

MAURITIUS CANE INDUSTRY AUTHORITY ACT

Act 40 of 2011 – 19 March 2012

ARRANGEMENT OF SECTIONS

SECTION

- | | |
|---|---|
| PART I – PRELIMINARY | 25. Receipt and milling of canes at factories |
| 1. Short title | 26. Records to be kept and returns to be furnished |
| 2. Interpretation | PART V – CANE CONTRACTS |
| PART II – THE AUTHORITY | 27. Cane contract by supplier of canes |
| 3. Establishment of Authority | 28. Provisions relating to cane contracts |
| 4. Objects of Authority | PART VI – MILLING OF CANES AND MANUFACTURE OF SUGAR |
| 5. Functions of Authority | 29. Permit to operate factories |
| 6. Powers of Authority | 30. Closing down of factories |
| 7. Monopoly of Authority | 31. Middleman's permit |
| PART III – ADMINISTRATION | 32. Control of weighing machines |
| Sub-Part A – The Board | 33. Control of canes |
| 8. Board of Directors | 34. Sucrose content tests |
| 9. Meetings of Board | 35. Delivery of canes at weighbridge |
| 10. Powers of Board | 36. Closing down of weighbridge |
| 10A. The Advisory Council | 37. Facilities for testing and weighing |
| 11. Chief Executive Officer | 38. Supervisory chemists |
| 12. Other employees | 39. Planters' and millers' entitlement |
| 13. Conditions of service of employees | 40. Transport of canes |
| 14. Special assignments | PART VII – ARBITRATION OF DISPUTES AND APPEALS |
| 15. Powers of Minister | 41. Arbitration of disputes |
| Sub-Part B – Mauritius Sugarcane Industry Research Institute | 42. Review of determinations |
| 16. Director of MSIRI | 43. Appeals to Supreme Court |
| 17. Functions and powers of MSIRI | PART VIII – FINANCIAL PROVISIONS AND ACCOUNTS |
| 18. Research and Development Committee | 44. Cess on sugar produced |
| Sub-Part C – Control and Arbitration Department | 45. Rate of charges |
| 19. Director of Control and Arbitration Department | 46. General Fund |
| 20. Control and Arbitration Committee | 47. Contribution to Mauritius Sugar Syndicate by distiller-bottler or importer of rum |
| 21. Functions and powers of Control and Arbitration Committee | 48. Donations and exemptions |
| PART IV – FACTORY AREAS | 49. Transfer of property and borrowing |
| 22. Variation of boundaries | 50. Estimates |
| 23. Saving as regards existing contracts | |
| 24. Delivery of canes to factories | |

SECTION

- | | |
|--------------------------------------|-------------------------------------|
| 51. Execution of documents | 58. Control and management of quays |
| 52. Annual report | 59. Validity of thumb print or mark |
| 53. Raising of funds | 60. Protection from liability |
| 54. Pledging of debentures | 61. Confidentiality |
| PART IX – MISCELLANEOUS | 62. Offences |
| 55. Liability for damage | 63. Regulations |
| 56. Lien on vessel, vehicle or cargo | 64. – 67. – |
| 57. Limitation of liability | |

MAURITIUS CANE INDUSTRY AUTHORITY ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Mauritius Cane Industry Authority Act.

2. Interpretation

In this Act—

“appointed date” means the date which is prescribed as such for the purposes of section 7;

“authorised body” means a body which is prescribed as such for the purposes of section 7;

“Authority” means the Mauritius Cane Industry Authority established under section 3;

“Board” means the Board of Directors referred to in section 8;

“cane” means sugarcane;

“cane contract” means a contract entered into in accordance with Part V;

“Chairperson” means the Chairperson of the Board appointed under section 8;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 11;

“Control and Arbitration Committee” means the Control and Arbitration Committee referred to in section 20;

“Control and Arbitration Department” means the Control and Arbitration Department referred to in section 3 (3) (c);

“co-product” –

- (a) means a by-product of cane or sugar; and
- (b) includes ethanol, other alcohol and any other derived goods;

“crop year” means the period extending from 16 January in a year to 15 January in the following year;

“employee” –

- (a) means a person appointed as such under section 12; and
- (b) includes the Chief Executive Officer, the Director of the MSIRI and the Director of the Control and Arbitration Department;

“factory” means a sugar factory;

“factory area” means the area assigned to a factory under this Act;

“fixed or floating charge” means a fixed or floating charge created under the Code Civil Mauricien;

“intermediate product” means any product of the manufacture of sugar that occurs between the clarified juice stage and the syrup stage;

“load” and “unload” include to load into and unload from ships, barges, lighters or any other means of transport by land or sea;

“Mauritius Ports Authority” has the same meaning as in the Ports Act;

“Mauritius Sugar Syndicate” means the Mauritius Sugar Syndicate referred to in the Mauritius Sugar Syndicate Act;

“member” –

- (a) means a member of the Board; and
- (b) includes the Chairperson;

“miller” –

- (a) means a person operating a factory; and
- (b) includes a person acting as manager for that person;

“Minister” means the Minister to whom responsibility for the subject of agro-industry is assigned;

“Ministry” means the Ministry responsible for the subject of agro-industry;

“MSIRI”, except in section 66, means the Mauritius Sugarcane Industry Research Institute referred to in section 3 (3) (b);

“planter” –

- (a) means a person growing canes in a factory area; and
- (b) includes a person acting as manager for that person;

“prescribed amount” has the same meaning as in the Public Procurement Act;

“quay” includes a jetty and any other similar structure;

“refined sugar” means sugar with a polarisation of 99.7 or more;

“refiner” means a miller or other entity producing refined sugar;

“Research and Development Committee” means the Research and Development Committee referred to in section 18;

“Secretary” means the person designated as such under section 8;

“small planter” means a planter cultivating cane over an extent of less than 10 hectares;

“SPRP” means the Sugarcane Planters Regrouping Project undertaken by the Authority to modernise the sugar cane planter sector and foster economies of scale;

“store”, in relation to sugar, includes to receive, weigh, handle, remove, or otherwise dispose of, sugar;

“sugar terminal” includes the facilities provided or operated by the Authority under section 5 (2);

“ton” means metric ton.

[S. 2 amended by s. 3 of Act 5 of 2014 w.e.f. 20 August 2014; s. 18 (3) (a) of Act 34 of 2016 w.e.f. 1 January 2017.]

PART II – THE AUTHORITY

3. Establishment of Authority

(1) There is established for the purposes of this Act the Mauritius Cane Industry Authority.

(2) The Authority shall be a body corporate.

(3) The Authority shall comprise—

- (a) the Office of the Chief Executive Officer;
- (b) the MSIRI;
- (c) the Control and Arbitration Department; and
- (d) such departments as may be set under section 10.

4. Objects of Authority

The objects of the Authority shall be to—

- (a) monitor, oversee and co-ordinate all activities relating to, and ensure a fair, efficient and effective administration and operation of, the cane industry;
- (b) promote and support the sustainable development, efficiency and viability of the cane industry;

- (c) formulate and implement policies, strategies, plans, programmes and schemes in relation to the cane industry;
- (d) promote and facilitate the sustainable development of the cane cluster in Mauritius and in the region;
- (e) by means of research and investigation, ensure the technical progress and efficiency of the cane industry;
- (f) monitor and co-ordinate the activities of the cane industry, including planting, milling, processing, transport, bulk handling and marketing;
- (g) co-ordinate the activities of organisations concerned with the cane industry in the private and public sectors;
- (h) overview the storage, sampling, bagging, packing, loading and unloading of sugar;
- (i) maintain a pool of machinery for agricultural purposes;
- (j) resolve disputes between planters, millers and middlemen;
- (k) overview the registration of cane contracts;
- (l) promote the development and use of co-products;
- (m) facilitate the participation of employees and planters in the cane industry;
- (n) ensure that necessary essential services are available to planters;
- (o) promote the setting up of cane nurseries and the supply of cane setts to planters;
- (p) facilitate the adoption of modern and efficient agricultural practices by planters;
- (q) foster the use of biomass, including sugar cane, cane trash, high fibre cane, fuel canes, gramineae and other related biomass, in the production of electricity and biofuels for transport; and
- (r) foster competitiveness of all segments of production in the cane industry.

[S. 4 amended by s. 18 (3) (b) of Act 34 of 2016 w.e.f. 1 January 2017.]

5. Functions of Authority

(1) The Authority shall have such functions as are necessary to further its objects most effectively and may, in particular—

- (a) set up and manage such agricultural or other centres as the Minister may determine;
- (b) hire the agricultural machinery of the Authority to such persons and on such terms and conditions as the Board may determine;
- (c) provide technical advice, assistance and training to planters on cane cultivation, harvesting and transport of canes and post harvest operations;

- (d) manage agricultural land and, in particular, abandoned fields in SPRP or such other similar projects;
- (e) enter into management contracts on behalf of planters;
- (f) devise agricultural credit schemes in consultation with financing agencies;
- (g) ensure that arrangements are made so that canes of small planters are harvested at their optimal sucrose content;
- (h) assist cooperative societies in benefiting from the Fair Trade Initiative or such other similar projects;
- (i) provide, operate and maintain facilities for the storage, sampling, bagging, packing, loading and unloading of sugar or such co-product or other commodity as the Minister may approve;
- (j) set up a planters' data bank;
- (k) commission studies and consultancies in respect of any specific or general issue affecting the cane industry;
- (l) review, on a regular basis, the economic and financial performance as well as the problems and prospects of the cane industry;
- (m) periodically commission a revaluation of the fixed assets of the cane industry;
- (n) commission long-term master plans for the viability and sustainability of the cane cluster, with due regard to the interests of all parties concerned;
- (o) make recommendations to the Mauritius Revenue Authority regarding a rational and uniform system of granting capital allowances, including allowances in respect of equipment depreciation, in relation to the cane industry;
- (p) as and when appropriate, examine the accounts of millers and planters and offer advice on the forms to be used in connection with the presentation of those accounts;
- (q) collect contribution from the sale of sugar on the local market for the purposes of compensation under section 46 (2) (k);
- (r) advise the Minister on—
 - (i) the formulation and management of policies, strategies and schemes in relation to the cane industry;
 - (ii) the provision of adequate means of inland access or, after consultation with the Mauritius Ports Authority, sea access, to the sugar terminal;
 - (iii) the transport of sugar to and from the sugar terminal;
 - (iv) all measures necessary to ensure the viability of the cane industry;

- (ra) manage, for the purpose of fostering the production of sugar cane and bagasse, the Sugar Cane Sustainability Fund set up under the Sugar Industry Efficiency Act;
- (rb) keep and maintain, for the purpose of sugar reform under the Sugar Industry Efficiency Act, a land conversion right (LCR) register;
- (rc) promote the production of energy from biomass generated by the sugar cane industry, develop and monitor the Renewable Sugar Cane Industry Based Biomass Framework specified in the Sugar Industry Efficiency Act;
- (rd) determine, under the Sugar Industry Efficiency Act, the sale price of molasses to distillers producing ethanol for blending or export or potable alcohol for export;
- (re) establish, under the Sugar Industry Efficiency Act, the Joint Molasses Allocation Committee for the allocation of molasses between distilleries;
- (rf) promote the sugar-based agro-industry and to generate sugar through the use of local raw materials, develop and monitor the Sugar Based Agro-Industry Framework referred to in the Sugar Industry Efficiency Act;
- (rg) provide value addition from ethanol obtained from molasses or from other raw material obtained from sugar cane, develop and monitor the Ethanol and Molasses Framework referred to in the Sugar Industry Efficiency Act; and
- (s) undertake such other activities as the Minister may determine.

(2) For the purposes of subsection (1) (i), the facilities to be provided by the Authority shall include—

- (a) loading and unloading quays;
- (b) buildings, sheds and other structures; and
- (c) plant, machinery and equipment.

[S. 5 amended by s. 4 of Act 5 of 2014 w.e.f. 20 August 2014; s. 18 (3) (c) of Act 34 of 2016 w.e.f. 1 January 2017.]

6. Powers of Authority

The Authority shall have such powers as are necessary to attain its objects and discharge its functions most effectively and may, in particular, subject to this Act—

- (a) enter into a contract, in accordance with the Public Procurement Act, including a contract for the supply of goods, services, plant, equipment or materials for the execution of works;
- (b) receive grants and donations, and raise funds;
- (c) subject to paragraph (e) (i), fix and levy fees and charges;

- (d) enter into an agreement with any person for the performance, or provision, by that person, of any service or facility which the Authority is authorised to perform or provide;
- (e) with the Minister's approval—
 - (i) fix the rate of charges in respect of the storage, bagging, packing, loading or unloading, at the sugar terminal, of sugar or any other commodity;
 - (ii) undertake, by agreement with the Mauritius Ports Authority, the execution of bulk handling or automated or semi-automated cargo handling operations in respect of any commodity other than sugar;
 - (iii) give such guidelines as it considers appropriate to the Mauritius Sugar Syndicate for the purpose of formulating, co-ordinating and harmonising the policies of those organisations in keeping with the objectives of this Act.

7. Monopoly of Authority

(1) Subject to subsection (2), no person, other than the Authority or an authorised body, shall—

- (a) as from the appointed date, store or load into a ship any sugar manufactured in Mauritius; or
- (b) during such time as may be specified, store such other commodity as may be prescribed.

(2) (a) Subject to paragraph (b) and to such conditions as may be prescribed, as from the appointed date—

- (i) every miller shall cause all the sugar manufactured at his factory to be delivered to the Authority or, with the approval of the Authority, to an authorised body;
- (ii) any sugar delivered under paragraph (a) shall be consigned to the Mauritius Sugar Syndicate in the name of its owner;
- (iii) the Authority or an authorised body, as the case may be, shall receive any sugar manufactured and delivered to it under paragraph (a).

(b) The Board may authorise a miller to store sugar at his factory or at such other place as it may approve.

PART III – ADMINISTRATION

Sub-Part A – The Board

8. Board of Directors

(1) The Authority shall be administered by a Board, to be known as the Board of Directors.

(2) The Board shall consist of—

- (a) a Chairperson, to be appointed by the Minister;
- (b) a representative of the Ministry;
- (c) a representative of the Ministry responsible for the subject of finance;
- (d) 4 members having wide experience in the sugar industry sector, including at least one representative from the milling activities sector and one from the small planter sector.

(3) Every member, other than members referred to in subsection (2) (b) and (c), shall hold office for 2 years and shall be eligible for reappointment.

(4) Every member shall be paid such fees and allowances as the Board may, with the approval of the Minister, determine.

(5) No person shall be qualified to be a member where he is a member of the Assembly or a local authority.

(6) Where a member, other than a member referred to in subsection (2)(b) and (c), ceases to hold office, the vacancy shall be filled by a person appointed by the Minister, who shall hold office for the remainder of the term of office of that member.

(7) No member shall engage in any activity which may undermine the reputation or integrity of the Authority.

(8) (a) The Board may co-opt any other person who may be of assistance in relation to any matter before the Board.

(b) A person co-opted under paragraph (a) shall—

- (i) not have the right to vote at a meeting of the Board; and
- (ii) be paid such allowances as the Board may determine.

(9) The Board shall designate an employee to act as Secretary to the Board who shall—

- (a) prepare and attend every meeting of the Board;
- (b) keep minutes of proceedings of every meeting of the Board; and
- (c) have such other duties as may be conferred on him by the Board.

[S. 8 repealed and replaced by s. 18 (3) (d) of Act 34 of 2016 w.e.f. 1 January 2017.]

9. Meetings of Board

(1) The Board shall—

- (a) meet at least once every month at such time and place as the Chairperson may determine;
- (b) regulate its meetings and proceedings in such manner as it may determine.

(2) At any meeting of the Board, 3 members shall constitute a quorum.

(3) Where a member has any interest, direct or indirect, in any matter before the Board, he shall, as soon as reasonably practicable, disclose to the Board the nature of his interest, and shall not take any part in the deliberation of the Board relating to that matter.

[S. 9 repealed and replaced by s. 18 (3) (d) of Act 34 of 2016 w.e.f. 1 January 2017.]

10A. The Advisory Council

(1) There is established for the purposes of this Act an Advisory Council which shall assist the Board in the discharge of its functions.

(2) The Council shall consist of—

- (a) a chairperson, to be appointed by the Minister;
- (b) a representative of the Ministry responsible for the subject of co-operatives;
- (c) a representative of the Ministry responsible for the subject of environment;
- (d) a representative of the Ministry responsible for the subject of public utilities;
- (e) the Chief Executive Officer of the Mauritius Sugar Syndicate;
- (f) the General Manager of the Sugar Insurance Fund;
- (g) a representative of the Irrigation Authority;
- (h) a representative of the Chamber of Agriculture;
- (i) a representative of the Fair Trade Cooperative Federation;
- (j) a representative of the employees of the Authority;
- (k) a representative of millers, to be appointed by the Minister;
- (l) a representative of power producing companies, to be appointed by the Minister;
- (m) a representative of refiners and agro-processors, to be appointed by the Minister;
- (n) 3 representatives of planters, one of whom shall represent small planters, to be appointed by the Minister;
- (o) 4 representatives of recognised trade unions of the sugar cane industry, including a representative of staff, overseers, non-agricultural employee and agricultural employee, to be appointed by the Minister.

(3) The Council shall meet at least once every month and at such time and place as the chairperson of the Council may determine.

(4) At any meeting of the Council, 11 members shall constitute a quorum.

(5) Every appointed member—

- (a) shall hold office for a period of 2 years and shall be eligible for reappointment;
- (b) shall be paid such fees and allowances as the Board may, with the approval of the Minister, determine.

[S. 10A inserted by s. 18 (3) (e) of Act 34 of 2016 w.e.f. 1 January 2017.]

10. Powers of Board

(1) (a) The Board may, on the recommendation of the Chief Executive Officer, set up one or more departments, split one of those departments into 2 or more, or merge 2 or more of those departments into one.

(b) For the purpose of ensuring the efficient and effective operation of any department, the Board may set up within that department such number of sections or units as it may determine.

(2) (a) Notwithstanding sections 18 and 20, the Board may set up such committees of not more than 5 persons as may be necessary to assist it in the discharge of its functions and the exercise of its powers.

(b) A committee set up under paragraph (a) may be made up of members, or of members and non-members.

(3) The persons referred to in subsection (2) shall—

- (a) be appointed by the Board on such terms and conditions as it may determine; and
- (b) be paid such allowance as the Board may, with the approval of the Minister, determine.

(4) A committee shall—

- (a) be chaired by the Chief Executive Officer or such other person as the Board may determine;
- (b) meet as and when required by the Board or as often as the chairperson of that committee thinks necessary; and
- (c) within such time as may be fixed by the Board, submit a report which shall contain its observations, comments and recommendations on any matter referred to it by the Board.

(5) Subject to this section, a committee shall regulate its meetings in such manner as it may determine.

(6) The Board shall not concern itself with any matter relating to the exercise by the MSIRI or the Control and Arbitration Committee of their powers or the discharge of their functions specified in sections 17 and 21, respectively.

11. Chief Executive Officer

(1) (a) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Board on a fixed term performance contract or on such terms and conditions as it may determine, subject to the approval of the Minister.

(b) The Chief Executive Officer shall, within 30 days of his appointment, submit a declaration of his assets with the Chairperson by way of an affidavit.

(c) The Chief Executive Officer shall submit a fresh declaration of his assets with the Chairperson every 3 years or, where he is under a fixed term performance contract, on the termination of his contract.

(2) The Chief Executive Officer shall—

- (a) be responsible for the execution of the policy of the Board and for the control and management of the day-to-day business of the Authority;
- (b) act in accordance with such directives as he may receive from the Board;
- (c) seek to achieve such annual performance targets as may be set by the Board; and
- (d) every 3 months, submit to the Board a report on the activities and finances of the Authority.

(3) (a) The Board may, subject to such instructions as it may give, delegate to the Chief Executive Officer such of its powers and functions as may be necessary for the effective management of the day-to-day business and activities of the Authority, other than the power to—

- (i) sell or exchange any property or make any investment or donation;
- (ii) borrow money; or
- (iii) enter into a contract which exceeds the prescribed amount.

(b) The Chief Executive Officer may, with the approval of the Board, delegate his powers and functions to such employee as he may determine.

[S. 11 amended by s. 18 (3) (f) of Act 34 of 2016 w.e.f. 1 January 2017.]

12. Other employees

(1) The Board may appoint such other employees as may be necessary for the proper discharge of its functions under this Act on such terms and conditions as it may determine, subject to the approval of the Minister.

(2) Every employee referred to in subsection (1) shall be under the administrative control of the Chief Executive Officer.

13. Conditions of service of employees

(1) No employee shall, during the tenure of his office, take an active part in politics or seek election as a member of the Assembly or of a local authority.

(2) The Board shall make provision to govern the conditions of service of its employees, and in particular, to deal with—

- (a) the appointment including promotion where applicable, staff development, retirement, dismissal, discipline, pay and leave of, and the security to be given by, employees;
- (b) appeals by employees against dismissal and any other disciplinary measure; and
- (c) the setting up and maintenance of provident and pension fund schemes and the contributions payable to and the benefits recoverable from those schemes.

14. Special assignments

(1) The Board may designate a person, other than an employee, to perform such functions as it may assign to him for the purposes of this Act on such terms and conditions as it may, with the approval of the Minister, determine.

(2) A person designated under subsection (1) may exercise such of the powers of the Board as it may determine to delegate to him for the proper discharge of his functions.

15. Powers of Minister

(1) The Minister may give such directions of a general character to the Board, not inconsistent with this Act, as he may determine in the public interest, and the Board shall comply with those directions.

(2) The Minister may require the Board to furnish such information in such manner and at such time as he may determine in respect of its activities, and the Board shall supply that information.

Sub-Part B – Mauritius Sugarcane Industry Research Institute

16. Director of MSIRI

(1) (a) The Board shall appoint a Director of the MSIRI on such terms and conditions as it may determine, subject to the approval of the Minister.

(b) The Director of the MSIRI shall, within 30 days of his appointment, submit a declaration of his assets with the Chief Executive Officer by way of an affidavit.

(c) The Director of the MSIRI shall submit a fresh declaration of his assets with the Chief Executive Officer every 3 years and at the termination of his employment.

(2) The Director of the MSIRI shall be responsible for the control and management of the day-to-day business of the MSIRI.

(3) The Director of the MSIRI may delegate any of his functions to such employee as he may determine.

17. Functions and powers of MSIRI

- (1) The MSIRI shall—
- (a) conduct research on canes to enhance the cost effectiveness and competitiveness of the cane industry;
 - (b) conduct research on technical and engineering options for improving the efficiency of factories and for value addition to the co-products;
 - (c) conduct research programmes on such other crops as the Minister may approve; and
 - (d) maintain an effective interaction with the agricultural sector and with national and international bodies.
- (2) The MSIRI may—
- (a) advise the cane industry on technologies for its efficiency and the conservation of the environment;
 - (b) collect specialised statistical data and other information relating to cane and sugar;
 - (c) maintain laboratories, experimental stations and workshops;

continued on page M13A – 13

- (d) engage in assignments on behalf of regional or international organisations;
- (e) provide quality control and laboratory facilities and ancillary facilities to the Mauritius Sugar Syndicate, planters, millers, refiners or such other person as the Board may determine;
- (f) provide assistance to or engage in consultancy work for local or international bodies; and
- (g) set up such committees as may be necessary to assist it in the discharge of its functions and exercise of its powers.

(3) In the exercise of its functions, the MSIRI shall not be subject to the direction or control of any other person.

18. Research and Development Committee

(1) There shall be a Research and Development Committee which shall advise the MSIRI on research programmes and on all technical matters relating to the functions of the MSIRI.

(2) The Research and Development Committee shall consist of—

- (a) a chairperson;
- (b) a representative of the Board;
- (c) a representative of the Ministry;
- (d) a representative of the Chamber of Agriculture;
- (e) a representative of millers;
- (f) two representatives of planters, one of whom shall be a representative of small planters; and
- (g) one independent member having wide experience in the field of agro-industry.

(3) (a) The persons referred to in subsection (2), other than the representatives of the Board and of the Ministry, shall—

- (i) subject to paragraph (b), be appointed by the Minister;
- (ii) be paid by the Board such allowance as the Minister may determine;
- (iii) hold office for 3 years; and
- (iv) be eligible for re-appointment.

(b) The restrictions specified in section 8 (3) shall apply to every appointment made under paragraph (a).

(c) The appointment of every member of the Research and Development Committee shall be published in the *Gazette*.

(4) (a) The Research and Development Committee shall meet as often as necessary but at least once every month.

(b) A meeting of the Research and Development Committee shall be held at such time and place as the chairperson thinks fit.

(c) At a meeting of the Research and Development Committee, 5 members shall constitute a quorum.

(d) Where the chairperson is absent from a meeting of the Research and Development Committee, the members present shall elect a member to chair the meeting.

(5) (a) The Research and Development Committee may co-opt any other person who may be of assistance in relation to any matter before it.

(b) A person co-opted pursuant to paragraph (a) shall—

(i) not have the right to vote at a meeting of the Research and Development Committee; and

(ii) be paid such allowance as the Board may determine.

Sub-Part C – Control and Arbitration Department

19. Director of Control and Arbitration Department

(1) (a) The Board shall appoint a Director of the Control and Arbitration Department on such terms and conditions as it may determine, subject to the approval of the Minister.

(b) The Director of the Control and Arbitration Department shall, within 30 days of his appointment, submit a declaration of his assets with the Chief Executive Officer by way of an affidavit.

(c) The Director of the Control and Arbitration Department shall submit a fresh declaration of his assets with the Chief Executive Officer every 3 years and at the termination of his employment.

(2) The Director of the Control and Arbitration Department shall be responsible for the execution of the policy of the Control and Arbitration Committee and the management of the day-to-day business of the Control and Arbitration Department.

(3) In the exercise of his functions, the Director of the Control and Arbitration Department shall act in accordance with such directives as he may receive from the Control and Arbitration Committee.

(4) The Director of the Control and Arbitration Department may, with the approval of the Control and Arbitration Committee, delegate any of his functions to such employee as he may determine.

20. Control and Arbitration Committee

(1) There shall be a Control and Arbitration Committee which shall consist of—

(a) a chairperson who is, and has for at least 10 years been, a judicial officer, a law officer or a barrister;

(b) a representative of the Board;

- (c) a representative of the Ministry;
- (d) one independent member;
- (e) one representative of millers; and
- (f) two representatives of planters, one of whom shall be a representative of small planters.

(2) (a) The persons referred to in subsection (1), other than the representatives of the Board and of the Ministry, shall—

- (i) subject to paragraph (b), be appointed by the Minister;
- (ii) be paid by the Board such allowance as the Minister may determine;
- (iii) hold office for 3 years; and
- (iv) be eligible for re-appointment.

(b) The restrictions specified in section 8 (3) shall apply to every appointment made under paragraph (a).

(c) The appointment of every member of the Control and Arbitration Committee shall be published in the *Gazette*.

(3) (a) The Control and Arbitration Committee shall meet as often as necessary but at least once every month.

(b) A meeting of the Control and Arbitration Committee shall be held at such time and place as the chairperson thinks fit.

(c) At a meeting of the Control and Arbitration Committee, 5 members shall constitute a quorum.

(d) Where the chairperson is absent from a meeting of the Control and Arbitration Committee, the members present shall elect a member to chair the meeting.

(4) (a) The Control and Arbitration Committee may co-opt any other person who may be of assistance in relation to any matter before it.

(b) A person co-opted under paragraph (a) shall—

- (i) not have the right to vote at a meeting of the Control and Arbitration Committee; and
- (ii) be paid such allowance as the Board may determine.

21. Functions and powers of Control and Arbitration Committee

(1) The Control and Arbitration Committee shall—

- (a) arbitrate disputes between planters, millers and middlemen;
- (b) control the milling of canes and the manufacture of sugar;
- (c) determine the quantity of sugar and co-products accruing to planters and millers; and
- (d) perform the functions assigned to it under Parts IV, V, VI and VII.

- (2) The Control and Arbitration Committee may—
- (a) summon witnesses and examine them on oath,
 - (b) authorise an employee to enter—
 - (i) any premises other than a private dwelling used in connection with the milling of canes or the manufacture of sugar and co-products; or
 - (ii) on any land used for the cultivation of canes;
 - (c) order the production of any document believed to contain any matter relating to the milling of canes or the manufacture of sugar and co-products which it may wish to inspect;
 - (d) undertake, or cause to be undertaken by an employee authorised for the purpose, any operation, test or experiment which it thinks necessary;
 - (e) require a planter or miller to undertake or to cause his employees to undertake on his land or business premises any operation, test or experiment which it thinks necessary;
 - (f) make an order for the payment of the cost of any operation, test or experiment required by it to be undertaken;
 - (g) use or cause to be used for the purposes of any operation, test or experiment any implement, plant, laboratory, machinery or apparatus belonging to a planter or miller;
 - (h) set up such committees as may be necessary to assist it in the discharge of its functions and exercise of its powers.

(3) In the discharge of its functions under subsection (1), the Control and Arbitration Committee shall not be subject to the direction or control of any other person.

PART IV – FACTORY AREAS

22. Variation of boundaries

(1) The Control and Arbitration Committee may, on the application of any person who has an interest in the matter, vary the boundaries of a factory area.

(2) An application under subsection (1) shall be made to the Control and Arbitration Committee before 31 January of the crop year for which the application is made.

- (3) The application shall—
- (a) specify all new facts, changes or alterations in conditions previously existing; and
 - (b) not be based exclusively on the higher efficiency of any other factory.

(4) Where the Control and Arbitration Committee varies the boundaries of a factory area, it shall cause notice of its decision, setting out the particulars of the variation, to be published in the Gazette.

23. Saving as regards existing contracts

No variation of the boundaries of a factory area shall affect the validity of any cane contract entered into before the variation is effective.

24. Delivery of canes to factories

(1) Subject to this section, no person shall, without the written authorisation of the Control and Arbitration Committee—

- (a) knowingly deliver canes to a factory outside; or
- (b) refuse to deliver canes to the factory in, the factory area in which they are grown.

(2) A planter may retain so much of his canes as he requires for the purposes of replanting.

(3) Subject to subsection (4), a planter may, with the written authorisation of the Control and Arbitration Committee—

- (a) deliver canes to a person engaged in the production of co-products;
- (aa) subject to the approval of the Minister, deliver canes to a person engaged in the production of cane juice for direct consumption;
- (ab) use canes grown by him for feeding livestock kept for research purposes; or
- (b) use canes grown by him to manufacture the types of sugar known as—
 - (i) Khandasary sugar; or
 - (ii) Jaggery sugar.

(4) The maximum quantity of canes which, for every period of 5 years starting 19 March 2012, may be used for the purpose specified in subsection (3) (b), shall be determined by the Control and Arbitration Committee, having regard to the sufficiency of canes for the manufacture of sugar, other than sugar of the types specified in subsection (3) (b), for which the Mauritius Sugar Syndicate has commitments on behalf of the cane industry.

(5) (a) The place or area where canes are grown for the purpose of subsection (3) (b) shall not be considered to be a factory area for the purposes of this Act.

(b) The premises at which the types of sugar specified in subsection (3) (b) are manufactured shall not be considered to be a factory for the purposes of this Act.

[S. 24 amended by s. 5 of Act 5 of 2014 w.e.f. 20 August 2014.]

25. Receipt and milling of canes at factories

(1) Subject to subsection (2), no miller shall, without the written authorisation of the Control and Arbitration Committee—

- (a) receive or mill canes grown outside his factory area;

- (b) refuse to receive and mill canes grown within his factory area; or
- (c) transfer or receive sugar, an intermediate product or any co-product to and from another factory.

(2) The Control and Arbitration Committee may, in special circumstances, direct a miller—

- (a) to receive canes grown outside his factory area; or
- (b) to transfer to another factory or receive any product for the manufacture of sugar.

[S. 25 amended by s. 18 (3) (g) of Act 34 of 2016 w.e.f. 1 January 2017.]

26. Records to be kept and returns to be furnished

(1) Every miller shall keep records in such form and manner as the Control and Arbitration Committee may require.

(2) Where a miller is also a planter, the Control and Arbitration Committee may require the miller to keep separate accounts of his planting and milling activities.

(3) The Control and Arbitration Committee may require a miller to produce the records kept by him for inspection or to furnish such information as it may require.

(4) The Control and Arbitration Committee may require any association of planters or millers, the Mauritius Sugar Syndicate or any broker to whom sugar is consigned to keep and produce such returns as it may require.

(5) The Control and Arbitration Committee may require a miller or a planter, other than an individual, to register with the Authority the name and address of every partner, *sociétaire* or shareholder who is a non-resident.

(6) No person shall, on furnishing a return or providing information under the section, knowingly furnish a false or misleading return or information.

[S. 26 amended by s. 6 of Act 5 of 2014 w.e.f. 20 August 2014.]

PART V – CANE CONTRACTS

27. Cane contract by supplier of canes

(1) Every planter shall enter into a cane contract with a miller.

(2) —

(3) Every co-operative credit society formed by planters shall enter into a cane contract with every miller to whom it supplies canes.

(4) Where a planter or cooperative credit society is required to enter into a contract with a miller under this section, the miller shall enter into the contract.

[S. 27 amended by s. 7 of Act 5 of 2014 w.e.f. 20 August 2014.]

28. Provisions relating to cane contracts

(1) Every cane contract shall—

- (a) be in such form as may be prescribed;
- (b) subject to paragraph (c), be drawn up in 3 originals and forwarded by the millers to the Control and Arbitration Committee for registration; and
- (c) where a miller to whose factory the canes forming the subject-matter of a cane contract are to be delivered has not been made a party to the contract, be drawn up in 4 originals, and, after registration with the Control and Arbitration Committee, the additional original shall be forwarded to the miller.

(2) The Control and Arbitration Committee, after registering a cane contract, shall keep one original for record purposes and return the other originals to the parties.

(3) Every planter shall, where required by the Control and Arbitration Committee, before the registration of a cane contract entered into by him, furnish to the Control and Arbitration Committee particulars as to his registration under section 40 of the Sugar Insurance Fund Act.

(4) Except with the written authorisation of the Control and Arbitration Committee—

- (a) no cane contract shall be made for a period exceeding 5 years;
- (b) no cane contract shall be entered into for any crop year after 31 May of that crop year;
- (c) every cane contract entered into for any crop year shall be forwarded to the Control and Arbitration Committee for registration not later than 15 June of that crop year; and
- (d) no new cane contract shall be entered into before the expiry of an existing one.

(5) Where, under the terms of a cane contract, money in the form of advances is lent at interest, the rate of interest charged shall—

- (a) be specified in the cane contract; and
- (b) not exceed the prevailing Repo rate determined by the Bank of Mauritius by more than 2 per cent.

[S. 28 amended by s. 13 (a) of Act 26 of 2013 w.e.f. 21 December 2013.]

PART VI – MILLING OF CANES AND MANUFACTURE OF SUGAR

29. Permit to operate factories

(1) No miller shall operate a factory for the manufacture of sugar or an intermediate product unless he obtains a permit from the Control and Arbitration Committee.

(2) No person shall operate a plant for the manufacture of a co-product unless he obtains a permit from the Control and Arbitration Committee.

(3) The Authority may fix the date for the commencement of milling activities in every crop year.

[S. 29 amended by s. 18 (3) (h) of Act 34 of 2016 w.e.f. 1 January 2017.]

30. Closing down of factories

(1) No miller shall cease to operate a factory in respect of which he has obtained a permit under section 29 unless he has—

- (a) not later than 15 October in the preceding crop year, caused to be served on the Minister a notice of his intention to close down the factory;
- (b) obtained the Minister's authorisation to do so; and
- (c) complied with any condition imposed by the Minister under subsection (5).

(2) On receipt of a notice under subsection (1), the Minister may authorise the temporary or permanent closing down of the factory—

- (a) where he is satisfied that there are good grounds for doing so; or
- (b) after appointing a board of enquiry, comprising 3 persons with proven experience in the cane industry, to investigate the proposed closing down of the factory and receiving its report.

(3) When reporting to the Minister under subsection (2), the board of enquiry shall give consideration to all the circumstances it considers proper, including the economical functioning of the sugar industry, with due regard to the employment of labour and the disposal of canes in the factory area.

(4) The miller shall supply all the information which the Minister or board of enquiry may require in connection with the proposed closing down of the factory.

(5) (a) Where the Minister authorises the closing down of a factory, he may impose such conditions as he may determine on the miller or any other person.

(b) The decision of the Minister on a notice served under subsection (1) shall be communicated to the miller not later than 31 March in the crop year which immediately follows the year in which the notice was served.

31. —

[S. 31 repealed by s. 8 of Act 5 of 2014 w.e.f. 20 August 2014.]

32. Control of weighing machines

(1) The Control and Arbitration Committee may require an employee to verify the accuracy of cane or sugar weighing machines wherever situated and the records kept by any person relating to the weighing of canes or sugar.

(2) In subsection (1), “weighing machine” includes the weights used in connection with a weighing machine.

33. Control of canes

(1) The Control and Arbitration Committee may authorise an employee to determine, in accordance with such procedures as it may approve, whether canes delivered at a factory should be milled, having regard to such standards as to cane quality as may be prescribed.

(2) Any person who is aggrieved by a determination of an employee under subsection (1) may refer the matter for final adjudication to such other suitable employee as the Control and Arbitration Committee may designate.

[S. 33 amended by s. 9 of Act 5 of 2014 w.e.f. 20 August 2014.]

34. Sucrose content tests

(1) The Control and Arbitration Committee shall cause sucrose content tests to be carried out on the canes delivered at every factory in such manner as it may determine and may, for that purpose—

- (a) divide a factory area into as many regions as it may determine; or
- (b) group planters together.

(2) In assessing the sucrose content of any canes grown in a region of a factory area or by planters grouped in accordance with subsection (1) (b), the Control and Arbitration Committee may base its assessment on the sucrose content of all canes grown in that region or by the group of planters, as the case may be.

(3) A planter may apply, on or before 15 March in any crop year, for a separate sucrose content test on his canes in that crop year, but the Control and Arbitration Committee may grant or refuse the application without giving any reasons for its decision, which shall be final.

35. Delivery of canes at weighbridge

Every miller or other person responsible for a weighbridge shall accept canes during any time during which the weighbridge is operational.

36. Closing down of weighbridge

Where a weighbridge has been receiving less than 500 tons of cane per day for the preceding 3 consecutive crop years, the miller may apply to the Control and Arbitration Committee for closure of the weighbridge.

37. Facilities for testing and weighing

(1) Every miller shall provide at his factory, or at such other site, a cane testing laboratory which shall be physically separated from other buildings and be capable of being locked.

(2) Every miller shall provide at his factory such instruments, scales or devices as may be required by the Control and Arbitration Committee and, in particular, shall provide the following automatic scales and devices of a type approved by it—

- (a) cane weighing machines;
- (b) juice weighing scales and checking devices;
- (c) weighing scales or scales for imbibition water;
- (d) weighing scales for scums;
- (e) weighing scales for molasses; and
- (f) weighing scales for sugar.

(3) An employee designated by the Control and Arbitration Committee may, at any time, verify the accuracy of any instrument, scale or device required to be provided under subsection (2) and the records kept in relation to the use of the instrument, scale or device.

(4) The methods of sampling, analysis and recording of figures to be applied at a factory shall be those approved by the Control and Arbitration Committee.

38. Supervisory chemists

The Control and Arbitration Committee may authorise a planter to appoint, at his own cost, a professional chemist or an agent to act as observer at the factory to which he delivers his canes at any time when his canes are being tested.

39. Planters' and millers' entitlement

(1) (a) Subject to paragraph (b), every planter shall be entitled to receive for his canes 78 per cent of the quantity of sugar which his canes, if delivered at the factory over the crop year, may normally be expected to yield according to the average efficiency of all factories.

(b) Where the efficiency of the factory where the canes have been milled is higher than the average efficiency of all factories, the planter shall, in addition to the entitlement under paragraph (a), be entitled to receive 50 per cent, and the miller the remaining 50 per cent, of such quantity of sugar actually produced from the planter's canes by the factory as is in excess of the quantity of sugar yield from such canes calculated according to the average efficiency of all factories.

(2) (a) Every planter shall, in addition, be entitled to receive in respect of each ton of canes supplied to a factory in any crop year—

- (i) the average quantity of scums produced by the factory per ton of canes milled during the preceding crop year; and
- (ii) 100 per cent of the molasses produced by the factory per ton of canes milled by the factory during that crop year.

(b) Every planter may, at the time of entering into a cane contract, opt to receive the molasses to which he is entitled wholly in kind or cash, or partly in kind and partly in cash.

(c) Where a planter has opted to receive the molasses to which he is entitled wholly or partly in cash, the value of the molasses shall be determined, where the molasses are sold by a miller or otherwise, on the average price of the molasses.

(3) Where any bagasse produced at a factory in a crop year, other than bagasse used for the specific purpose of manufacturing sugar at that factory, is sold or otherwise transferred or is utilised in the production of any goods, every planter, shall, in addition, be entitled to receive out of the value of the bagasse so sold, transferred or utilised, an amount equivalent to the fraction represented by the quantity of canes supplied by him over the quantity of canes milled at the factory in that crop year.

(4) The quantity of sugar, scums, molasses or bagasse to which a planter is entitled under this section shall be determined by the Control and Arbitration Committee.

(5) The Control and Arbitration Committee shall cause notice of any determination under this section to be published in the Gazette and in 3 daily newspapers, and the notice shall indicate whether the determination is provisional or final.

40. Transport of canes

(1) Where the distance over which a planter's canes are transported to a factory or to a cane transit site is greater than 6.4 kilometres, the miller shall—

- (a) where the transport is undertaken by the planter, reimburse to the planter the amount by which the cost of transport over that distance exceeds the cost of transport over 6.4 kilometres;
- (b) where the transport is undertaken by the miller, be refunded the cost of the transport over the first 6.4 kilometres only.

(2) For the purposes of subsection (1), the Control and Arbitration committee shall determine—

- (a) the distance over which a planter's canes have to be transported, having regard to the route which, in the opinion of the Control and Arbitration Committee, is the most economical; and
- (b) the rate at which the reimbursement or refund under subsection (1) is to be made.

(3) The Control and Arbitration Committee shall cause notice of any determination under this section to be published in the *Gazette* and in 3 daily newspapers, and the notice shall indicate whether the determination is provisional or final.

(4) In this section—

“cane transit site” means a factory which has closed down but which contains fully operational infrastructure with regard to—

- (a) cane sampling;
- (b) cane storage facilities;
- (c) cane unloading facilities; and
- (d) weighing of canes.

[S. 40 amended by s. 10 of Act 5 of 2014 w.e.f. 20 August 2014.]

PART VII – ARBITRATION OF DISPUTES AND APPEALS

41. Arbitration of disputes

(1) Where a dispute arises in relation to—

- (a) the boundaries of a factory area;
- (b) the transport of planters’ canes;
- (c) the quantity of sugar, scums, molasses, bagasse and other co-products accruing to a planter;
- (d) the amount paid, or the basis or method of paying, for canes supplied by a planter;
- (e) a cane contract;
- (f) the weighing of canes; or
- (g) any similar or related matter,

a party to the dispute may, not later than 21 days after the dispute arose, refer it to the Control and Arbitration Committee for arbitration and be assisted at a hearing by a law practitioner or a technical expert.

(2) The decision of the Control and Arbitration Committee on any matter referred to it under subsection (1) shall—

- (a) be in writing;
- (b) set out the reasons for the decision; and
- (c) be communicated to every interested party.

(3) Where a dispute referred to the Control and Arbitration Committee is resolved by an agreement, the agreement shall—

- (a) be recorded in writing; and
- (b) be signed by the parties to the dispute.

42. Review of determinations

(1) Any party who is aggrieved by a decision of the Control and Arbitration Committee under section 22 or 24 or a final determination of the Control and Arbitration Committee under section 29, 31, 39 or 40 may, within 21 days of the date of the decision or determination, request the Control and Arbitration Committee to review the matter by forwarding to it a notice stating the grounds on which the request is made.

(2) On receipt of a notice under subsection (1), the Control and Arbitration Committee shall notify the appellant in writing of the date fixed for the hearing of the review and cause a notice to be published in the *Gazette* and in 3 daily newspapers informing interested parties of the review and of the date of the hearing.

(3) (a) The applicant or any interested party may, on the date fixed for the hearing of a review under subsection (2), appear before the Control and Arbitration Committee and show cause for or against its decision or determination.

(b) For the purpose of paragraph (a), a party may be assisted by a law practitioner or technical expert.

(4) The Control and Arbitration Committee may, after hearing the interested parties, confirm or vary its decision or determination and shall cause a notice of the confirmation or variation to be published in the Gazette.

43. Appeals to Supreme Court

Any party who is aggrieved by a decision of the Control and Arbitration Committee under section 41 or 42 may appeal against the decision to the Supreme Court in such manner as may be provided by rules made by the Chief Justice.

PART VIII – FINANCIAL PROVISIONS AND ACCOUNTS

44. Cess on sugar produced

(1) The Authority shall be financed mainly by means of a cess on sugar produced.

(2) (a) The cess shall be levied every year and in such manner and at such rate not exceeding 4 per cent of the ex-Mauritius Sugar Syndicate price as, after consultation with the Board, may be prescribed.

(b) In paragraph (a)–

“ex-Mauritius Sugar Syndicate price” means the uniform average net price per tonne of sugar referred to in the Articles of Association of the Mauritius Sugar Syndicate.

45. Rate of charges

(1) The Board may, with the approval of the Minister, fix the rate of charges to be paid to the Authority in respect of–

- (a) the storage, bagging, packing, loading and unloading of sugar, at or from the sugar terminal;
- (b) the storage, loading and unloading of any commodity other than sugar, at or from the sugar terminal; or
- (c) any other services offered by the Authority.

(2) The Mauritius Sugar Syndicate shall, at the request of the Board and without incurring any liability to any person, pay to the Authority the charges leviable under subsection (1) (a) at such time and in such manner as the Board may determine.

(3) The Mauritius Ports Authority shall, after consultation with the Board, pay to the Authority the charges leviable under subsection (1) (b).

46. General Fund

(1) The Authority shall set up a General Fund—

- (a) into which all monies received from any source by the Authority shall be paid; and
- (b) out of which all payments required to be made for the purposes of this Act by the Authority shall be effected.

(2) The Authority may, for the purposes of subsection (1) (b), make provision for—

- (a) the remuneration of its employees and payment of their pensions, gratuities or allowances;
- (b) the purchase of such equipment as the Board considers necessary for the purposes of this Act;
- (c) experiments, investigations and research in connection with the cane industry;
- (d) the collection of specialised statistics and other information in relation to cane, sugar and co-products which the Board considers necessary;
- (e) the formation of a library or information centre, and the preparation and publication of information concerning matters relating to the cane industry;
- (f) the promotion of exhibitions for the display of cane and sugar processes and the uses of sugar;
- (g) the setting up of laboratories, experimental stations and workshops and the provision of ancillary facilities;
- (h) specialised training or study tours for its employees and expenses in connection with their attendance at any conference concerned with cane and co-products;
- (i) the employment and remuneration of such technical advisers and instructors as the Board may determine;
- (j) the payment of fees or allowances authorised under this Act to members or any other person; and
- (k) the payment of compensation to employees of the United Docks, the stevedoring companies, Societe Noel Freres, Mauritius Jute and Textile Ltd, Central Alloc Fibre Factory and Taylor-Smith Co. Ltd or their widows in accordance with agreements between the Government of Mauritius and certain trade unions in 1979.

47. Contribution to Mauritius Sugar Syndicate by distiller-bottler or importer of rum

(1) Subject to subsection (1B), every distiller-bottler shall, in a crop year, make a contribution to the Mauritius Sugar Syndicate for distribution to planters during that crop year.

(1A) Every importer of rum shall, in respect of rum imported in a crop year for home consumption under the Excise Act, make such contribution as may be prescribed to the Authority.

(2) The contribution under subsection (1) shall be calculated at the rate of 40 rupees for each litre of absolute alcohol removed from a factory or an excise warehouse for home consumption under the Excise Act during that crop year.

(3) The Mauritius Sugar Syndicate shall convert the contribution received in respect of a crop year in terms of rate per tonne of sugar by dividing the total contribution by the total tonnes of sugar accruing to planters to arrive at a value per tonne.

(4) The value per tonne under subsection (3) for every crop year shall, on approval by the Authority, be distributed to planters in 2 instalments, the first not later than 31 December and the other not later than 30 June in the following year.

(5) In this section—

“absolute alcohol” and “distiller-bottler” have the same meaning as in the Excise Act;

“excise warehouse” has the same meaning as in the Excise Act;

“factory” has the same meaning as in the Excise Act;

“rum” has the same meaning as in the Excise Act.

[S. 47 amended by s. 13 (b) of Act 26 of 2013 w.e.f. 19 March 2012; s. 33 of Act 18 of 2016 w.e.f. 7 September 2016; s. 18 (3) (i) (i), (ii), insofar as it relates to subsection (1A), (iv) and (vi) of Act 34 of 2016 w.e.f. 1 January 2017.]

48. Donations and exemptions

(1) Article 910 of the Code Civil Mauricien shall not apply to the Authority.

(2) Notwithstanding any other enactment, the Authority shall be exempt from payment of any registration duty, fee or charge in respect of any document under which the Authority is the sole beneficiary.

49. Transfer of property and borrowing

(1) The Authority shall not, except with the approval of the Minister—

(a) sell or exchange any property or make any investment or donation; or

(b) subject to subsection (2) (a), borrow any money.

(2) (a) The Authority shall not borrow any money except for the purpose of carrying out its objects under this Act.

(b) The Government may, subject to such terms and conditions as it may determine, guarantee the performance of an obligation undertaken by the Authority pursuant to the borrowing of any money.

(3) Where the Authority has borrowed any money, it shall make adequate provision for—

- (a) the redemption of the loan at due times; and
- (b) the payment of interest and other charges and expenses incurred in connection with the loan.

50. Estimates

(1) The Authority shall submit to the Minister, not later than 30 September in every year, an estimate of the income and expenditure of the Authority for the next financial year for his approval.

(2) Where the Minister gives his approval under subsection (1), he may direct the Authority to amend the estimate in respect of any item in such manner as he may determine.

51. Execution of documents

No deed or other document shall be executed or signed by or on behalf of the Authority unless it is signed by—

- (a) the Chairperson or, in his absence, any other member designated by the Board; and
- (b) the Chief Executive Officer or, in his absence, any other employee designated by the Board.

52. Annual report

(1) The Board shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Minister, together with an audited statement of accounts on the operations of the Authority, in respect of every financial year.

(2) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited accounts of the Authority before the Assembly.

(3) The auditor to be appointed under section 5 (1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

[S. 52 amended by s. 11 of Act 5 of 2014 w.e.f. 20 August 2014.]

53. Raising of funds

(1) The Authority may, with the approval of the Minister to whom responsibility for the subject of finance is assigned, raise funds for its requirements on such terms and conditions as the Board may determine, by—

- (a) the issue of bonds, debentures or certificates of indebtedness; or
- (b) negotiations or arrangements with any financial institution for overdrafts.

(2) A debenture issued by the Authority may be made the subject of a fixed or floating charge, or any charge of a similar nature authorised to be created by an enactment.

(3) The Authority shall keep at its principal place of business—

- (a) a register of debentures issued by the Authority; and
- (b) a copy of every outstanding debenture or, in the case of a uniform series of debentures, a copy of each of the series.

(4) The register of debentures shall, in respect of every transaction entered in it, show—

- (a) the names of the parties;
- (b) the principal sum payable;
- (c) the date of repayment; and
- (d) such other particulars as may be prescribed.

(5) The register required to be kept under this section shall be made available for inspection by any creditor of the Authority, free of charge, or by any other person, on payment of the prescribed charge, and the person making the inspection may make copies of any part of the register.

54. Pledging of debentures

(1) A debenture issued by the Authority may be given in pledge in all civil and commercial transactions by instrument in writing signed by the pledger and the pledgee.

(2) The instrument shall be in such form as may be approved by the Board and shall state—

- (a) the nature of the debt in respect of which the pledge is given;
- (b) that the debenture issued to the pledger has been delivered to the pledger in warranty of the debt.

(3) Notwithstanding Articles 2074 and 2075 of the Code Civil Mauricien, a pledge given under this section shall be valid as regards the parties to it or any third party.

(4) Subject to this Act, Articles 2073 to 2099 and 2112 to 2129 of the Code Civil Mauricien shall apply to a pledge effected under this Act.

(5) Where the Authority is satisfied that a pledge given under this section has been redeemed, it shall cancel the endorsement on the debenture and make an entry to that effect in the register of debentures.

PART IX – MISCELLANEOUS

55. Liability for damage

(1) where damage is done to any property of the Authority by a vessel or vehicle or by any person employed in or about the vessel or Vehicle, the cost of making good the damage may be recovered by the Authority from the master, owner or person in charge of the vessel or vehicle.

(2) The Authority may detain a vessel or vehicle referred to in subsection (1) until the costs of making good the damage have been paid to the Authority or security has been given to the Authority for the amount of the damage.

56. Lien on vessel, vehicle or cargo

(1) Notwithstanding any other enactment, the Authority may detain any vessel, vehicle or cargo in respect of which fees or charges have not been fully paid and the rights of the Authority over the vessel, vehicle or cargo shall have priority over any debt other than a debt due to the Government.

(2) Notwithstanding any other enactment but subject to subsection (1) and sections 5 and 6 of the Mauritius Sugar Syndicate Act, no sugar delivered to the Authority shall be attached, detained or levied upon for or in respect of any debt or claim due by the person by whom or on whose behalf the sugar is so delivered.

57. Limitation of liability

(1) The Authority shall not be liable to any person in respect of—

- (a) any loss or damage caused to a vessel or vehicle unless the actual fault or liability of the Authority is proved; or
- (b) any failure or delay in the delivery of a commodity in the course of the operations of the Authority, where the failure or delay arises out of a riot, industrial dispute, civil commotion, war or act of God, of is not occasioned by the fault or negligence of the Authority.

(2) Where the Authority is liable in respect of any matter specified in subsection (1), the damages shall be limited to the actual loss or damage, net of other losses.

58. Control and management of quays

(1) Where the facilities provided by the Authority relate to a quay, the quay shall be managed and controlled by the Mauritius Ports Authority.

(2) The Mauritius Ports Authority may, in relation to the services offered by it under subsection (1), levy such charges and fees as it may determine.

(3) The Mauritius Sugar Syndicate shall, without incurring any liability to any person, pay to the Mauritius Ports Authority the charges and fees leviable under subsection (2) in respect of sugar at such time and in such manner as the Minister may approve.

59. Validity of thumb print or mark

Where a party to—

- (a) a cane contract; or
- (b) a writing witnessing the receipt of money paid in respect of—
 - (i) the supply of canes;

- (ii) compensation payable in respect of canes or sugar; or
- (iii) advances to a planter,

is unable to sign, the thumb print or mark of that party, if attested by the signatures of 2 persons, shall have the same legal effect as if the party had signed his name.

60. Protection from liability

(1) Subject to section 58, no liability, civil or criminal, shall be incurred by the Authority, a member, an employee, or a person appointed as member of the Research and Development Committee, the Control and Arbitration Committee or any other committee set up under this Act in respect of any act done or omitted in good faith in the performance of its or his functions or exercise of its or his powers under this Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act, and for the purposes of that Act, every member, employee, or person appointed as member of the Research and Development Committee, the Control and Arbitration Committee or any other committee set up under this Act shall be deemed to be a public officer or a person lawfully engaged, authorised or employed in the performance of a public duty.

61. Confidentiality

No member, employee, or person appointed as member of the Research and Development Committee, the Control and Arbitration Committee or any other committee set up under this Act shall disclose to any unauthorised person any matter which comes to his knowledge in the performance of his functions.

62. Offences

Any person who—

- (a) without the Board's authorisation, uses the name or the logo of the Authority; or
- (b) contravenes this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to a term of imprisonment not exceeding 2 years.

63. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for—

- (a) the levying of fees or charges;
- (b) the control of activities related to the manufacture of sugar and co-products;
- (c) the management of the sugar terminal
- (d) the collection of any contribution to be made to the Authority from the sale of sugar on the local market; or

- (e) prescribing anything that may or is required to be prescribed under this Act.

64. – 67. –

(g) Any person employed on the permanent and pensionable establishment of a former organisation may, within 30 days of 19 March 2012, instead of a transfer under paragraph (c), be offered the option to—

- (i) be redeployed, so far as is practicable, to a Ministry, a Government Department or a statutory corporation, where a vacancy in a similar position is available; or
- (ii) retire on the ground of abolition of office and be paid his pension benefits in accordance with the Pensions Act, the Statutory Bodies Pension Funds Act or such other pension scheme as may be applicable to his former organisation.

(h) (i) Subject to paragraph (i), any person employed on the permanent and pensionable establishment of a former organisation against whom a disciplinary inquiry or other proceedings are pending as at 19 March 2012—

- (A) who is not interdicted, shall be transferred to the permanent and pensionable establishment of the Authority on terms and conditions which shall be not less favourable than those of his previous employment;
- (B) who is interdicted, may opt to—
 - (I) be transferred to the permanent and pensionable establishment of the Authority on terms and conditions which shall be not less favourable than those of his previous employment; or
 - (II) retire on the ground of abolition of office and be paid pension benefits in accordance with the Pensions Act, the Statutory Bodies Pension Funds Act or such other pension scheme as may be applicable to his former organisation,

where no disciplinary charge is subsequently found proved against him.

(ii) For the purposes of paragraph (g) and of this paragraph, the date of a person's retirement on the ground of abolition of office shall be 19 March 2012.

(i) Any disciplinary inquiry or proceedings pending at 19 March 2012 against a person employed on the permanent and pensionable establishment of a former organisation shall be taken up, continued or completed by the Permanent Secretary of the Ministry, and any resulting order or decision shall have the same force and effect as if made by the former organisation.

(j) Notwithstanding any other enactment, the contract of every person employed on a fixed term performance contract by a former organisation which is in force at 19 March 2012 shall be deemed to have been entered into with the Authority and shall remain governed by its existing terms and conditions.

(ja) Notwithstanding paragraphs (b), (c), (d), (e), (f), (g) and (j), an employee of MSIRI who has not opted to be transferred to the Authority and has retired pursuant to the Voluntary Retirement Scheme shall be eligible to an actuarially calculated contributory retirement pension in accordance with section 20 (8A) of the National Pensions Act.

(k) The assets and funds of every former organisation shall, at 19 March 2012, vest in the Authority.

(l) Subject to paragraphs (c) to (g), all rights, obligations and liabilities subsisting in favour of or against a former organisation shall, at the commencement of this Act, continue to exist under the same terms and conditions in favour of or against the Authority.

(la) Any proceedings, whether judicial or extrajudicial, started by or against a former organisation and pending at 19 March 2012 shall be deemed to have been started by or against the Authority.

(m) Any licence, certificate, permit or authorisation issued, registration made or application granted by a former organisation, as the case may be, which is in force at 19 March 2012, shall be deemed to have been issued, made or granted by the Authority and shall remain valid for the period specified in the licence, certificate, permit, authorisation, registration book or any other document, as the case may be.

(n) An application made to a former organisation which is pending at 19 March 2012 shall be considered to have been made to the Authority and shall be dealt with in accordance with this Act and any other relevant enactment.

(o) (i) Every cane contract made under the repealed Cane Planters and Millers Arbitration and Control Board Act shall be considered to have been made under this Act.

(ii) Any dispute which, at 19 March 2012, has been referred to the Control Board shall be considered to have been referred to and may be dealt with by the Control and Arbitration Committee.

(p) For the purposes of section 29, Belle Vue Milling Company Ltd, Compagnie Usinière de Mon Loisir Ltée, Deep River Beau Champ Milling Co. Ltd, FUEL Sugar Milling Company Ltd, Medine Sugar Milling Co. Ltd and Omnicane Milling Operations Ltd shall, at 19 March 2012, be deemed to have obtained a permit from the Control and Arbitration Committee to operate as factories for the manufacture of sugar.

(q) Any debentures issued by the MSTC shall be deemed to have been issued by the Authority.

(r) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

[S. 66 amended by s. 12 of Act 5 of 2014 w.e.f. 19 March 2012 and 11 September 2012.]

67. —
