty-three, who buys tobacco and who is not licensed by the Board as a licensed buyer under this Part, shall be guilty of an offence. Licensing of buyers

42. An application for a licence to buy tobacco shall be made to the Board in the form and manner prescribed by rules by the Board with the approval of the Minister. Application for buyer's licence

43. In any application for a licence under this Part, the applicant may nominate an employee or agent, who, upon the applicant being licensed as a licensed buyer, shall be entitled to buy tobacco for and on behalf of such licensed buyer under his said licence.

Nominated agents

44. (1) Subject to the provisions of subsection (2), the Board may, with the approval of the Minister, by rule prescribe grounds upon which it may refuse to issue a buyer's licence under this Part.

Grounds of refusal to issue and conditions attaching to buyer's licence

(2) The Board shall refuse to issue a buyer's licence if it is not satisfied with the financial standing of the applicant.

(3) The Board may attach to any buyer's licence any conditions which it deems reasonable in the circumstances.

(4) (a) The Board may, with the approval of the Minister, issue to any applicant a buyer's licence granting to such applicant the right to buy any class of tobacco, specified by the Board in such licence, to the exclusion of any other licensed buyer.

(b) An exclusive licence issued under paragraph (a) may be confined by its terms to any specific area specified therein by the Board.

45. Any applicant who is aggrieved by the refusal of the Board to issue to him a buyer's licence, or by any condition attaching to such licence, shall be entitled to appeal to the Minister. Appeal to Minister

46. A buyer's licence issued under this Part shall contain the following particulars: (a) the class or classes of tobacco which the buyer is licensed to buy;

(b) the area or areas, as defined by the Permanent Secretary, in which the buyer is licensed to make his purchases;

(c) any condition attaching to the said licence;

(d) such other particulars as may be prescribed.

47. The Minister may by regulation prescribe the conditions under which tobacco may be bought by a licensed buyer at a primary or rural level and the conditions to which any resale of such tobacco shall be subject. Minister may prescribe conditions of sale at primary level

48. (1) The Board may cancel or suspend any buyer's licence issued under this Part if-
Cancellation and suspension of buyer's licence

(a) the licensed buyer had been convicted of an offence under this Act; or

(b) having considered a report from an inspector or sales supervisor that the said licensed buyer has failed to comply with any condition or perform any duty imposed on him by or under this Act and,

having afforded such licensed buyer an opportunity to be heard on any such report, the Board is satisfied that the said licensed buyer has failed to comply with such condition or to perform such duty, as the case may be.

(2) Any person whose licence has been cancelled or suspended under the provisions of subsection (1) shall not be eligible to hold a licence to buy tobacco for such period as the Board may fix at the time of cancellation or suspension of such licence.

(3) Any person whose buyer's licence has been cancelled or suspended by the Board under the provisions of subsection (1), or any nominated employee or agent of such person who buys tobacco while such licence is so cancelled or so suspended, shall be guilty of an offence.

49. (1) A person who is aggrieved by the cancellation by the Board of a buyer's licence issued to him may appeal to the Minister. Appeal to Minister

(2) No appeal shall lie to any court against the decision of the Minister on any appeal pursuant to subsection (1).

PART VIII LICENSING OF AUCTION FLOORS

50. (1) Any person who uses or intends to use any premises as an auction floor for the sale of tobacco by auction shall apply to the Board in the form and manner prescribed for a licence of such premises as a licensed auction floor. Licensing of auction floors

(2) The Board shall, with the approval of the Minister, by rule prescribe minimum standards of suitability and sufficiency of premises for licensing under this Part.

(3) The Board may, with the approval of the Minister, by rule prescribe the form and manner of application for a licence under this Part and may, as it deems fit, prescribe, by rule, conditions and requirements in respect thereof and in respect of the operation and maintenance of auction floors licensed under this Part.

(4) The Board may refuse any application for an auction floor licence if it is of opinion that such auction floor is unnecessary or if it is of opinion that the applicant is not a fit or proper person to hold such licence, or that he is unable or unwilling to comply with any prescribed condition or requirement in respect of the operation or maintenance of licensed auction floors.

(5) Any premises operated and maintained by the Board as an auction floor for the sale of tobacco by auction shall be exempt from licensing under this Part, but shall be deemed to be a licensed auction floor for the purposes of this Act.

(6) The Board, with the approval of the Minister, may exempt, either generally or for a specified period of time, any premises from the provisions of this Part.

51. (1) Any person who is aggrieved by the refusal of the Board to grant his application for an auction floor licence under this Part may appeal to the Minister. Appeal to Minister

(2) No appeal shall lie to any court against the decision of the Minister on any appeal pursuant to subsection (1).

52. Any person being the owner or occupier of any premises who uses such premises or permits their use for the sale of auctionable tobacco-

(a) unless such premises are licensed as a licensed auction floor; or

- (b) while any auction floor licence issued in respect thereof is suspended; or
- (c) unless such premises are exempt from licensing as a licensed auction floor;

shall be guilty of an offence. Prohibition against sale of auctionable tobacco on unlicensed auction floors

53. (1) The Board may cancel or suspend any auction floor licence issued under this Part if-
Cancellation and suspension of auction floor licences

- (a) the holder of such licence has been convicted of an offence under this Act; or
- (b) having considered a report from an inspector or a sales supervisor that the said holder of such licence has-
 - (i) furnished any false information to the Board in any return made under and for the purposes of this Act; or
 - (ii) failed to comply with any condition or perform any duty imposed on him by or under this Act;

and having afforded such holder of such licence an opportunity to be heard on any such report, the Board is satisfied that the said holder of such licence has furnished such false information or has failed to comply with such condition or perform such duty, as the case may be.

(2) Any holder of an auction floor licence whose licence has been cancelled or suspended under the provisions of subsection (1) shall not be eligible to hold an auction floor licence for such period as the Board may fix at the time of the cancellation or suspension of such licence.

(3) Any person whose licence has been cancelled or suspended under the provisions of subsection (1) and who carries on the business of an auction floor while such licence is so cancelled or so suspended shall be guilty of an offence.

54. (1) Any person who is aggrieved by the cancellation or suspension of his auction floor licence by the Board may appeal to the Minister. Appeal to Minister

(2) No appeal shall lie to any court from the decision of the Minister on any appeal pursuant to subsection (1).

55. Any person, including the holder of an auction floor licence, who proposes to erect premises intended for use as an auction floor, or to extend or alter premises which include a licensed auction floor, shall apply to the Board in the manner prescribed, with the approval of the Minister, by rules by the Board, for a conditional authority to erect, extend or alter the said premises as proposed.

Conditional authorities for building or extending auction floors

56. The Board may issue a conditional authority referred to in section fifty-five to an applicant if the Board is satisfied that-

(a) having regard to the amount of auctionable tobacco which can be sold on existing licensed auction floors, it is desirable to license additional premises as auction floors; and

(b) the premises to which the application relates will, when erected, extended or altered, as the case may be, be suitable for the sale of auctionable tobacco. Issue of conditional authorities

57. Upon the issue of any conditional authority pursuant to section fifty-six, the Board may impose conditions and requirements as to the building works proposed to be done under such conditional authority and may require that any plans for such proposed building works be approved by an architect nominated by the Board. Conditions on issue of conditional authority

58. If, in the opinion of the Board, any building erected under any conditional authority issued pursuant to section fifty-six is in substantial conformity with the conditions and requirements imposed by the Board and with the plan, if any, approved by an architect pursuant to section fifty-seven, the Board shall issue an auction floor licence in respect thereof or extend the existing auction floor licence to include the said building in a licensed auction floor, as the case may be. Licensing of improvements

PART IX SALE OF TOBACCO

59. The Minister may from time to time, by statutory instrument, prescribe-

(a) any class of tobacco as tobacco which is required to be sold on a licensed auction floor, which prescribed class of tobacco shall be auctionable tobacco; and

(b) any class of tobacco which is not required to be sold by auction, which prescribed class of tobacco shall be non-auctionable tobacco; which said prescribed classes of tobacco shall be tobacco for the purposes of this Act.

Auctionable and non-auctionable tobacco

60. (1) Save as provided by subsection (2), any person who- Prohibition against sale of auctionable tobacco otherwise than by auction

(a) sells auctionable tobacco otherwise than by auction on a licensed auction floor; or

(b) buys auctionable tobacco otherwise than at an auction on a licensed auction floor;

shall be guilty of an offence.

(2) The provisions of subsection (1) shall not apply to-

(a) any further sale or purchase of auctionable tobacco after it has been sold on a licensed auction floor; or

(b) any sale of auctionable tobacco effected by the Board as agent of any registered grower pursuant to section thirty-three; or

- (c) any sale or purchase of auctionable tobacco as a trade sample or for use in research not exceeding two kilogrammes and three hundred grammes in weight; or
- (d) any sale of auctionable tobacco at a primary or rural level to a licensed buyer whose licence empowers him so to buy auctionable tobacco; or
- (e) any sale by the Board of auctionable tobacco purchased by the Board.

61. (1) Any person who sells or buys non-auctionable tobacco by auction shall be guilty of an offence.

Prohibition against sale of non-auctionable tobacco by auction

- (2) The provisions of subsection (1) shall not apply to-
 - (a) any sale of non-auctionable tobacco effected by the Board as agent of any registered grower pursuant to section thirty-three;
 - (b) any sale or purchase of non-auctionable tobacco as a trade sample or for use in research not exceeding two kilogrammes and three hundred grammes in weight;
 - (c) any export of non-auctionable tobacco on consignment;
 - (d) any sale of non-auctionable tobacco at a primary or rural level to a licensed buyer whose licence empowers him so to buy non-auctionable tobacco; or
 - (e) any sale by the Board of non-auctionable tobacco purchased by the Board.

62. The holder of an auction floor licence shall not sell or permit the sale on his auction floor of auctionable tobacco which was grown in the Republic unless the said tobacco was grown and is delivered to him by or on behalf of a registered grower. Auctionable tobacco to be delivered to auction floor by registered grower

63. Any registered grower who delivers or causes to be delivered to a licensed auction floor auctionable tobacco in excess of the delivery quota fixed for him by the Board shall not, for such period as the Board may fix-

- (a) deliver or cause to be delivered auctionable tobacco to a licensed auction floor for sale; or
- (b) export auctionable tobacco. Delivery in excess of delivery quota

64. (1) Save as provided by this section, no person may import for sale in the Republic auctionable tobacco not grown in the Republic. Import of auctionable tobacco for sale in Republic

- (2) The Minister may from time to time, subject to any conditions he may deem necessary, by regulation prescribe that any specified class of auctionable tobacco not grown in the Republic may be imported for purposes of sale on licensed auction floors.
- (3) The Board may issue to holders of auction floor licences permits to accept for sale, sell or permit the sale of auctionable tobacco imported into the Republic under any regulation made pursuant to subsection (2).

(4) Any person who imports auctionable tobacco not grown in the Republic in contravention of this section or of any regulation made thereunder shall be guilty of an offence.

(5) Any person who accepts for sale, sells or permits the sale of imported auctionable tobacco not grown in the Republic without a permit from the Board pursuant to subsection (3) shall be guilty of an offence.

65. (1) Immediately before auctionable tobacco which was not grown in the Republic is auctioned on a licensed auction floor, the holder of the auction floor licence or his agent shall cause to be publicly announced on the said auction floor the name of the country within which the tobacco was grown.

Duties of auction floor licensee on sale of imported auctionable tobacco

(2) Tobacco referred to in subsection (1) which is auctioned on a licensed auction floor-

(a) shall be auctioned in lots separate and apart from auctionable tobacco which was grown within the Republic; and

(b) shall not be purchased for the internal market without the authority in writing of the Minister.

(3) Any person who fails to comply with, or contravenes, any provision of this section shall be guilty of an offence.

66. (1) Any registered grower who has, under a permit from the Board, held any auctionable tobacco over from any selling season, may deliver the said tobacco to an auction floor for sale in any later selling season if he is the holder of a certificate in the form prescribed, issued by an inspector appointed pursuant to section twenty-two of the Plant Pests and Diseases Act to the effect that- Sale of auctionable tobacco grown in earlier season, Cap. 233

(a) the tobacco has been fumigated in the manner prescribed; and

(b) the tobacco or a representative sample thereof has been inspected as prescribed and no evidence of the presence of any living pest of tobacco has been found therein; and which certificate has been issued not more than thirty days before the said tobacco is delivered to the said licensed auction floor.

(2) Immediately before any auctionable tobacco, which has been delivered to an auction floor pursuant to subsection (1), is auctioned on such auction floor, the sales supervisor on the said auction floor shall publicly announce the year of the growth of the said tobacco and that the certificate required by subsection (1) has been issued in respect thereof.

67. Any person who sells, or permits the sale of, auctionable tobacco on any licensed auction floor-

(a) on any day which is not a fixed day in any selling season fixed by the Board; or

(b) at any hour of any day in the selling season which is not an hour fixed by the Board; or

(c) on any day or at any hour of any day in any selling season which is not fixed by the Board for the sale of auctionable tobacco of that class; or

(d) at any time in any selling season during which the Board or a sales supervisor has prohibited sales on such auction floor;

shall be guilty of an offence. Auctionable tobacco to be sold only on sales days in the selling season, etc.

68. (1) Every buyer of auctionable tobacco on a licensed auction floor shall pay the purchase price of the tobacco to the holder of the auction floor licence on whose auction floor the tobacco is sold.

Deductions from purchase price of auctionable tobacco

(2) The holder of an auction floor licence, after deducting from the purchase price such charges and deductions as he is authorised to deduct by or under this Act or any other written law, shall pay the balance of the said purchase price to the seller or his agent thereunto authorised in writing.

69. (1) The holder of an auction floor licence- Weighing, selling and commission charges of holders of auction floor licences

(a) may make-

(i) such weighing charges in respect of auctionable tobacco which is accepted by him for sale on his auction floor; and

(ii) such selling, commission and re-handling charges in respect of auctionable tobacco which is sold on his auction floor;

as the Board may, with the approval of the Minister, authorise him to make and he may deduct such charges from the purchase price;

(b) shall not make-

(i) any weighing, selling, commission or re-handling charges greater than the appropriate charges referred to in paragraph (a); or

(ii) any charges other than the weighing, selling, commission or re-handling charges referred to in paragraph (a).

(2) After completion of sales on his auction floor in any selling season fixed by the Board, the holder of an auction floor licence may grant to registered growers such rebates of any of the charges referred to in paragraph (a) of subsection (1) as he may think fit.

70. (1) The Board may give notice to an owner or to a registered grower representing the owner of auctionable tobacco which remains unsold on a licensed auction floor after the last day of the selling season to remove the tobacco from the said licensed auction floor within a period fixed by the Board.

Disposal of auctionable tobacco which is left unsold

(2) Any owner or any registered grower representing an owner of tobacco referred to in subsection (1) to whom notice has been given pursuant to that subsection, who fails to remove the tobacco within a period fixed by the Board in the notice, shall be guilty of an offence.

(3) The Board or the holder of the auction floor licence may, after the expiry of the notice referred to in subsection (1), cause any such tobacco to be returned to the owner thereof, or his agent, at the said owner's expense, and the costs and charges of delivery of the said tobacco to the said owner, or his agent, shall constitute a civil debt to the Board or to the holder of the auction floor licence, as the case may be.

71. The Board shall appoint sales supervisors for the supervision of sales of tobacco on licensed auction floors. Appointment of sales supervisors

72. (1) A sales supervisor shall- Duties and powers of sales supervisors

(a) attend all sales of auctionable tobacco held on the licensed auction floor to which he is assigned by the Board;

(b) control and regulate all such sales of auctionable tobacco on the licensed auction floor to which he is assigned, in accordance with instructions supplied to him by the Board;

(c) if, in his opinion, compliance is not being made with the provisions of this Act relating to the sale of auctionable tobacco, suspend or prohibit the sale for such period as he may fix, and for that purpose give such directions to the holder of the auction floor licence or his agents as the circumstances may require.

(2) The Board shall furnish-

(a) sales supervisors with instructions in writing relating to their powers to control, regulate, suspend or prohibit sales of auctionable tobacco on licensed auction floors; and

(b) holders of auction floor licences with copies of all such instructions referred to in paragraph (a)

and of any alterations thereto made by the Board from time to time.

73. The Minister may, at the request of the Board, prescribe the manner of sale of any class of non- auctionable tobacco and the periods within which such tobacco may be sold. d. Power of Minister to control sales of non-auctionable tobacco

74. (1) Subject to the provisions of subsection (3), the Minister may, at any time, after consulting with the Board, by Gazette notice, fix minimum prices at which auctionable tobacco may be sold for the internal or external markets, or both. Power of Minister to fix minimum prices for auctionable tobacco

(2) In the exercise of the powers conferred upon him by subsection (1), the Minister may fix different minimum prices in respect of different markets and in respect of different classes and grades of classes of auctionable tobacco.

(3) The minimum price for auctionable tobacco fixed by the Minister at any one time pursuant to subsection (1) shall be for the duration of one selling season only and the Minister shall not vary the same during such selling season.

(4) If the Minister does not fix a minimum price for a class or grade of auctionable tobacco pursuant to subsection (1), the minimum price of that class or grade shall be one hundred kwacha per half kilogramme weight.

75. Licensed buyers shall-

(a) purchase auctionable tobacco only at or above the appropriate minimum price fixed for the purpose of the market in respect of which the purchase is made; and

(b) if the Minister has, pursuant to subsection (1) of section seventy-four, fixed a minimum price for the internal market or any external market, declare at the time of the purchase the market for the purposes of which the said tobacco is purchased.

Duties of licensed buyers on purchase of auctionable tobacco

76. (1) Save as provided by subsection (2), if any person buys auctionable tobacco for the purposes of any external market at a price less than the internal market minimum price fixed for such tobacco pursuant to subsection (1) of section seventy-four, he shall not resell the said tobacco in the Republic for the purposes of the internal market. Prohibition against resale of auctionable tobacco bought at less than internal market minimum price

(2) If the Minister is satisfied that auctionable tobacco, bought in the Republic at a price less than the appropriate internal market minimum price fixed therefor, pursuant to subsection (1) of section seventy-four, will be-

(a) manufactured in the Republic by cutting at four cuts or more to three centimetres; and

(b) exported from and sold outside the Republic;

the Minister may, on the recommendation of the Board, issue a permit authorising, subject to such conditions as he may prescribe, the resale of the said tobacco at less than the said appropriate internal market minimum price.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

77. Any person who, without the authority in writing of the Minister-

(a) manufactures auctionable tobacco whether for sale as manufactured tobacco or otherwise; or

(b) keeps auctionable tobacco in his possession or under his control for the purposes of manufacture and sale whether as manufactured tobacco or otherwise;

unless the said tobacco was initially purchased on a licensed auction floor, shall be guilty of an offence.

Prohibition against manufacture or keeping of auctionable tobacco not sold on licensed auction floors

PART X MARKETING QUOTAS AND POOLS

78. If, in the opinion of the Minister, the quantity of tobacco of a particular class or grade which is being produced or is likely to be produced in the Republic for sale will exceed the requirements of the internal and external markets, the Minister may, after consulting with the Board-

(a) prescribe the total weight of that class or grade of tobacco which may be sold in the Republic or exported on consignment by registered growers during a specified period, and may make such provision as he may deem necessary or convenient to ensure that the total weight of such tobacco which is sold in the Republic or exported on consignment by registered growers during the specified period does not exceed the amount prescribed;

(b) for the purposes of paragraph (a), prescribe the manner in which the Board shall determine the weight of such tobacco which any registered grower of that class or grade of tobacco may offer for sale in the Republic or for export on consignment in the specified period, and the weight so determined shall be the marketing quota of such registered grower for the purposes of this Part. Control of marketing of tobacco of specified class or grade

79. Any certificate issued by the secretary to the Board setting forth the amount of any marketing quota of any registered grower shall upon its production in any court be prima facie evidence of the amount of such marketing quota. Evidence of amount of marketing quotas

80. (1) If, at any time, the Board deems it expedient it may, with the approval of the Minister, establish centres within the Republic where surplus tobacco shall be sent by registered growers when so instructed by the Board, and shall be there accumulated for disposal by the Board. Establishment of pools

(2) For the purposes of this Part, such centres shall be known as pools.

(3) The Minister may from time to time prescribe for the operation, maintenance and administration of pools established pursuant to subsection (1), and for the manner of sale or other disposal of any tobacco accumulated in any such pool.

81. (1) Notwithstanding the establishment and operation of any pool pursuant to section eighty, the Board may at any time accept surplus tobacco from registered growers, otherwise than through the medium of such pool, for sale in such manner and on such terms as the Board may deem expedient.

Power of Board to dispose of surplus tobacco otherwise than through pools

(2) Any surplus tobacco accepted by the Board pursuant to subsection (1) shall, in the first instance, be offered by the Board for sale to licensed buyers.

82. Any grower who sells or exports on consignment surplus tobacco of which he is the grower otherwise than-

(a) through a pool established pursuant to section eighty; or

(b) in pursuance of any arrangement made by the Board for the disposal of surplus tobacco pursuant to section eighty-one;

shall be guilty of an offence. Prohibition against sale or export of surplus tobacco by grower except through Board

PART XI PRESCRIBED VARIETIES OF TOBACCO

83. (1) The Minister may from time to time, after consultation with the Board, by regulation prescribe any specific variety of tobacco within any prescribed class of tobacco to be tobacco to which this Part shall apply, and may from time to time, after consultation with the Board, by regulation revoke any such regulation. Power of Minister to prescribe varieties of tobacco

(2) In this Part, "prescribed variety" means any variety of tobacco which is, by virtue of a regulation made by the Minister under this section, for the time being, a prescribed variety for the purposes of this Act.

(3) The Minister may, after consultation with the Board, authorise, subject to such conditions as he deems fit to impose, the growing or the delivery or acceptance for sale, or the sale of tobacco of a variety which is not a variety prescribed pursuant to subsection (1).

84. (1) Any person who grows or sells tobacco not of a prescribed variety shall be guilty of an offence.

Prohibition against growing or selling tobacco not of prescribed variety

(2) Any person who grows or sells a varietal sport of any prescribed variety of tobacco, unless such varietal sport has itself been prescribed as a prescribed variety by the Minister pursuant to subsection (1) of section eighty-three, or authorised pursuant to subsection (3) of section eighty-three, shall be guilty of an offence. In this subsection, "varietal sport" means any plant which varies singularly and spontaneously from the normal type of plant of the variety in which it appears.

(3) Upon the conviction of any person of an offence under this section, the court may, at the request of the prosecution and in addition to any other penalty imposed, declare any such tobacco not of a prescribed variety, or any such varietal sport, found in the possession or under the control of the defendant to be forfeited, or may order it to be destroyed, without compensation, or may both declare it to be so forfeited and order it to be so destroyed, without compensation.

PART XII EXPORT OF TOBACCO

85. (1) Save as provided by subsections (3) and (4), any grower who exports tobacco from the Republic save in accordance with a permit issued by the Minister shall be guilty of an offence. Prohibition against export of tobacco by grower

(2) Any permit to any grower to export tobacco shall be subject to such conditions as the Minister may deem fit to impose.

(3) The Minister may, at any time, after consultation with the Board, and subject to such conditions as he may deem fit to impose, prescribe for the exemption of any grower or class of growers or any class of tobacco from the provisions of subsection (1).

(4) Nothing contained in this section shall apply to or operate to prevent the bona fide export of a sample of tobacco by any grower when such sample does not exceed two kilogrammes and three hundred grammes in weight.

86. Subject to the provisions of sections eighty-five, eighty-eight and eight-nine, any person other than a grower or a licensed buyer who exports tobacco from the Republic save in accordance with a permit so to do issued pursuant to section eight-seven shall be guilty of an offence. Prohibition against export of tobacco

87. (1) The Minister may, subject to such conditions as he deems fit to impose, permit any person to export tobacco from the Republic. Power of Minister to permit export

(2) Any permit issued by the Minister pursuant to subsection (1) shall be in writing.

88. (1) The Minister may, after consultation with the Board, by statutory instrument exempt any person or class of persons or any class of tobacco from the provisions of this Part. Power of Minister to grant exemption from this Part

(2) Any exemption granted pursuant to subsection (1) may be subject to such conditions as the Minister may deem fit to impose.

89. Nothing contained in this Part shall apply to, or operate to prevent, the bona fide export of a sample of tobacco by any person, when such sample does not exceed two kilogrammes and three hundred grammes in weight. Export of sample

PART XIII MISCELLANEOUS AND OFFENCES

90. Any licence issued by the Board pursuant to this Act shall not be valid after the 31st December in the year in respect of which the licence is issued. Period of validity of licences issued by Board

91. Any certificate, licence, permit or authority issued under this Act shall be produced by the holder thereof for inspection by any inspector, or other person thereunto duly authorised in writing by the Board. Official documents to be produced to inspector

92. Any person who contravenes or fails to comply with any of the provisions of this Act, or with any regulation, rule, requirement or condition lawfully prescribed, made or imposed thereunder, shall be guilty of an offence. Failure to comply with Act, regulations or rules an offence

93. If any person-

(a) being a person employed for the purposes of this Act, publishes or communicates without lawful authority to any other person any information acquired by him in the course of his employment; or

(b) being in possession of any information which to his knowledge has been disclosed in contravention of this Act, publishes or communicates that information to any other person;

he shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding fifteen thousand penalty units or to a term of imprisonment not exceeding two years, or to both.

(As amended by Act No. 13 of 1994) Secrecy

94. Any person who, without lawful authority, alters, defaces or removes-

(a) any register, index or other such official record maintained in pursuance of this Act or of any order, requirement, regulation or rule made thereunder; or

(b) any entry appearing in any such register, index or other such official record;

shall be guilty of an offence. Prohibition against altering, defacing or removing official records

95. Any person who, without lawful authority, alters or defaces any certificate, licence, return, record or other document prescribed, issued, furnished or kept pursuant to this Act or to any order, requirement, rule or regulation made thereunder shall be guilty of an offence. Prohibition against altering or defacing prescribed records

96. (1) Any person who- Prohibition against obstruction, etc., of inspectors or sales supervisors

(a) obstructs or impedes an inspector or a sales supervisor or a duly appointed person, in the exercise of any of the powers conferred upon him by or under this Act; or

(b) refuses to furnish to an inspector or a sales supervisor or a duly appointed person, on request, any particulars or information to which the said inspector, sales supervisor or duly appointed person is entitled by or under this Act; or

(c) wilfully or recklessly gives to an inspector or a sales supervisor or a duly appointed person, any false or misleading particular or information with respect to any fact or particular to which the said inspector, sales supervisor or duly appointed person is entitled by or under this Act;

shall be guilty of an offence.

(2) For the purposes of this section, "duly appointed person" means any person to whom duties in connection with the administration of this Act are delegated by the Minister or the Board pursuant to this Act or to any regulation or rule made thereunder.

97. Any person who, being a person required by or under this Act to furnish any return or information to the Minister or to the Board-

(a) fails to furnish such return or information as required; or

(b) fails to furnish such return or information within the time prescribed therefor; or

(c) *with intent to mislead, furnishes a return or information which is false in any material particular;*

shall be guilty of an offence. Prohibition against failure to furnish returns, etc.

PART XIV PROCEEDINGS AND PENALTY

98. For the purposes of any proceedings for an offence against this Act, the offence may be treated as having been committed either at the place where it was actually committed or at the place where the person charged with the offence is, for the time being, resident, and the appropriate court shall have the power to hear and determine proceedings for any such offence accordingly. Venue of proceedings for offences

99. Save where otherwise expressly provided by this Act, any person who is convicted of an offence under this Act shall, in the case of a first such offence, be liable to a fine not exceeding four thousand penalty units or to imprisonment for a term not exceeding six months, or to both, and, in the case of a second or any subsequent offence, to a fine not exceeding fifteen thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

(As amended by Act No. 13 of 1994) Penalty

PART XV REGULATIONS

100. The Minister may, by statutory instrument, make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may make provisions for-

- (a) returns to be furnished to the Minister by registered growers, licensed buyers, licensed graders, holders of auction floor licences, and persons who handle, prepare or process tobacco for the purposes of sale or for export after its sale;
- (b) forms of registers to be kept by the Board;
- (c) forms of records of licenses, permits and authorities issued under and for the purposes of this Act;
- (d) anything that is to be prescribed by or under this Act, which is not expressed to be prescribed by rule by the Board;
- (e) periods of validity of licences, authorities and permits issued under and for the purposes of this Act;
- (f) fees payable upon application for licences, authorities and permits;
- (g) the hearing and determination of appeals to the Minister, and the fees payable upon any such appeal;
- (h) standards of suitability and fitness of buildings used by licensed graders for the purposes of grading tobacco;
- (i) methods of grading to be used by licensed graders in grading tobacco;
- (j) declaring certain organic or inorganic substances to be noxious and unfit for use in the treatment of tobacco;
- (k) prohibiting the sale or other disposal of tobacco which has been treated with any prescribed noxious substance, or which has been reaped from tobacco plants treated with any prescribed noxious substance;

(l) requiring licensed buyers or persons who process or prepare tobacco for sale or export to disclose such information as the Minister may require with regard to the ownership, sale or export of any tobacco in the hands of such licensed buyers or other persons. Regulations

PART XVI TRANSITIONAL PROVISIONS

101. Any licence, certificate, authority or permit issued or any registration registered or any application for registration made or any marketing quota determined under the provisions of the Tobacco Marketing and Levy Act, Chapter A.L. 13 of the 1965 Edition of the Applied Laws, which immediately before the commencement of this Act was of, or was capable of, acquiring force or effect, shall, subject to the provisions of this Act, continue to have or to acquire force or effect, as the case may be, and shall on and after such commencement be deemed to have been issued, registered, made or determined under this Act. Savings

102. Upon the commencement of this Act, the Tobacco Industry Board established pursuant to section three of the Tobacco Industry Board (Establishment) Act, Chapter 110 of the 1964 Edition of the Laws, shall be dissolved and shall cease to exist for all purposes except for the purposes of performing any act or executing any document necessary to implement any of the provisions of this Part, and for such purposes the Minister may, by order, nominate any person to perform any such act or to execute any such document on behalf of and in the name of the said dissolved Tobacco Industry Board and such act or document so performed or so executed by such person shall be deemed to be the act or document of the said dissolved Tobacco Industry Board. Dissolution of Tobacco Industry Board

103. From the commencement of this Act and until such time as the Minister, pursuant to section four, appoints members of the Board established by section three, those persons who immediately before the commencement of this Act were members of the Tobacco Industry Board established pursuant to section three of the Tobacco Industry Board (Establishment) Act, Chapter 110 of the 1964 Edition of the Laws, shall be deemed to be and shall constitute the membership of the Board established under this Act and shall, during the said period, exercise all of the powers and functions of such members as if they had been appointed to the Board pursuant to section four. Composition of Board pending appointment of members

104. Upon the commencement of this Act, all property real or personal and all rights over property, and liabilities arising out of the ownership, possession or occupation of property of any kind and all liabilities in tort, which were subsisting immediately prior to such commencement and were vested in, held, enjoyed or incurred by the Tobacco Industry Board established pursuant to section three of the Tobacco Industry Board (Establishment) Act, Chapter 110 of the 1964 Edition of the Laws, shall by virtue of this section be transferred to and vested in the Board established pursuant to section three. Vesting of property in Board

105. Upon the commencement of this Act, the benefit of all deeds, contracts, bonds, securities, or things in action, which were subsisting immediately prior to such commencement and were vested in the Tobacco Industry Board established pursuant to section three of the Tobacco Industry Board (Establishment) Act, Chapter 110 of the 1964 Edition of the Laws, shall by virtue of this section be transferred to and vested in and shall

inure to the benefit of the Board in the same manner as if the Board had been contracted with instead of the said Tobacco Industry Board established pursuant to the said Tobacco Industry Board (Establishment) Act, and as if the Board had been party to all such deeds, contracts, bonds, or securities instead of the said Tobacco Industry Board established pursuant to the said Tobacco Industry Board (Establishment) Act. Transfer of contractual rights to Board

106. Upon the commencement of this Act, all subsisting or future liabilities or obligations arising out of any deed, contract, bond, security or thing in action imposed upon, suffered or incurred by the Tobacco Industry Board established pursuant to section three of the Tobacco Industry Board (Establishment) Act, Chapter 110 of the 1964 Edition of the Laws, shall by virtue of this section be transferred to, imposed upon, suffered and incurred by the Board in the same manner as if the Board had been party to each such deed, contract, bond, or other security instead of the said Tobacco Industry Board established pursuant to the said Tobacco Industry Board (Establishment) Act and in the same manner as if the Board at all times had been the party bound or obliged by or under each such thing in action instead of the said Tobacco Industry Board established pursuant to the said Tobacco Industry Board (Establishment) Act. Transfer of contractual and other liabilities to Board

107. In the case of property transferred to and vested in the Board under the provisions of this Part, in respect of the transfer of which any written law provides for registration, it shall be the duty of the Board, within six months from the commencement of this Act, to make written application to the proper officer of the appropriate registration authority for the registration of each such transfer and it shall be the duty of that officer to make such entries in the appropriate register as shall give effect to such transfer and, where appropriate, to issue to the Board a Certificate of Title in respect of the said property or to make the necessary amendments to the register, as the case may be, and, if presented therefor, to make endorsements on the deeds relating to the title, right or obligation concerned; and no registration fees, stamp or other duties shall be payable in respect thereof. Registration upon transfer of registered lands or interests

108. Where, upon the commencement of this Act, any legal proceeding is pending to which the Tobacco Industry Board established pursuant to section three of the Tobacco Industry Board (Establishment) Act, Chapter 110 of the 1964 Edition of the Laws, is a party, the Board established pursuant to section three of this Act shall be substituted in such proceeding for the said Tobacco Industry Board established pursuant to the said Tobacco Industry Board (Establishment) Act, and such proceeding shall not abate by reason of such substitution. Proceedings not to abate

SCHEDULE

(Section 15)

POWERS OF THE TOBACCO BOARD OF ZAMBIA

1. To acquire any property necessary or convenient for the exercise of its functions and the performance of its duties and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire real and personal property and any interest therein and any rights and privileges over the same and any concessions, grants, rights, powers and privileges in

respect thereof, and in particular any lands, buildings, easements, machinery, plant and stock in trade.

2. To maintain, alter or improve property acquired by it.

3. To mortgage any assets or part of any assets and, with the approval of the Minister, to sell, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions or the performance of its duties for such consideration as it may determine.

Provided that any such last mentioned assets which exceed two thousand kwacha in value shall not be so dealt with without the approval of the Minister.

(As amended by Act No. 46 of 1970)

4. To own, maintain and operate tobacco auction floors and tobacco packing plants, and, in its discretion, to grant licences or concessions to third persons to use the said tobacco auction floors or tobacco packing plants in and about the sale or packing of tobacco; and to subsidise the operating or capital costs of persons to whom the Board has granted licences or concessions under this power, and to own, maintain and operate any other service or services in connection with tobacco if it should be, in the opinion of the Minister, in the best interests of the tobacco industry of the Republic for the Board so to do.

5. To produce tobacco or tobacco seed whenever and as often as the Board is of the opinion that it is in the best interests of the tobacco industry of the Republic so to do.

6. To draw, make, accept, endorse, discount, execute and issue for the purpose of its functions or duties promissory notes, bills of exchange, bills of lading, securities and other negotiable and transferable instruments.

7. To insure against losses, damages, risks and liabilities which it may incur.

8. With the approval of the Minister, to make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions or the performance of its duties and to modify or rescind such contracts or to modify or rescind such suretyships or guarantees.

9. (a) To raise moneys temporarily or otherwise by such means and for such purposes as the Minister may approve.

(b) To invest any of its moneys not immediately required by it in such manner as it, with the approval of the Minister in consultation with the Minister responsible for finance, may determine and to vary or realise investments so made.

10. With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or the performance of its duties or any of them and to obtain from such government or authority rights, privileges and concessions which it thinks desirable to obtain; and to carry out, exercise and comply with such arrangements, rights, privileges and concessions.

11. To delegate to sales supervisors such powers and duties as the Board may deem fit.

12. To appoint such professional, technical and other officers, secretaries, accountants, clerks and such servants as may be necessary for the exercise of its functions and the performance of its duties.
13. To pay such remuneration and allowances and grant such leaves of absence and, with the approval of the Minister, to make such gifts, bonuses and other lump sum payments or gratuities to persons in its employ as it may deem fit.
14. To provide pecuniary benefits for persons in its employ on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury, and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for persons in its employ and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
15. Generally to do all such things as are incidental or conducive to the exercise of the functions and powers or the performance of the duties vested in or conferred or imposed upon it by this Act.
16. To buy tobacco if, in the opinion of the Minister, such course would serve the best interests of the industry and to sell or otherwise dispose of any such tobacco bought by the Board under this power.
17. To do all things which are necessary in the opinion of the Board to promote, protect and maintain the sale of tobacco grown in the Republic, having regard to buyers and trade interests and the stability of the market.
18. To prescribe, with the approval of the Minister, by rules, the returns and forms of returns to be furnished to the Board by registered growers and persons who handle, prepare or process tobacco for sale or for export after its sale.
19. To prescribe, by rules, the fees, approved by the Minister, which shall be paid to the Board in connection with applications for registration or for the issue of authorities, licences and permits.
20. To fix a date in each selling season fixed by the Board on which the Board deems it expedient to begin controlling and to control the rate of delivery of auctionable tobacco for sale on auction floors licensed by the Board, and to fix delivery quota periods from and after that date, and further to determine delivery quotas applicable to each such delivery quota period.
21. To fix a date in each selling season fixed by the Board on which the Board deems it expedient to stop controlling the rate of delivery of auctionable tobacco for sale on auction floors licensed by the Board.
22. To give directions to and prescribe, with the approval of the Minister, by rules, the duties of licensed graders in connection with-
 - (a) the methods of handling and storing tobacco from the time tobacco is received for grading to the time tobacco is despatched after grading; and
 - (b) the grading of tobacco; and

- (c) the processes to be employed in conditioning or treating tobacco; and
- (d) the supervision to be exercised over the handling, grading, storing or despatch of tobacco; and
- (e) the manner in which tobacco is to be despatched after it has been graded.

23. To prescribe, with the approval of the Minister, by rules, hygienic and other conditions of maintenance of buildings, plant and equipment to be used by registered growers or licensed graders, as the case may be, for or in connection with the handling, storing, grading or despatch of tobacco.
24. To prescribe, with the approval of the Minister, by rules, the form of returns, receipts and documents to be furnished to the Board and to registered growers by licensed graders.
25. To fix the period in each year during which tobacco may, subject to the provisions of this Act, be sold.
26. To fix the days and the hours of the days in the selling season fixed by the Board on or during which tobacco may, subject to the provisions of this Act, be sold.
27. To prohibit for any period in a selling season fixed by the Board the sale of tobacco.
28. To prescribe, with the approval of the Minister, by rules, the grade classification of tobacco for purposes of sale and to prescribe for the marking of such classification.
29. To prescribe, with the approval of the Minister, by rules, the grading, packing, marking or identification of tobacco for purposes of sale.
30. To issue permits to registered growers or their agents to hold over to a later selling season tobacco which was not sold in the selling season appropriate to the year of its growth.
31. To prescribe, with the approval of the Minister, by rules, a maximum rate of selling at which auctionable tobacco shall be sold on licensed auction floors.
32. To give directions to the holders of auction floor licenses as regards receipt, storage and sale of auctionable tobacco.
33. To prescribe, with the approval of the Minister, by rules, the duties of holders of auction floor licences as regards the receipt, storage and sale of auctionable tobacco and all matters incidental thereto, and, as regards the disposal of unsold auctionable tobacco, the keeping of such records and the furnishing of such returns, accounts and other documents as may be prescribed.
34. To prescribe, with the approval of the Minister, by rules, the duties of owners of auctionable tobacco with regard to its removal from licensed auction floors and with regard to the disposal of bale wrappings.
35. To prescribe, with the approval of the Minister, by rules, the terms and conditions of sale of auctionable tobacco when sold by auction on a licensed auction floor.
36. To prescribe, with the approval of the Minister, by rules, the terms and conditions of sale of non- auctionable tobacco except when sold at a primary or rural level.

37. To prescribe, with the approval of the Minister, by rules, the form of returns to be made to the Board by licensed buyers on the purchase or sale of non-auctionable tobacco.

38. To prescribe, with the approval of the Minister, by rules, the liabilities of holders of auction floor licences in connection with losses whether caused by errors in weighing or otherwise and the making good of such losses.

39. To inspect books, accounts and other documents relating to the acceptance for sale and sale of auctionable tobacco on licensed auction floors and relating to such charges as are allowed pursuant to section sixty-nine.

40. With the approval of the Minister, to give directions to and prescribe, by rules, the duties of sellers and buyers as regards the places at which non-auctionable tobacco shall be sold and the storage and sale of non-auctionable tobacco.

41. With the approval of the Minister, to prescribe, by rules, the form and manner of applications, nominations, licences, certificates of registration and other such certificates, licences, authorities or permits as the Board deems necessary for the better administration of this Act.

42. To prescribe, with the approval of the Minister, by rules, all matters which by this Act are required or permitted to be prescribed by the Board.

43. To make loans to farmers from the funds of the Board, and to guarantee the payment of loans made to farmers by any bank, building society or statutory body for the purpose of the production of tobacco or of such other crops as the Board may deem necessary or convenient to the development of the tobacco industry generally, or for the purpose of engaging in activities which the Board may consider as ancillary to the production of tobacco.

(As amended by Act No. 46 of 1970)

44. To lease or sub-lease land, or to grant rights of occupancy of lands held by the Board to persons for the purpose of the production of tobacco or other ancillary crops, and to impose conditions of use and occupancy upon any such leases or occupiers.

(As amended by Act No. 46 of 1970)

45. To lend money to any officer or employee of the Board for the purchase of a motor vehicle, a refrigerator or house furniture, or for the purchase of a residential property, or for the construction of a dwelling house on a residential property, or for the improvement of a residential property, or for the discharge of existing liabilities on a residential property.

(As amended by Act No. 46 of 1970)

46. Subject to the directions and with the written authority of the Minister, to act as agent of the Government of Zambia in any matter, or for any purpose, directly or indirectly affecting the tobacco industry.

(As amended by Act No. 46 of 1970)

47. With the approval of the Minister, to establish and operate institutions for the training of persons in the production and marketing of tobacco and in the running of tobacco farms, auction floors or other activity ancillary to the production and marketing of tobacco.

(As amended by Act No. 46 of 1970)

48. To train persons, and to establish and run training courses in the production and marketing of tobacco and in any other activity the Board deems necessary to, and beneficial to, the tobacco industry generally.

(As amended by Act No. 46 of 1970)

49. To appoint and remunerate managing agents, visiting agents and technical and other consultants which the Board deems necessary for the better exercise of the functions and powers conferred upon it by or under this Act.

(As amended by Act No. 46 of 1970)

SUBSIDIARY LEGISLATION

CHAPTER 237: THE TOBACCO ACT

THE TOBACCO (MARKETING AND LICENSING) RULES

ARRANGEMENT OF RULES

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Rule

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2. Interpretation

PART II RETURNS BY REGISTERED GROWERS

3. Crop forecast returns

PART III LICENSING OF GRADERS

4. Form and manner of application
5. Minimum standards of premises
6. Receipting of tobacco
7. Reports on condition
8. Grading returns
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PART IV LICENSING OF BUYERS

11. Form and manner of application for licence