

TOBACCO PRODUCTION AND MARKETING ACT

Cap 16 – 31 July 1943

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TOBACCO PRODUCTION AND MARKETING ACT

EDITORIAL NOTE: The words “Comptroller of Customs” have been deleted and replaced by the words “Director-General”, following the passing of Act 33 of 2004.

1. Short title

This Act may be cited as the Tobacco Production and Marketing Act.

2. Interpretation

In this Act—

“acreage” means an area measured—

- (a) on the basis of 40,000 square feet (french measure) per acre; or
- (b) at the discretion of the Board, on the basis of the number of tobacco plants;

“air curing” means the process of curing green tobacco without the aid of artificial heat, except to the extent necessary to dry the green tobacco or reduce any excessive moisture in it;

“barn” means a building used for the curing of green tobacco;

“Board” means the Tobacco Board;

“bonded warehouse” means a building appointed by the Director-General, in which leaf tobacco purchased by a manufacturer may be stored pending payment of excise duty;

“certificate” means a certificate issued under section 17;

“curing” means the process of yellowing, fixing the colour and drying green tobacco for producing a type of tobacco;

“Director-General” means the Director-General of the Mauritius Revenue Authority or any officer deputed by the Director-General to act on his behalf;

“fire curing” means the process of curing green tobacco with the aid of artificial heat obtained from open fires inside a barn;

“flue curing”—

- (a) means the process of curing green tobacco with the aid of artificial heat in a barn fitted with flues for that purpose;
- (b) does not include air curing or the process of drying leaf tobacco in a barn fitted with flues for flue curing;

“green tobacco” –

- (a) means tobacco leaves which have not been subjected to a process of curing; and
- (b) includes tobacco plants and tobacco plantations;

“leaf tobacco” means tobacco leaves which are in the process of being cured or which have been cured, and includes tobacco in the form of strips and stems or such other form as may be approved by the Board;

“manufactured tobacco” means tobacco which has undergone processing for use as cigarettes, cigars and in such other form as may be approved by the Board;

“member” means a member of the Board and includes the Chairperson of the Board;

“Minister” means the Minister to whom responsibility for the subject of agriculture is assigned;

“producer” means a producer of tobacco registered under this Act;

“sun curing” –

- (a) means the process of curing green tobacco by exposing it to the sun; and
- (b) includes the process of subjecting green tobacco to wilting prior to exposing it to the sun;

“tobacco” means a plant belonging to the species *Nicotiana Tabacum* and *Nicotiana Rustica*;

“tobacco product” means tobacco which has undergone processing for use as snuff, chewing tobacco and in such other form as may be approved by the Board;

“type of tobacco” means any leaf tobacco which has been air cured, flue cured, fire cured, or sun cured;

“warehouse” means a tobacco warehouse established by the Board under this Act.

[S. 2 amended by Act 42 of 1985; Act 28 of 1997.]

PART I – THE TOBACCO BOARD

3. Production and sale of leaf tobacco

The control of the production and the sale of leaf tobacco in Mauritius is vested in the Tobacco Board.

4. Status of Board

The Board shall be a body corporate and shall, subject to this Act, have all the powers of a natural person.

5. Composition of Board

(1) The Board shall consist of—

- (a) a Chairperson, to be appointed by the Minister;
- (b) the Director-General who shall be the Vice-Chairperson;
- (c) the Permanent Secretary of the Ministry responsible for the subject of agriculture or his representative;
- (d) a representative of the Ministry responsible for the subject of finance;
- (e) a representative of the Ministry responsible for the subject of trade;
- (f) the General Manager of the Board; and
- (g) such other members, not exceeding 8, as may be appointed by the Minister.

(2) Every *ex officio* member of the Board shall remain a member for as long as he holds the office by virtue of which he became a member, and every other member of the Board shall hold office for one year but shall be eligible for reappointment.

(3) The Chairperson and Vice-Chairperson shall be *ex officio* members of any committee of the Board.

[S. 5 amended by Act 42 of 1985.]

6. —

7. Power of Board to act

(1) The Board may act notwithstanding any vacancy among its members, provided the number of the members is not reduced below 6.

(2) The Board may, every financial year, appoint committees from among its members, and may delegate to any committee so appointed any of its powers other than the power to borrow money or to pledge, mortgage, or create a charge on, its property.

(3) Every committee appointed under subsection (2) shall report its proceedings to the Board and shall comply with the Board's directions, and shall cease to hold office at the expiry of the financial year for which it was appointed.

8. Meetings of Board

The quorum of the Board shall be 6 and the quorum of a committee 3.

9. Powers of Board

The Board may—

- (a) provide, in such form as it may determine, but subject to the Minister's approval, for the conditions of service of officers and in particular, but without prejudice to the generality of this power, deal with—
 - (i) the appointment, dismissal, discipline, pay and leave of officers;

- (ii) appeals by officers against dismissal or other disciplinary measures;
- (iii) the payment of gratuities to officers and the establishment of pension or provident schemes for their benefit;
- (b) fix the grades of leaf tobacco and the purchase and sale prices for those grades;
- (c) subject to any excise regulations, manufacture and sell tobacco extract, tobacco dust for insecticidal purposes, and nicotine;
- (d) set up such schemes relating to production, marketing and control of tobacco in Mauritius, or such other schemes, as may be approved by the Minister;
- (e) classify, in such manner as may be prescribed, cigarettes destined for sale on the local market into different categories;
- (f) control the import of leaf tobacco, manufactured tobacco and tobacco products in accordance with section 29A.

[S. 9 amended by Act 4 of 1995; Act 28 of 1997; s. 20 of Act 23 of 2001 w.e.f. 11 August 2001; GN 44 of 2002; s. 19 (a) of Act 28 of 2004 w.e.f. 26 August 2004; s. 31 of Act 14 of 2005.]

9A. General Fund

(1) The Board shall establish a General Fund—

- (a) into which shall be paid—
 - (i) all monies, rents, fees, charges and other dues received by the Board;
 - (ii) all sums received from the Consolidated Fund; and
 - (iii) all sums which may lawfully accrue to the Board; and
- (b) out of which shall be effected—
 - (i) all payments, other than those under section 9B (1) (b), required to be made by the Board and all charges on the Board;
 - (ii) all payments required to be made to finance such schemes as may be set up under section 9 (d).

(2) Any sum standing to the credit of the Special Research Fund and Mechanisation and Inputs Fund shall, at the commencement of this section, vest in the General Fund.

[S. 9A inserted by s. 19 (b) of Act 28 of 2004 w.e.f. 26 August 2004.]

9B. Warehouse Fund

(1) The Board shall establish a Warehouse Fund—

- (a) into which shall be paid the proceeds from the sale of leaf tobacco and other income related to warehouse operations; and
- (b) out of which all payments required to be made in respect of leaf tobacco and warehouse operations shall be effected.

(2) Any sum standing to the credit of the Building and Equipment Fund shall, at the commencement of this section, vest in the Warehouse Fund.

[S. 9B inserted by s. 19 (b) of Act 28 of 2004 w.e.f. 26 August 2004.]

9C. Accounts and audit

(1) The Board shall, not later than 3 months before the commencement of each financial year, submit to the Minister an estimate of its income and expenditure for that financial year.

(2) The Board shall, not later than 6 months after the close of every financial year, forward to the Minister a report on the activities of the Board together with its audited accounts in respect of that financial year.

(3) The Board shall furnish to the Minister such information with respect to the activities of the Board, in such manner and at such time, as he may specify.

(4) The Minister shall, at the earliest available opportunity, lay on the table of the National Assembly a copy of the annual report and audited accounts referred to in subsection (2).

[S. 9C inserted by s. 19 (b) of Act 28 of 2004 w.e.f. 26 August 2004.]

10. Remuneration of members

The Board may, with the approval of the Minister, pay a fee to its members.

11. Exemption from duties and fees

The Board shall be exempt from all stamp duties and registration fees on all documents executed by it or on its behalf.

PART II – CONTROL OF PRODUCTION

12. Planting of tobacco

(1) No person shall—

- (a) sow, plant, grow or cultivate tobacco on any land; or
- (b) allow tobacco to be sown or planted or to grow or to be cultivated on land in his occupation,

unless he is a producer, and is in possession of a certificate for the current year.

(2) No producer shall—

- (a) cultivate tobacco on a land on which any other crop is being raised; or
- (b) raise any other crop on land on which tobacco is planted,

unless he has obtained the written permission of the Board.

(3) Any person who contravenes this section shall commit an offence.

13. Registration of producers

(1) The Board shall keep a register of producers, and may enter in it the names of such other persons as the Board may determine.

(2) (a) The register shall be open for inspection at the office of the Board on such day and time as the Board may prescribe.

(b) Any person shall be entitled—

(i) to be supplied with a copy of the register or any part of it on payment of the fee determined by the Board; or

(ii) take extracts from the register for his own use free of charge.

14. Exemption from registration

This Act shall not apply to the Ministry responsible for the subject of agriculture, but the Board shall purchase any leaf tobacco produced by that Ministry when tendered to the Board for purchase.

15. Removal of name from register

(1) The Board may, where it thinks fit, refuse to issue a certificate for such period as it thinks fit to any producer who has been convicted of an offence under this Act or against whom proceedings for such an offence have been commenced.

(2) The Board, on being satisfied that a producer—

(a) has been found guilty of a breach of this Act or has failed to comply with this Act or any regulations or order of the Board;

(b) has, through his negligence, persistently failed to produce leaf tobacco of the required standard;

(c) has ceased to grow tobacco; or

(d) though purporting to be a producer, is not in the opinion of the Board, a producer,

may remove the name of that producer from the register.

16. Allotment of basic quotas

(1) The Board shall allot to every producer a basic quota equal to the average annual quantity of leaf tobacco delivered by the producer to the warehouse during such period as the Board may determine, or the Board may allot a basic quota as it considers equitable.

(2) The Board shall allot to every producer a basic acreage equal to the average annual acreage cultivated in tobacco by that producer during such period as the Board may determine, or the Board may allot a basic acreage as it considers equitable.

(3) The Board may, where it thinks necessary, revise basic quotas and basic acreages or the basic quota and basic acreage of any producer.

17. Allotment of annual quotas

(1) The Board shall every year determine the quantity of leaf tobacco required, and shall issue to each producer the following certificates—

- (a) a certificate in respect of a seed bed in which shall be specified—
 - (i) the situation of the seed bed;
 - (ii) the variety of tobacco the grower may sow;
 - (iii) the date of expiry of the certificate; and
 - (iv) such other particulars as the Board may determine;
- (b) a certificate in respect of a tobacco plantation in which shall be specified—
 - (i) the locality where the tobacco may be grown;
 - (ii) the quota allotted to the producer for that year;
 - (iii) the acreage the producer may plant;
 - (iv) the type and variety of tobacco the producer may produce; and
 - (v) such other particulars as the Board may determine.

(2) A producer to whom certificates have been issued under subsection (1) shall, on being required so to do by the Board, the Director-General, an officer of the Ministry responsible for the subject of agriculture, or a person deputed in that behalf by the Chairperson of the Board or the Director-General, produce any of the certificates for inspection.

(3) (a) In this subsection, “specified” means specified in a certificate issued under subsection (1).

- (b) A producer who—
 - (i) sows any tobacco other than a specified tobacco;
 - (ii) plants any tobacco in any locality other than a specified locality;
 - (iii) produces any type or variety of tobacco other than a specified type or variety;
 - (iv) sows or has in his possession any tobacco seed other than the tobacco seed supplied to him or approved by the Board;
 - (v) collects any tobacco seed without prior authorisation by the Board;
 - (vi) fails to destroy any tobacco plant, seed bed or nursery bed within one week of the date of expiry of a certificate issued to him under this section;

(vii) fails to produce or satisfactorily account for any certificate issued to him under this section; or

(viii) cultivates more than the specified acreage,
shall commit an offence.

(4) The quota granted to a producer in any year shall bear to that producer's basic quota the like proportion as the total quantity of leaf tobacco required by the Board bears to the total basic quotas allotted to producers.

(5) The acreage allotted to any producer in any one year shall bear to that producer's basic acreage the like proportion as that producer's quota bears to his basic quota.

(6) Where in any year the total quantity of leaf tobacco required by the Board exceeds 110 per cent of the total basic quotas allotted to producers, the Board shall allot to the producers or other persons such additional basic quotas as the Board thinks fit.

18. Ownership of basic quota and acreage

(1) Where a basic quota and a basic acreage are allotted to a producer in respect of land which is occupied by him under a lease or other agreement, the basic quota and basic acreage shall be considered as belonging to the occupier and not to the owner of the land.

(2) (a) Where a basic quota and a basic acreage are allotted to a producer in respect of land which is owned by him, the basic quota and basic acreage shall be considered as belonging to the producer.

(b) Where the producer disposes of the land by sale, lease or otherwise, the whole of the basic quota and of the basic acreage allotted to him may be transferred to the new owner or to the lessee, or the basic quota and basic acreage may, by agreement, be divided between the former owner and the new owner or the lessee.

(3) (a) A transfer or agreement under subsection (2) shall be subject to the approval of the Board.

(b) On the approval of the transfer or agreement by the Board, the new owner or the lessee shall be entitled to be registered as a producer and shall, as the case may be, be allotted the whole of the basic quota and basic acreage or proportion agreed on, and the former owner's basic quota and basic acreage shall be cancelled or reduced accordingly.

(c) Where the lessee, to whom the whole or part of the basic quota and basic acreage have been transferred, ceases to be the lessee of the land, the basic quota and basic acreage transferred to him shall revert to the lessor, and the name of the lessee shall be removed from the register of producers in respect of that basic quota and basic acreage, and the name of the lessor shall be entered in the register.

(4) (a) Where a producer sells his barn together with the land on which it stands to any other person, that person may make a written application to the Board for a transfer to him of the basic quota and basic acreage allotted to the producer.

(b) The Board may, on receiving an application under paragraph (a), reject the application or approve the transfer on such terms and conditions as it thinks fit to impose.

(c) Where the Board approves the transfer under paragraph (b), the applicant shall be entitled to be registered as a producer.

(5) (a) Where a producer is unable through old age or incapacity to cultivate tobacco, he may make a written application to the Board for the transfer of the basic quota and basic acreage allotted to him to any of his eventual heirs or other person whom he has designated.

(b) The Board may, on receiving an application under paragraph (a), reject the application or approve the transfer on such terms and conditions as it thinks fit to impose.

(c) Where the Board approves the transfer under paragraph (b), the person designated under paragraph (a) shall be entitled to be registered as a producer.

[S. 18 amended by Act 27 of 1982; Act 4 of 1995.]

19. Persons deemed to be producers

(1) Where a producer dies, becomes subject to a legal disability or enters into a composition or scheme of arrangement with his creditors, and the property in, or control of, the tobacco is transferred to an heir, executor, legatee, trustee or other person, the Board shall transfer the certificates issued to the original producer to the heir, executor, legatee, trustee or other person, and until the transfer, the Board may appoint such person as it thinks fit to cultivate the plantation of the original producer and supply the leaf tobacco to the Board.

(2) Where a person is appointed by the Board under subsection (1), the balance of any amount remaining after the payment of all expenses incurred by that person shall be paid over to the heir, executor, legatee, trustee or other person to whom the certificates are transferred.

(3) (a) The person to whom the certificates have been transferred under this section shall, while he has any interest in and control over any green tobacco and leaf tobacco or of any of the proceeds of green tobacco and leaf tobacco, be deemed to be a producer.

(b) The Board shall have the same powers and obligations in connection with leaf tobacco delivered to it under subsection (1) as if the leaf tobacco had been delivered by the original producer.

(c) Any basic quota and basic acreage allotted under section 16 to the original producer may be transferred in whole or in part to the heir, executor, legatee, trustee, or other person to whom the certificates have been transferred under this section or, where the heir or heirs are minors, to the guardian of those minors, or the Board may transfer the whole or part of the basic quota and basic acreage to any other person it thinks fit.

20. Producers to submit returns

(1) (a) Every producer shall, before a certificate is issued to him, submit to the Board a statement in such form as the Board may direct, showing the number and situation of all buildings he intends to utilise for the curing and storing of green tobacco and of leaf tobacco.

(b) No producer shall utilise any buildings for the curing and storing of green tobacco and of leaf tobacco other than those which have been approved by the Board and are designated by a specific number.

(c) The Board may approve or refuse to approve any building for the curing and storing of green tobacco and leaf tobacco.

(2) Where a producer fails to provide suitable buildings approved by the Board for the curing and storing of green tobacco and of leaf tobacco within such period as the Board may determine, the Board may by resolution decide that his name shall be removed from the register, and his name shall be removed accordingly, and the Board may allot the basic quota and basic acreage of the producer to some other person.

21. Producers to keep books

Every producer shall keep, in such form as the Board may prescribe, such books and render such returns as the Board may require, and any producer who fails to keep books in the form prescribed by the Board or makes a false entry in the books or fails to submit the required returns, or makes any false statement in the returns, shall commit an offence.

22. Transfer of land growing tobacco

(1) Where any land on which tobacco is under cultivation by a producer is transferred by sale or otherwise, the certificates may, with the approval of the Board, and subject to any agreement which may have been made under section 18 (2), be transferred on application being made to the Secretary of the Board, and the Board shall have the same power and be under the same obligations in connection with those certificates as if the certificates had not been transferred, and the person to whom the certificates are transferred shall be entitled to have his name entered as a producer in the register of producers, and the producer whose certificates are transferred shall, subject to any agreement under section 18 (2), have his name erased from the register of producers.

(2) In the case of a transfer under subsection (1), the transferee shall be under the same obligations in connection with the certificates as if the certificates had been issued to him by the Board.

23. Sale and delivery by producers

(1) Subject to this Act—

- (a) every producer shall sell and deliver all leaf tobacco produced by him to the Board at a warehouse, and no producer shall sell or transfer, any leaf tobacco which he has produced to any person other than the Board;

(b) no producer shall sell or transfer any green tobacco to any other person except as provided in sections 19 and 22.

(2) A producer may, with the written authority of the Board, sell or transfer any young tobacco plant to any other producer.

(3) Any producer who contravenes this section shall commit an offence.

24. Possession of green and leaf tobacco

(1) Notwithstanding any other enactment—

(a) no person, other than a producer or the Ministry responsible for the subject of agriculture, shall receive or have in his possession any green tobacco;

(b) no person, other than a producer, a manufacturer, the Ministry responsible for the subject of agriculture or the Board, shall receive or have in his possession, or deposit or allow to be deposited in premises under his control or occupation, any leaf tobacco;

(c) paragraph (b) shall not apply in respect of any leaf tobacco stored in a bonded warehouse.

(2) Any person who contravenes this section shall commit an offence.

25. Removal of leaf tobacco

(1) No leaf tobacco shall be removed from or transported to any bonded warehouse on a public holiday and on any other day between 6 pm and 6 am.

(2) Any person who contravenes this section shall commit an offence.

[S. 25 amended by Act 4 of 1995.]

PART III – MARKETING PROVISIONS

26. Establishment of warehouses and stores

(1) The Board may establish and maintain, at such place as it thinks convenient, warehouses where all leaf tobacco shall be received from producers, and the Board may acquire such machinery and equipment for any warehouse as it thinks necessary.

(2) The Board may establish and maintain such stores as it thinks necessary for the storage of leaf tobacco prior to sale, and for the storage of leaf tobacco on behalf of manufacturers pending payment of excise duty on it, and the Board may acquire such machinery and equipment for such stores as it thinks necessary.

(3) Notwithstanding subsections (1) and (2), the Board may, whenever it does not require its warehouses or stores for the purposes specified in those subsections, rent such stores or warehouses for such other purposes and on such terms and conditions as it thinks fit.

[S. 26 amended by Act 28 of 1997.]

27. Purchase of leaf tobacco by Board

(1) Subject to this section, the Board shall purchase all leaf tobacco tendered to it by a producer.

(2) The Board may refuse to purchase, or may fix a special price for, leaf tobacco produced in excess of the quota allotted to a producer under section 17, but all that leaf tobacco shall be delivered to the Board.

(3) (a) The Board may refuse to purchase leaf tobacco tendered to the Board after such date as the Board may fix as the last date for the tender to it of leaf tobacco of the season, and any producer who is found in possession of any green or leaf tobacco after that date shall commit an offence and the green tobacco or leaf tobacco shall be seized by the Board.

(b) Where a producer, owing to any circumstances beyond his control which render it impossible for him to harvest his tobacco in time, fails to tender his leaf tobacco to the Board within the period fixed, the Board may extend the period.

(4) Producers shall deliver their leaf tobacco at a warehouse in such manner and condition as may be prescribed, and, on delivery, the leaf tobacco shall be consigned to grades by an officer.

(5) (a) The Board shall purchase all leaf tobacco according to grade.

(b) The grades and the prices for leaf tobacco may be fixed by the Board, and any alteration to them other than any special prices the Board may fix for the purchase of leaf tobacco produced in excess of the quota allotted to a producer, shall be published in the *Gazette* 2 weeks prior to their coming into operation.

(6) (a) A producer who is dissatisfied with the decision of a grading officer regarding the grade of leaf tobacco delivered, or the condition or manner in which the leaf tobacco is delivered, may appeal to the Board or to a committee appointed by the Board, against the decision in such manner and within such period as may be prescribed.

(b) Pending the decision of the Board or committee, the leaf tobacco shall be stored at the producer's risk, and the Board shall not be responsible for any loss or damage due to the excessive moisture content of the leaf tobacco or any cause beyond the control of the Board.

(c) The decision of the Board or of the committee, on any such appeal, shall be final.

(7) The acceptance of a receiving slip by a producer shall be an acceptance of the decision of the grading officer, and no appeal shall in such a case lie against such decision.

(8) Payments for leaf tobacco delivered by producers shall be made in such manner as the Board may determine.

28. Leaf tobacco delivered

All leaf tobacco accepted by the Board from a producer, or which is forfeited to the Board, shall become the property of the Board, and the Board may sell, pack, adapt for sale, export, borrow money on the security of it, and may destroy or utilise it for any purpose that the Board may decide upon.

29. Purchase and possession by manufacturers

(1) Subject to section 29A, no manufacturer shall purchase or offer to purchase leaf tobacco from any person other than the Board, or receive or have in possession any leaf tobacco which has not been purchased from the Board.

(2) A manufacturer who applies for the Board's approval for a transfer under subsection (1) (b) shall state in his application the number of bales, the weight and grade of leaf tobacco he desires to transfer and the name of the manufacturer to whom the leaf tobacco is to be transferred.

[S. 29 amended by Act 4 of 1995.]

29A. Import of leaf tobacco

(1) A manufacturer may apply to the Board for a licence to import leaf tobacco.

(2) A person may apply to the Board for a licence to import manufactured tobacco and tobacco products.

(3) The Board may, in writing—

(a) reject; or

(b) approve on such terms and conditions as it deems fit,

an application under subsections (1) and (2).

[S. 29A inserted by Act 4 of 1995; Act 28 of 1997.]

30. Sale by Board

The sale of leaf tobacco by the Board to persons in Mauritius shall be at such prices for each grade as may be determined by the Board and published in the *Gazette*, and shall otherwise be subject to regulations made under this Act.

31. Storage of leaf tobacco

(1) (a) The Board may, at the request of a manufacturer who has purchased leaf tobacco from it, accept the leaf tobacco for storage in such stores as may be established for manufacturers' leaf tobacco, subject to such conditions and to the payment of such charges as may be prescribed.

(b) The manufacturer shall pay for such storage such monthly charges on demand as the Board may determine.

(2) The Board shall insure leaf tobacco stored by it under subsection (1) against loss or damage due to fire, rain, tidal wave, flood, hurricane or similar cause.

32. Export of leaf tobacco

The Board may export Mauritius leaf tobacco.

PART IV – WAREHOUSES AND BONDED WAREHOUSES

32A. Storage in bonded warehouses

(1) A manufacturer who has purchased leaf tobacco from the Board may, with the approval of the Director-General, store the leaf tobacco purchased in a bonded warehouse pending payment of an excise duty payable.

(2) No leaf tobacco shall be removed to a bonded warehouse until the necessary account has been taken by an excise officer.

32B. Appointment of bonded warehouses

The Director-General may, by notice in writing under his hand, appoint buildings approved by him to be bonded warehouses and may direct in what manner any leaf tobacco may be stored in those buildings.

32C. Leaf tobacco to be cleared

(1) Where the Director-General, by notice published in the *Gazette*, revokes an order appointing a bonded warehouse, the excise duty on all the leaf tobacco stored there shall be paid, or the leaf tobacco shall be removed to another bonded warehouse within such time as the Director-General shall direct.

(2) All leaf tobacco not cleared or removed in accordance with subsection (1) shall be removed by order of the Director-General to a warehouse at the risk and expense of the owner.

(3) Where leaf tobacco removed to a warehouse under subsection (2) is not cleared or removed to a bonded warehouse within 2 months, it shall, after due notice published in the *Gazette*, be sold by public auction, and the proceeds of the sale shall be applied to the payment of the duty, rent and other charges and any balance shall be paid into the Consolidated Fund and shall be held at the disposal of any party who applies for payment within the next 2 years and shows that he is entitled to it.

32D. Bond by proprietor

The proprietor or occupier of a bonded warehouse shall, before any leaf tobacco is stored in it, give general security by bond, with 2 sufficient sureties, in such sum as the Director-General shall direct, for the payment of the full duty chargeable on any leaf tobacco which may be stored there.

32E. Security for transfer to warehouse

Where leaf tobacco is transferred from a warehouse to a bonded warehouse, the manufacturer who causes the leaf tobacco to be transferred shall give security by bond, with 2 sufficient sureties, in such sum as the Director-General shall direct, to cover the value of, and the excise duty on, the leaf tobacco during the transfer from the warehouse to the bonded warehouse.

32F. Proprietor of bonded warehouse

The proprietor or occupier of a bonded warehouse shall—

- (a) stack and arrange the leaf tobacco in the bonded warehouse so that reasonable access to the leaf tobacco for the purpose of examination may be had at all times;
- (b) provide sufficient lights and accurate scales and weights for the use of the excise officer in control of the bonded warehouse;
- (c) find all labour and materials necessary for the storing, examining, packing, marking, weighing and taking stock of the leaf tobacco stored there whenever the Director-General may so require;
- (d) pay the excise duty on all leaf tobacco removed from the bonded warehouse (except with the Director-General's authorisation) and on all leaf tobacco stored in the bonded warehouse and not produced to the excise officer on demand, unless the leaf tobacco is otherwise accounted for to the satisfaction of the Director-General.

32G. Opening bonded warehouse

No person shall, except with the Director-General's authorisation, open any bonded warehouse or gain access to the leaf tobacco in it.

32H. Director-General to have access

The Director-General shall have access at all hours of the day and night to every part of any bonded warehouse and may examine the leaf tobacco there, and, for that purpose, may break open the bonded warehouse.

32I. Responsibility for bonded warehouse

The proprietor or occupier of a bonded warehouse shall be responsible to the owner of any leaf tobacco stored there for the safe and proper delivery of the leaf tobacco, and Government shall incur no liability in respect of any delivery effected under the authority of an excise delivery warrant or other excise document.

32J. Compensation

No compensation shall be payable by Government to any manufacturer of leaf tobacco by reason of any damage occasioned to it in a bonded warehouse.

32K. Re-examination of leaf tobacco

Leaf tobacco stored in a bonded warehouse may be reweighed or examined by an excise officer either by direction of the Director-General or at the request and expense of the owner.

32L. Leaf tobacco not worth duty

The Director-General may cause any warehoused leaf tobacco not worth the duty payable on it to be destroyed and may remit the duty.

PART V – MISCELLANEOUS

33. Mechanisation and Inputs Scheme

The Board shall set up and manage a Mechanisation and Inputs Scheme out of which loans shall be made to producers of tobacco for—

- (a) the purchase of equipment and spare parts;
- (b) the purchase of fertilisers and chemical for use in tobacco production; and
- (c) the repair of barns.

(2) —

[S. 33 added by Act 4 of 1995; amended by Act 28 of 1997; s. 19 (c) of Act 28 of 2004 w.e.f. 26 August 2004.]

34. Power to borrow money

Subject to the approval of the Minister, the Board may, for the purpose of exercising any of its functions, borrow money in such manner and on such terms and on such security as may be arranged by it with the person from whom the money is borrowed.

[S. 34 amended by Act 48 of 1991; Act 4 of 1995.]

35. Power to lend money

(1) Subject to the approval of the Minister, the Board may lend to a producer such amount as he may require in connection with the production, sale and marketing of tobacco on such terms as to repayment and security and on such other conditions as the Board thinks fit.

(2) Where a loan made under subsection (1) is, according to the terms of the contract witnessing it, secured by a charge or privilege on the current season's crop belonging to the borrower, the loan together with interest and any commission on it shall, notwithstanding any other enactment, become a charge or privilege in preference to all other charges or privileges on the crop, and shall be paid out of the crop in the first place and in priority to all other claims privileged or otherwise which affect the crop or its produce.

[S. 35 amended by Act 48 of 1991; Act 4 of 1995.]

36. —

37. Limitation period

Notwithstanding any other enactment, any money standing to the credit of a producer or other person in the books of the Board and which has remained unclaimed for 2 years shall, if not claimed within one month of the publication in the *Gazette* of a notice stating that the Board intends to transfer the money to its credit, be transferred to the credit of the Board, and the producer or other person, or his heirs, executors or assignees, shall then have no further claim on the money.

38. – 39. –

40. Bonuses

(1) The Board may pay, from its profits, bonuses to producers who have delivered leaf tobacco to the Board, and for that purpose the Board may establish a bonus equalisation reserve.

(2) Bonuses under subsection (1) shall be paid out on a sliding scale in such manner and according to such grades and quantities of leaf tobacco, delivered by the producers, as the Board may determine.

41. Investment of funds

Funds standing to the credit of the Board may be invested by the Board in securities approved by the Minister.

42. Right of entry

(1) A person authorised in writing by the Chairperson of the Board to act on its behalf shall have access at any time to any land or premises used or suspected of being used for the production, sale, purchase or storing of green tobacco or of leaf tobacco and may search such land or premises and examine all goods found there and seize any green tobacco, or leaf tobacco, which cannot be satisfactorily accounted for by the owner or occupier of the land or premises together with any books or documents relating to it.

(2) A person authorised in writing by the Chairperson of the Board to act on its behalf may require any person engaged in the production of green tobacco, or in the production and sale of leaf tobacco, or in the manufacture of tobacco to answer any question or to furnish any statement or to produce any document which may be necessary to control the production of green tobacco, or the production, purchase or sale of leaf tobacco.

(3) Any person who refuses to comply with a request or knowingly supplies information, statements or documents which are incorrect, under subsection (2), shall commit an offence.

43. Security

The Board may require and take security for due compliance with this Act and such security shall be by bond or in such other form as may be prescribed.

44. Penalty

(1) Any person who commits an offence under this Act or who contravenes this Act shall, on conviction, be liable to a fine not exceeding 3,000 rupees and to imprisonment for a term not exceeding 2 years, and any green tobacco, or leaf tobacco, the subject matter of the contravention, together with any vehicle, container or other article which, to the knowledge of its owner has been used in connection with the offence or contravention, may be forfeited to the Board.

(2) The Board, or a person deputed by the Chairperson of the Board to act on its behalf, may seize and detain any vehicle, container or other article which, under this Act, is liable to forfeiture.

(3) Any green tobacco, leaf tobacco, vehicle, container or other article declared to be forfeited by the Court, shall be delivered into the custody of the Board to be disposed of in such manner as the Board thinks fit.

(4) Where a person who is not a producer is convicted of growing tobacco on any land, the Board may either gather and appropriate the tobacco growing on that land or destroy it, and any person duly authorised by the Chairperson of the Board to act on its behalf may enter the land to gather and appropriate or destroy the tobacco.

45. Enforcement of Act

A prosecution for any breach of this Act may be instituted by the Board, the Director-General, or a person deputed by the Chairperson of the Board or by the Director-General.

46. Application of fines

(1) Notwithstanding any other enactment, all fines recovered under this Act shall, after the deduction of any costs, be paid to the Accountant-General, who shall pay to the Board one half of the amount received by him.

(2) The Board may utilise the portion of the fines as is received by it for rewarding informers and detecting officers, and for defraying the legal and other expenses incurred in enforcing this Act.

47. Certificate of convicted producer

(1) Where a producer is convicted of an offence, the Board may by resolution cancel or withhold a certificate issued or transferred to him and erase his name from the register of producers, and his basic quota and basic acreage may be allotted to some other person.

(2) (a) Where a certificate is cancelled under this section the producer shall deliver all green tobacco and leaf tobacco in his possession to the Board within 14 days of the cancellation, failing which he shall commit an offence.

(b) Any green tobacco or leaf tobacco delivered to the Board under paragraph (a) shall become the property of the Board.

(c) Nothing in this section shall affect the power of the Court to order the forfeiture of any green tobacco or leaf tobacco under this Act.

48. Export from other islands

(1) No person shall export from Mauritius, other than from the Island of Mauritius, any green tobacco produced there.

(2) Leaf tobacco produced in Rodrigues may be exported for sale to the Board in the manner prescribed.

49. Appeal from decision of Board

(1) Subject to section 27, any person who is aggrieved by or dissatisfied with a decision of the Board may, after having been furnished by the Secretary of the Board with a statement of the reasons for the decision of the Board, appeal to the Minister against the decision.

(2) An appeal under subsection (1) shall be lodged with the Secretary of the Board within one month from the date the decision appealed against was communicated to the appellant or published in the *Gazette*, whichever is the earlier.

(3) (a) The Minister may, if he thinks fit, cause an inquiry to be held into any matter referred to him under subsection (1) and may confirm, amend or reverse the decision of the Board.

(b) The decision of the Minister shall be final.

(4) Where no appeal is lodged within the period and in the manner prescribed under subsection (2), the decision of the Board shall be final.

[S. 49 amended by Act 48 of 1991; Act 4 of 1995.]

50. Power reserved to Minister

Without prejudice to any other power conferred upon him by this Act, the Minister may, where he thinks that a decision of the Board is contrary to the interest of consumers of tobacco, or to the public interest, by Order revoke the decision which shall then be null and void.

[S. 50 amended by Act 48 of 1991; Act 4 of 1995.]

51. Saving of other powers

Nothing in this Act shall affect the powers of the Director-General under any other enactment.

[S. 51 amended by Act 42 of 1985.]

52. Regulations

The Minister may make regulations—

- (a) prescribing the procedure of the Board;
- (b) prescribing the conditions under which the sale, purchase, and storage of leaf tobacco shall be carried out;

- (c) prescribing the rate of any cess which the Board may impose under section 9 and amending paragraphs (d) and (e) of that section accordingly;
- (d) providing for the levying and collection of fees by the Board in respect of storage of leaf tobacco and for the disposal of such fees;
- (e) providing for the levying and collection of fees by the Board in respect of the registration of lands planted in tobacco and providing for the disposal of such fees;
- (f) prescribing the conditions and method of curing green tobacco leaves;
- (g) with respect to the manufacture and sale by the Board of the tobacco products specified in section 9 (f);
- (h) prescribing—
 - (i) the form of application for a licence;
 - (ii) the form of a licence;
 - (iii) any licence fee payable; and
 - (iv) the conditions subject to which any licence may be granted under section 29A; and
- (i) generally for the purposes of this Act.
[S. 52 amended by Act 4 of 1995; Act 28 of 1997.]