

LEGAL NOTICE NO. 81

THE AGRICULTURE ACT

(*Cap.* 318)

IN EXERCISE of the powers conferred by section 191 of the Agriculture Act, the Minister for Agriculture makes the following order—

THE KENYA OILCROPS DEVELOPMENT AUTHORITY ORDER,
2001

Citation.

1. This Order may be cited as the Kenya Oilcrops Development Authority Order, 2001.

Interpretation.

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

“Authority means the Kenya Oilcrops Development Authority established under paragraph 3;

“oilcrops” means the oilcrops specified in the Schedule;

“oilseeds” means the oilseeds being the produce of the oilcrops specified in the Schedule;

“Oilseeds Development Council” means the Oilseeds Development Council established under paragraph 4(1);

“oilshed” means the geographical area served by a processing plant;

“association” means an association under regulation 4(2) (f) or (g);

“vegetable oil” means vegetable oil obtainable from plants, fruits or oilseeds and includes edible and non-edible vegetable oils, whether vegetable fat, drying, semi-drying or liquid vegetable oil, by any method of processing or refining;

“processing plant” means a plant or processing plant or factory processing oilseeds or refining vegetable oils;

3. (1) There is hereby established authority to be known as the Kenya Oilcrops Development Authority (hereinafter referred to as the “Authority”) for promoting and fostering the effective development of oilcrops for the production of oilseeds and vegetable oil, in any suitable area of Kenya.

Establishment of
Kenya Oilcrops
Development
Authority.

(2) The Authority shall be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued, and, for and in connection with the purpose of this Order, may purchase, sell lease or otherwise acquire or dispose of, hold and manage movable and immovable property, and may enter into such contracts as may be necessary or expedient.

4. (1) There is hereby established a council to be known as the Oilseeds Development Council (hereinafter referred to as “the Council”) to co-ordinate the functions of the Authority and advise the Government on the development of oilcrops and their oilseeds in Kenya.

Establishment of
Oilseeds
Development
Council.

(2) The Council shall consist of the following members—

- (a) a chairman appointed by the Minister;
- (b) the Permanent Secretary for the time being responsible for agriculture;
- (c) the Permanent Secretary to the Treasury;
- (d) the Director, Kenya Agricultural Research Institute;
- (e) the Director of Agriculture;
- (f) seven members representing the seven oilcrops growing provinces nominated by the Minister or elected by the association of oilseed growers recognized by the Minister, as the representative of the oilcrops growers;
- (g) four members of the oilseed processing and vegetable oil refining industry nominated by the Minister or elected by the oilseed and vegetable oil processors association recognized by the Government, as the representative of the oilseed processing and vegetable oil refining industry;
- (h) the Chief Executive of the Authority who shall be hired by the Council and shall be the Secretary to the Council;
- (i) two members appointed by the Minister to represent special interest groups in the oilseed industry.

(3) The Chairman and members of the Council shall be gazetted by the Minister.

(4) The members of the Council other than *ex-officio* members shall hold office for a period of three years and shall be eligible for reappointment.

Termination
of office.

5. Notwithstanding anything to the contrary in this Order, a person shall cease to be a member of the Council—

(a) upon receipt by the Minister of his resignation in writing; or

(b) upon his death; or

(c) if he is certified to be of unsound mind, temporarily or permanently incapacitated by illness or is otherwise prevented from performing his duties as a member of the Council; or

(d) if he is absent; without permission of the chairman from three consecutive meetings of the Council; or

(e) if he is adjudged bankrupt; or

(f) if he is sentenced by a court of law to imprisonment for a term of six months or more without the option of a fine.

Meetings of
the Council.

6. (1) The chairman shall convene the meetings of the Council whenever it may be necessary or expedient for the transaction of its business and in any event not less than once in every period of three months.

(2) A special meeting of the Council may be convened to deal with any special or urgent matter.

(3) In the absence of the Chairman, the members present at the meeting may appoint any one of the members present to act as chairman at such meeting.

(4) Any person appointed to act as chairman under subparagraph (3) shall have all the powers and privileges of the chairman at and in respect of any such meeting.

Quorum.

7. (1) The quorum of the Council at any meeting shall be nine members.

(2) All acts, matters and things authorized to be done by the Authority shall be decided by a resolution at a meeting of the Council at which a quorum is present.

(3) Notwithstanding subparagraph (2), where the chairman so directs, a decision may be made by the Council without a meeting by circulation of the relevant papers among all the members and the expression in writing of their views, but any majority of members may require that a decision shall be deferred for consideration at a meeting of the Council.

Declaration of
interest.

8. Every member of the Council who is or is likely to be concerned in or who participates in the profits of any contract with or work done for the Authority, otherwise than in his capacity as a member of the Council shall on the matter coming before the Council for consideration, immediately declare his interest therein, and shall in any case abstain from voting in the matter.

Voting.

9. Every decision of the Council shall be by a simple majority of the members present and voting, but the chairman shall have a casting as well as a deliberative vote.

<p>10. The Council may co-opt to serve on it for such length of time as it thinks fit any person or person whose assistance or advice it may require, but a person so co-opted shall not be entitled to vote at any meeting of the Council or be counted as a member for the purpose of forming a quorum.</p>	<p>Co-opted members.</p>
<p>11. Subject to any directions given by the Minister and to the provisions of this Order, the Council may regulate its own procedure.</p>	<p>Procedure.</p>
<p>12. The Council shall meet not less than four times in each financial year.</p>	<p>Number of meetings.</p>
<p>13. Minutes in proper form of each meeting of the Council shall be kept, and shall be signed by the chairman of that or the next succeeding meeting.</p>	<p>Minutes.</p>
<p>14. (1) The Council may appoint such other officers as it deems necessary to enable it to co-ordinate the functions of the Authority.</p>	<p>Officers of the Council.</p>
<p>(2) The terms and conditions of service of officers appointed by the Authority shall be determined by the Council.</p>	
<p>(3) The Council may appoint such committees, whether wholly or partly of its own members or otherwise, and with such advisory or executive functions, as the Council may consider necessary.</p>	
<p>(4) The Chief Executive and other officers appointed by the Council shall be paid by the Council such remuneration as the Council shall determine.</p>	
<p>15. The Council may delegate any of its powers to any committee of the Council or to the Chief Executive.</p>	<p>Delegation of powers.</p>
<p>16. (1) Subject to the provisions of this paragraph, the Authority may borrow money required by it for meeting any of its obligation, or discharging any of its functions.</p>	<p>Borrowing of money.</p>
<p>(2) The power of the Authority to borrow shall be exercisable only with the approval of the Minister after the consent of the Minister for the time being responsible for finance, as to the amount, as to the powers of the Council to borrow and as to the terms on which the borrowing may be effected, and any such approval may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.</p>	
<p>17. (1) The Authority shall keep proper accounts and other records in relation to the business of the Authority, and shall prepare in respect of each financial year a statement of accounts in such form as the Minister, with the approval of the Minister for the time being responsible for finance, may direct.</p>	<p>Accounts and audit of the Authority.</p>
<p>(2) The accounts of the Authority shall be examined, audited and reported upon annually by the Controller and Auditor-General (State Corporations).</p>	
<p>18. Members of the Council and other co-opted members shall receive such remuneration and allowances as the council may approve.</p>	<p>Remuneration of members.</p>
<p>19. (1) The seal of the Authority shall be authenticated by the signature of the Chairman and of the Chief Executive, or by either the Chairman or the Chief Executive, together with one member of the Authority authorized in writing by the Council in that behalf.</p>	<p>Seal of the Authority.</p>

(2) The Authority may, by writing under its seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute bids on its behalf in any place not situated in Kenya, and a deed signed by such attorney on behalf of the Authority shall have the same effect as if it were under the seal of the Authority.

Signification of documents.

20. Any document, other than a document which is required by any other law to be under seal, made by and any decision of the Council, may be signified under the hand of the Chairman, or of the Chief Executive, or any other member of the Council or any other person authorized in writing by the Council in that behalf.

Financial year.

21. The financial year of the Authority shall be from 1st July in each year to 30th June in the year following.

Accounts and audit of the Council.

22. (1) The Council shall cause to be kept such books of accounts and other books in relation thereto and to all its undertakings, funds and activities as the Minister, may from time to time require or approve and shall, within a period of four months after the end of its financial year or within such longer period as the Minister may approve, cause to be prepared, signed and transmitted to the auditor—

(a) a balance sheet showing in detail the assets and liabilities of the Authority; and

(b) such other statement of accounts as the Minister may require.

(2) The expenses of and incidental to the audit shall be paid by the Authority.

(3) The Authority 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 year's balance sheet and such other statements of accounts as the Minister shall require together with the auditor's report thereon, and the Authority shall, if the Minister so requires, publish them in such manner as the Minister may specify.

(4) The Minister shall lay the Authority's report and the auditor's report, together with the balance sheet and such other statement of accounts as he may have required before the National Assembly as soon as practicable.

Establishment of Oilseeds Development Fund.

23. (1) There is established a fund to be known as the Oilseeds Development Fund which shall be administered by the Authority.

(2) There shall be paid into the Fund any moneys realized by the Authority from any levy or levies imposed by authority.

(3) Any levy imposed by the Authority under this Order shall be payable to the Authority or its agents by the person on whom it is imposed in such manner and within such time as the Council may direct and shall be a civil debt due from such person to the Authority.

(4) The moneys in the Fund shall be used by the Authority for the development of the oilseeds sub-sector.

Powers of the Authority.

24. The Authority shall have all such powers as are necessary for the performance of its functions under this Order and without prejudice to the generality of the foregoing, the Authority shall have power—

- (a) to collect and collate information and statistics on production, processing and marketing of edible oils, oilseeds and oilmeals;
- (b) to monitor imports and local availability of edible and non-edible oils, oilseeds and oilmeals for the efficient management of the oilseed industry;
- (c) to register processing plants and designate oilsheds in respect thereto;
- (d) to concurrently monitor the implementation of the approved policies and take steps necessary to remove any difficulties and help the Government in reformulating the policies whenever considered necessary and expedient to do so;
- (e) to formulate in conjunction with the Government a national plan for oilseed development and assist in its implementation;
- (f) with the approval of the Minister by Order of the Gazette, impose a levy or levies for the purpose of financing the operations of the Authority and for such other purposes as the Minister may approve;
- (g) with the approval of the Minister, by notice in the Gazette, charge a cess on the processing of locally produced and processed oilseeds to augment the Fund;
- (h) to finance applied research and development and extension services for the production and processing of edible oils and the increase of oilseed production;
- (i) to identify ways and means of funding the implementation of the oilseeds plans through public and private sector initiatives, food aid and multilateral and bilateral funding;
- (j) to recommend to the Government the appropriate duties to be charged on imported edible oils, oilmeals and oilseeds and monitor the imports to ensure that the collection of import duties matches the expected levels;
- (k) in case there are difficulties in monitoring imports, and the duties collected do not reach the expected levels, encourage the associations to co-ordinate and canalize imports;
- (l) where the associations are unable to co-ordinate and canalize imports, undertake these activities until it is possible for the associations to be effective;
- (m) to encourage contract farming of oilseeds, and where necessary mediate between the growers and the processors to ensure the implementation of fair contractual agreements;
- (n) to review and encourage formulation and proper implementation of standards of quality labelling and packaging for marketing edible oils to create a level playing field and to protect the consumers;
- (o) to oversee the functioning of the dynamic concept of an oilshed and oilseed sub-sector;
- (p) whenever necessary, to arrange for market intervention operations to ensure that the oilseeds producer prices do not go below

remunerative levels for the growers and that edible oil prices do not go beyond reasonable levels for the consumers;

(q) to do any other thing that is provided in this Order to promote or foster the oilseeds subsector.

Orders.

25. The Council may, with the approval of the Minister, make Orders for the better carrying out of its functions and without prejudice of the foregoing, the Orders may make provision—

- (a) requiring the processors to report their inputs and throughput along with prices so as to ensure transparency and to assist the planning of future processing capacities;
- (b) prescribing the proper hygienic standards to be observed in processing plants;
- (c) prescribing proper standards for the processing of oils, oilseeds and oilmeals to protect consumer interests;
- (d) prescribing the demarcations of oilsheds for every processing plant to ensure that every plant gets the natural advantage of nurturing its oilshed;
- (e) prescribing the contractual arrangements between growers and processors for entering into contract farming and collecting oilseeds from the oilsheds;
- (f) prescribing the physical locations of the oilseed processing plants;
- (g) ensuring that once an oilshed has been designated to a plant during its registration, the concept of an oilshed shall become dynamic in nature and consistent with the operations of a free market economy;
- (h) prescribing anything which under this Order may be prescribed, to promote the development of the oilseeds industry.

Made on the 2nd May, 2001.

C. OBURE,
Minister for Agriculture.