



THE REPUBLIC OF KENYA

LAWS OF KENYA

DAIRY INDUSTRY ACT

CHAPTER 336

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CHAPTER 336

DAIRY INDUSTRY ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title and commencement.
2. Application.
3. Interpretation.

**PART II – ESTABLISHMENT AND
ADMINISTRATION OF THE KENYA DAIRY BOARD**

4. Establishment of the Board.
5. Membership of the Board.
6. Duration of office of members of the Board.
7. Remuneration and expenses of members of the Board.
8. Officers and staff.
9. Pensions and staff funds.
10. Presiding officer at meetings.
11. Decisions of the Board.
12. Common seal.
13. Execution of documents, etc., not under seal.
14. Meetings of the Board.
15. Consumers' Committee and other committees of the Board.
16. Board to regulate its own conduct.

PART III – FUNCTIONS, POWERS AND DUTIES OF THE BOARD

17. Functions of the Board.
18. Management and utilization of assets of the Board.
19. Power to make regulations.
20. General provisions with regard to regulations.
21. Regional and delegates meetings.
22. Notice of meetings.
23. Vesting of dairy produce in the Board.
24. Power of the Board to acquire and dispose of property.

PART IV – FINANCIAL

25. Board may establish accounts and special funds.
26. Investment of funds of the Board.
27. Loans, subsidies and guarantees by the Board.
28. Borrowing powers.
29. Books of account.
30. Audit of accounts.

PART V – REGISTRATION OF PRIMARY PRODUCERS

Section

- 31. “Primary producer” defined.
- 32. Requirement to register.
- 33. Penalty for failure to register.
- 34. Register of primary producers.

PART VI – GENERAL

- 35. Offences by companies.
- 36. Appeals.
- 37. Act additional to public health laws.

SCHEDULE

CHAPTER 336

DAIRY INDUSTRY ACT

[Date of assent: 11th August, 1958.]

[Date of commencement]

An Act of Parliament to provide for the improvement and control of the dairy industry and its products

[Act No. 34 of 1958, L.N. 364/1958, L.N. 533/1958, Act No. 15 of 1961, L.N. 666/1961, Act No. 26 of 1963, Act No. 45 of 1963, L.N. 2/1964, L.N. 183/1964, Act No. 9 of 1967, Act No. 10 of 1969, L.N. 415/1992, Act No. 17 of 2006.]

PART I – PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Dairy Industry Act.

(2) Subject to the provisions of section 2, this Act shall come into operation on such day as the Minister may appoint, and the Minister may appoint different days in relation to different provisions of this Act and to different classes of persons, for the whole or for different areas of Kenya.

2. Application

This Act shall not be applied to any part of the Non-scheduled Areas, except in respect of dairy produce produced in those Areas and sold or intended for sale in the Scheduled Areas or in any municipality or township, unless the Central Agricultural Board has been consulted.

[Act No. 10 of 1969, Sch.]

3. Interpretation

In this Act, except where the context otherwise requires—

“**Board**” means the Kenya Dairy Board established by section 4;

“**butterfat**” means the natural and complete fat which is present in milk;

“**Central Agricultural Board**” means the Board established by section 35 of the Agriculture Act (Cap. 318);

“**consumer**” means a person who buys dairy produce for his own use and not for resale;

“**dairy produce**” means milk, cream, butter, ghee, cheese and any other product or by-product of milk;

“**distributor**” means a person who buys dairy produce for the purpose of resale;

“**ghee**” means pure clarified butterfat containing no preservative or colouring matter and no fats or oils other than butterfat;

“**milk**” means milk from a cow;

“**Non-Scheduled Areas**” means all areas of land in Kenya not for the time being comprised in the Scheduled Areas;

“**package**” includes cask, keg, crate, can, box, case, wrapper, tin, bottle, carton and every other receptacle or covering used for the packing of dairy produce;

“**producer**” means a person who produces, processes, manufactures, prepares or treats dairy produce for sale;

“**registered producer**” means a person registered under Part V;

“**retailer**” means a producer who sells dairy produce directly to consumers or a person who purchases dairy produce from a distributor for resale to consumers;

“**Scheduled Areas**” means the areas of land specified in the Schedule;

“**sell**” includes offer, advertise, keep, expose, transmit, convey, deliver, or prepare for sale and any exchange or disposal for consideration.

[L.N. 183/1964.]

PART II – ESTABLISHMENT AND ADMINISTRATION OF THE KENYA DAIRY BOARD

4. Establishment of the Board

(1) There is hereby established a Board to be known as the Kenya Dairy Board, which shall be a body corporate with perpetual succession and a common seal, with power to sue and be sued and to purchase, hold, manage and dispose of land and other property, and to enter into such contracts as it may consider necessary or expedient.

(2) Except where the Board acts as agent for the Minister under any provision of this Act the Board shall not be regarded as the servant or agent of the

Government or as enjoying any status, immunity or privilege of the Government, and no property of the Board shall be regarded as property of, or held on behalf of, the Government.

5. Membership of the Board

- (1) The Board shall consist of twelve members appointed by the Minister.
- (2) The members of the Board shall be—
 - (a) a chairman;
 - (b) five members, being producers selected for appointment from a panel of not less than ten names submitted to the Minister by the Central Agricultural Board;
 - (c) three members, being selected for appointment from a panel of not less than seven names submitted to the Minister by the Central Agricultural Board;
 - (d) two members, being selected for appointment, after consultation by the Minister with any person or organisation which the Minister thinks fit to consult; and
 - (e) one member, being selected for appointment from a panel of not less than three names submitted to the Minister by the Kenya members of the Association of Municipalities of East Africa or of any body formed to take over the functions of that Association.

(3) The Board shall once in every year elect from amongst its members a vice-chairman who shall hold office in the ensuing year.

- (4) An appointment made under this section shall be notified in the *Gazette*.

[L.N. 183/1964.]

6. Duration of office of members of the Board

(1) Three members of the Board shall retire one year after the first appointment of members, and thereafter three members of the Board shall retire annually in rotation; the members to retire shall be those who have been continuously longest in office, and, as between members who have been continuously in office for an equal period, the order of retirement shall, in default of agreement between them, be determined by lot:

Provided that—

- (i) not more than two members appointed by virtue of section 5(2)(b);
- (ii) not more than one member appointed by virtue of section 5(2)(c); and
- (iii) not more than one member appointed by virtue of section 5(2)(d),

shall retire at any one time.

- (2) A member of the Board shall cease to hold office—
 - (a) if he delivers to the Minister a written resignation of his office;
 - (b) if he is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;

- (c) if the Board declares by resolution that he has been absent from three consecutive meetings of the Board without the leave of the Board;
- (d) if he undergoes any term of imprisonment on conviction for an offence;
- (e) if he accepts office as a member of the staff of the Board;
- (f) if the Minister removes him from office on being satisfied that he is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.

(3) A member of the Board who retires or resigns shall be eligible for reappointment.

(4) Section 5(2) shall apply in relation to the appointment of a person to be a member of the Board to fill a vacancy in the membership thereof, save that, if two persons are to be so appointed by virtue of paragraph (b) of the said section, then the panel shall consist of not less than five names, and, if one person is to be so appointed by virtue of paragraph (b) or paragraph (c) of that subsection, then the panel or panels shall consist of not less than three names.

(5) If a member of the Board is, by reason of illness, absence or other cause, unable to perform the duties of his office, the Minister may appoint a person to be a temporary member of the Board for the period of the incapacity of the member; and any such temporary member shall have the powers and authority of a member of the Board during that period.

(6) Every appointment made under this section shall be notified in the *Gazette*.

[Act No. 15 of 1961, Sch.]

7. Remuneration and expenses of members of the Board

(1) The remuneration of the members of the Board shall be determined by the Minister, who shall take into consideration any recommendations made to him under section 21(3).

(2) In addition to remuneration the Board may pay travelling and other expenses which may reasonably have been incurred by the members by reason of their office.

(3) No public officer shall be entitled to remuneration or expenses under this section.

8. Officers and staff

The Board may employ an executive officer, a secretary and such other officers, servants and agents as may be necessary or desirable for the efficient conduct and operation of the Board.

9. Pensions and staff funds

The Board may establish and make contributions to a pension or superannuation fund and a medical fund, for the benefit of its officers and other employees, and may require those officers and employees to contribute thereto.

10. Presiding officer at meetings

The chairman, or in his absence the vice-chairman, or in the absence of both a member elected by the Board, shall preside at all meetings of the Board, and the member presiding at a meeting shall with respect to that meeting or to any business transacted thereat have all the powers of the chairman of the Board under this Act.

11. Decisions of the Board

(1) The member presiding at a meeting shall have a casting as well as a deliberative vote, and subject thereto the decision of the majority of the members present and voting at any meeting of the Board shall be deemed to be the decision of the Board.

(2) The quorum of the Board shall be six, exclusive of the chairman or member presiding.

(3) Subject to the provisions of subsection (2), no act, decision or proceeding of the Board shall be questioned on account of a vacancy in the membership thereof, or on account of the appointment of a member of the Board being defective.

12. Common seal

The common seal of the Board shall be authenticated by the signature of the chairman of the Board or of some other member authorised by the Board to act in that behalf, together with the signature of the executive officer to the Board or the secretary to the Board, or some other person authorized by the Board to act in that behalf, and the seal shall be officially and judicially noted.

13. Execution of documents, etc., not under seal

All documents other than those required by law to be under seal made by, and all decisions of, the Board may be signified under the hand of the chairman, the executive officer or the secretary, or of any member of the Board authorised in that behalf.

14. Meetings of the Board

(1) The Board shall hold ordinary meetings as and when necessary, but not less than once in every three months.

(2) Ordinary meetings of the Board shall be convened by the chairman at such times and at such places as he may deem fit.

(3) The chairman, or in his absence the vice-chairman, shall convene a special meeting of the Board at any time upon receipt of a requisition signed by not less than three members calling upon him so to do, and the special meeting shall be held not later than twenty-one days after the receipt of the requisition.

15. Consumers' Committee and other committees of the Board

(1) The Board shall appoint a committee to represent the interests of consumers (hereinafter referred to as the Consumers' Committee), and may appoint such other committees as it may deem necessary, to examine and report to it on any matter whatsoever arising out of or connected with any of its functions or powers under this Act.

(2) A committee appointed under this section shall consist of persons, whether members, officers or servants of the Board or not, whose assistance or advice the Board may desire.

(3) A committee appointed under this section may appoint one or more subcommittees.

(4) The Board may pay to persons, not being members, officers or servants of the Board, who are members of a committee or subcommittee appointed under this section, such travelling and other expenses as may reasonably have been incurred by them by reason of membership.

16. Board to regulate its own conduct

The Board may from time to time make standing orders providing for the regulation of its meetings, the conduct of its business and the duties of its officers and other employees.

PART III – FUNCTIONS, POWERS AND DUTIES OF THE BOARD

17. Functions of the Board

(1) The functions of the Board shall be—

- (a) to organise, regulate and develop the efficient production, marketing, distribution and supply of dairy produce, having regard to the various types of dairy produce required by different classes of consumers;
- (b) to improve the quality of dairy produce;
- (c) to secure reasonable and stable prices to producers of dairy produce;
- (d) to promote market research in relation to dairy produce;
- (e) to permit the greatest possible degree of private enterprise in the production, processing and sale of dairy produce, consistent with the efficiency of the producer and the interests of other producers and of consumers; and
- (f) generally to ensure, either by itself or in association with any Government department or local authority, the adoption of measures and practices designed to promote greater efficiency in the dairy industry.

(2) In the exercise of its powers and in the performance of its functions under this Act, the Board shall act in accordance with any general or special directions that may be given to it by the Minister.

[Act No. 45 of 1963, s. 6.]

18. Management and utilization of assets of the Board

(1) All the funds, assets and property, movable and immovable, of the Board shall be managed and utilised by the Board in accordance with the provisions of this Act and of any regulations made thereunder, in such manner and for such purposes as in the opinion of the Board shall promote the best interests of the dairy industry.

(2) The expenses of the Board shall be met from the Board's funds.

19. Power to make regulations

The Minister may, on the advice of the Board, make regulations generally for the better carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, may make regulations with regard to dairy produce—

- (a) prescribing grades for any form of dairy produce, and minimum standards to which dairy produce shall conform, whether as a condition of importation or of exportation or of sale within Kenya;
- (b) fixing the price to be paid for any grade or type of dairy produce to producers, distributors or retailers, with power to fix different prices on a basis of quota or for different seasons or circumstances;
- (c) prescribing the manner of handling, transporting and storing of dairy produce intended for the use of or consumption by any person other than the producer thereof;
- (d) regulating and controlling the manufacture of any form of dairy produce;
- (e) imposing a levy or cess, payable to the Board, on any form of dairy produce, or imposing different rates as between different forms of produce, or as between produce for export and produce for consumption in Kenya;
- (f) prescribing the terms and form in which contracts for the sale of milk by producers, other than producers who sell direct to consumers, shall be made, and making provision for the Board to be joined as an additional party to any such contract;
- (g) providing for the creation and administration by the Board of schemes for the pooling of dairy produce by producers in such area or areas as may be prescribed and for the distribution to producers of the proceeds of sale of such dairy produce after payment to the Board, therefrom, of such sums as may be prescribed;
- (h) controlling the sale, purchase and delivery by any person of dairy produce in such area as may be prescribed:

Provided that no distributor or retailer shall be compelled to buy dairy produce from a producer or distributor unless the Board guarantees a regular and sufficient supply of the dairy produce;

- (i) prescribing the areas within which retailers may sell dairy produce to consumers;
- (j) requiring the registration and licensing, in such manner and upon payment of such fees as may be prescribed, of distributors of dairy produce;
- (k) requiring the giving of such security to the Board as the Board may specify a licensed distributor or retailer in respect of payment for dairy produce which a producer or distributor is directed by the Board to sell to the distributor or retailer;
- (l) prescribing fees or charges for services rendered under this Act by the Board or its officers, servants or agents;

- (m) prescribing the manner in which delegates to represent registered producers for the purposes of section 21 may be selected;
- (n) requiring returns, reports and estimates to be furnished to the Board by producers, distributors and retailers;
- (o) prescribing the forms of application, and of licences, marks, registers and all other documents to be used for the purpose of this Act;
- (p) prescribing the manner of marking articles intended for use in connection with dairy produce, including wrappers or packages intended to contain dairy produce;
- (q) prescribing the qualifications, powers and duties of inspectors and other persons appointed to exercise powers and perform duties under this Act;
- (r) for the examination, inspection, analysis and testing of dairy produce or any article used in connection with dairy produce, prescribing charges in respect thereof, and the conditions upon and the manner in which samples of such produce may be taken, whether compulsorily or otherwise;
- (s) authorising the opening by prescribed persons or officers, for the purpose of inspection, of any package which contains or is reasonably thought to contain dairy produce;
- (t) prescribing the books, accounts, vouchers and records to be kept by persons carrying on business in dairy produce;
- (u) authorising the examination and inspection by prescribed persons or officers of all books and documents relating to the production, manufacture, distribution or sale of any dairy produce;
- (v) making different provisions with respect to different cases or classes of case, different areas, seasons or circumstances, and for different purposes of this Act and may impose conditions and restrictions and make exceptions.

[Act No. 9 of 1967, Sch., L.N. 415/1992, Sch, Act No. 17 of 2006, Sch.]

20. General provisions with regard to regulations

Regulations made under this Act may provide for—

- (a) their application to any specified area, or class of persons, or type or description of dairy produce;
- (b) empowering such authorities or persons as may be specified in the regulations to make orders or issue directions for any of the purposes for which regulations are authorised by this Act to be made;
- (c) imposing a fine or imprisonment or both for the breach of any such regulation, order or direction but so that the fine shall not exceed ten thousand shillings and the period of imprisonment shall not exceed one year;
- (d) the particulars, information, proof or evidence to be furnished as to any question or matter arising under this Act or such regulations;

- (e) imposing on any person accused of an offence under this Act or regulations the burden of proving particular facts, but not so as to impose on an accused person the general burden of proving his innocence.

[Act No. 9 of 1967, Sch.]

21. Regional and delegates meetings

(1) The Board shall at least once in every year convene a meeting (hereinafter referred to as a regional meeting) of the registered producers in each region into which Kenya may, for this purpose, be divided by the Board.

(2) The chairman of the Board, or in his absence a member of the Board appointed by the chairman, shall preside at every regional meeting.

(3) The Board shall at least once in every year convene a meeting of delegates of registered producers for the purpose of considering the reports and accounts specified in section 30(4), of recommending to the Minister the remuneration of the chairman and members of the Board and of transacting such other business of which notice has been given.

(4) The Board shall give the Minister at least six weeks' prior notification of the date upon which each annual meeting under subsection (3) is to be held, and the Minister shall cause not less than ten persons who in his opinion are representative of the consumers affected by the meeting to be invited thereto, not less than seven of whom shall be invited after consultation with the Consumers' Committee; and each of the ten persons so invited shall be entitled to speak, but not to vote, at the meeting.

(5) The Board may also convene other regional meetings or meetings of delegates of registered producers for such purposes and at such times as it thinks fit.

(6) The Board may from time to time make standing orders providing for the regulation of regional meetings and of meetings of delegates of registered producers.

22. Notice of meetings

(1) Not less than twenty-one days before the day fixed for the holding of a regional meeting or a meeting of delegates of registered producers, the Board shall send to the Minister and to every registered producer in the region or to every delegate, as the case may be, a notice stating—

- (a) the time and place appointed for the holding of the meeting; and
- (b) the business to be transacted at the meeting,

and if the business is to include consideration of the reports and accounts specified in section 30(4) then those reports and accounts shall be sent with the notice.

(2) The Board shall include in the business to be transacted at a regional meeting or a meeting of delegates of registered producers any matter of which not less than ten registered producers in the region or a delegate of registered producers, as the case may be, have given notice in writing to the Board.

(3) No business shall be transacted at a regional meeting or meeting of delegates of registered producers other than the business of which notice has been given under subsection (1) by the Board:

Provided that the accidental omission to send a notice to a registered producer or a delegate, as the case may be, shall not invalidate proceedings of the meeting.

23. Vesting of dairy produce in the Board

(1) Subject to subsection (2), the Minister may by order empower the Board to acquire by compulsory purchase all or any form of dairy produce, upon such terms as to the price of, and the method of payment for, such form of produce and otherwise as may be specified in the order.

(2) No order shall be made under subsection (1) unless notice of its intention to apply for the making of such an order has been published by the Board in a newspaper circulating in the area in which the order is to have effect at least twenty-one days before the application.

(3) A person who thinks he may suffer detriment by reason of an order proposed to be made under subsection (1), or by any provision of the order, may, within twenty-one days of the publication of the notice referred to in subsection (2) state his objection in writing to the Minister.

(4) A person who obstructs or impedes the Board or its servants or agents in an acquisition pursuant to an order made under this section, or who fails to comply with any reasonable requirement made by the Board pursuant to such an order, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year.

[L.N. 183/1964.]

24. Power of the Board to acquire and dispose of property

(1) The Board may, out of its funds, purchase, take on lease, hire or otherwise acquire such land, buildings, plant, machinery, equipment and livestock as in the opinion of the Board are necessary for the performance of its functions.

(2) The Board may sell, transfer, lease, hire, or otherwise dispose of any of its movable or immovable property.

(3) The Board may, out of its funds, provide for the erection of such depots, factories and stores as it thinks fit.

(4) The Board may buy or import any dairy produce, may process or manufacture any dairy produce and may sell, grade, pack, store, adapt for sale, insure, advertise, transport or export any dairy produce or any dairy produce so processed or manufactured.

(5) The Board may, out of its funds, if in its opinion it is expedient so to do, purchase sites and erect houses for the use of its officers or make advances, on such terms and conditions as it thinks fit to its officers for the purpose of enabling those officers to purchase houses for their own use.

(6) Where pursuant to subsection (5) the Board erects or purchases a house, it may let the house to its officer for such time and at such rent and otherwise upon such terms and conditions as it thinks fit.

PART IV – FINANCIAL

25. Board may establish accounts and special funds

(1) The Board may establish in the name of the Board at such banks as it may determine such accounts as it deems necessary or convenient for the exercise of its powers and functions under the provisions of this Act or of regulations made under this Act.

(2) Every such account shall be operated on by cheque signed by a person or persons as may from time to time be authorised in that behalf by the Board.

(3) The Board may from time to time establish special funds or reserves as it deems necessary or expedient for any purpose contemplated by this Act.

26. Investment of funds of the Board

The Board may invest moneys in securities in which trustees are empowered to invest under the Trustee Act (Cap. 167), and in other securities which may be approved for the purpose by the Minister for the time being responsible for Finance.

27. Loans, subsidies and guarantees by the Board

The Board may from time to time out of its funds—

- (a) make loans to persons, or grant subsidies to producers or manufacturers, for such purposes and on such terms and conditions as the Minister may approve;
- (b) guarantee payments for dairy produce, to be made by agents or licensed buyers, on such security by way of indemnity or otherwise as the Minister may require;
- (c) with the consent of the Minister in each case and subject to such conditions as the Minister thinks fit, in any suitable case where a licence issued under regulations made under this Act has been cancelled or amended or its renewal has been refused, compensate any person for loss occasioned thereby.

[Act No. 26 of 1963, s. 2.]

28. Borrowing powers

The Board may, with the consent of the Minister and upon and subject to such conditions as the Minister thinks fit, borrow moneys and mortgage or charge any of its property.

29. Books of account

The Board shall cause to be kept proper books of account and other books in relation thereto in respect of all its undertakings, funds, activities and property, including yearly statements of income and expenditure and balance sheets made up to the end of each financial year showing in detail the assets and liabilities of the Board, and shall prepare such other accounts as the Minister may require.

30. Audit of accounts

(1) The Minister shall appoint one or more accountants (in this section referred to as the auditors) being holders of practising certificates issued

pursuant to section 21 of the Accountants Act (Cap. 531), who shall annually examine, audit and report upon the accounts of the Board.

(2) The Board shall produce and lay before the auditors all books and accounts of the Board, with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditors may require from all members, officers, agents and employees of the Board such information and explanation as may be necessary for the performance of their duties as auditors.

(3) The expenses of and incidental to the audit shall be paid by the Board.

(4) The Board shall within a period of seven months after the end of its financial year, or within such longer period as the Minister may approve, submit to the Minister a report of its operations during that year, and the auditor's report, together with the yearly statement of income and expenditure, balance sheet and such other statements of accounts as the Minister shall require; and in addition to the requirements of section 22(1) the Board shall publish the reports and accounts in such manner as the Minister may specify.

PART V – REGISTRATION OF PRIMARY PRODUCERS

31. “Primary producer” defined

In this Part, “**primary producer**” means a person who produces milk for sale, but does not include persons employed by him for that purpose.

32. Requirement to register

(1) A primary producer who has already begun production at the time when this Part comes into operation in relation to himself and to his area of production in accordance with section 1(2) shall, within one month of that date, register with the Board by supplying the following particulars—

- (a) the full name and postal address of the primary producer;
- (b) the survey or land reference number of the dairy premises used;
- (c) such particulars as to the cattle, equipment, production and disposal of produce, and otherwise in relation thereto, as may be prescribed by the Board.

(2) A primary producer who begins production at any time after this Part comes into operation in relation to himself and to his area of production shall, within one month of beginning production, register in the manner provided in subsection (1).

(3) A primary producer who is registered in accordance with this section shall, within one month of any change occurring in the particulars supplied by him for registration, notify the Board in writing of the details of the change.

33. Penalty for failure to register

After the appropriate period of one month referred to in section 32 has elapsed, a primary producer to whom this Part applies who carries on business as such without being registered in accordance with this Part, or who wilfully neglects to supply the particulars prescribed by that section, or who knowingly or recklessly supplies any such particulars which are materially false, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

34. Register of primary producers

(1) The Board shall maintain a register for the purposes of this Part and shall record therein the particulars supplied in accordance with section 32.

(2) Where the Board has reasonable cause to believe that a person whose particulars are so recorded has ceased to be a primary producer it may, after giving that person written notification by registered post of its intention so to do, remove the relevant particulars from the register.

(3) The register shall be *prima facie* proof of the fact that a person is or is not registered under this Part.

PART VI – GENERAL

35. Offences by companies

Where a person in breach of any provision of this Act or of any regulations made under this Act is a company, every director, manager, secretary and other officer of the company who is knowingly a party to the breach shall also be guilty of the breach and be liable to the same punishment.

36. Appeals

A person aggrieved by a decision of the Board or of an agent of the Board may, within one month after being notified of that decision, appeal to the Agricultural Appeals Tribunal established under Part XV of the Agriculture Act (Cap. 318), and, save as aforesaid, the provisions of that Part shall, *mutatis mutandis*, apply in relation to every such appeal.

37. Act additional to public health laws

The provisions of this Act and of any regulations made thereunder shall be in addition to and not in derogation of the provisions of any written law relating to public health for the time being in force.

SCHEDULE

[Section 3, L.N. 183/1964.]

SCHEDULED AREAS

The areas of land the boundaries whereof are delineated and edged red on Boundary Plans Nos. 476A to 476K, deposited in the Survey Records Office, Survey of Kenya, excepting therefrom—

Land Reference No. 8739;

Land Reference No. 8740;

Land Reference No. 8741;

Land Reference No. 9904;

Land Reference No. 4870/R;

Land Reference No. 4886/6; and

Land Reference No. 226.
