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PYRETHRUM ACT

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CONDUCT OF THE BUSINESS AND AFFAIRS
OF THE BOARD

NO. 22 OF 2013

PYRETHRUM ACT

[Date of assent: 14th January, 2013.]

[Date of commencement: See Section 1.]

An Act of Parliament to repeal and re-enact the Pyrethrum Act to provide for the development, regulation and promotion of the pyrethrum industry, to provide for the establishment, functions and powers of the Pyrethrum Regulatory Authority and for connected purposes

[Act No. 22 of 2013.]

PART I - PRELIMINARY

1. Short title and commencement

This Act may be cited as the Pyrethrum Act, 2013 and shall come into operation upon the expiry of thirty days from the date of its publication.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Authority**” means the Pyrethrum Regulatory Authority established by section 3;

“**Board**” means the Board of Management of the Authority established by section 6;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“**dealer**” means a person licensed under this Act to purchase pyrethrum flowers from a grower to sell to a licensed processor;

“**Development Levy**” means Pyrethrum Development Levy established by section 14;

“**formulator**” means a person registered by the Authority to use pyrethrum extract to make end user pest control products;

“**Fund**” means the Pyrethrum Development Fund established by section 13;

“**grower**” means a person who grows or cultivates pyrethrum or manages, controls the cultivation of pyrethrum;

“**licence**” means a licence issued under section 19;

“**processor**” means a person licensed under this Act to extract pyrethrins from pyrethrum or pyrethrum products;

“**pyrethrum**” means the plant or part of the plant of the species known botanically as *Tanacetum cinerariaefolium* or of any inter-specific hybrid involving this species or of any progeny of such hybrid; and

“**pyrethrum extract**” means an active ingredient obtained or delivered from pyrethrum flower by treatment or process.

PART II – ESTABLISHMENT OF THE AUTHORITY

3. Establishment of the Authority

There is established an authority to be known as the Pyrethrum Regulatory Authority which shall be a body corporate with perpetual succession and a common seal, and capable in its corporate name, of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts which may lawfully be done by a body corporate.

4. Functions of the Authority

The functions of the Authority shall be to—

- (a) develop and promote the pyrethrum industry;
- (b) register processors, formulators and persons running pyrethrum nurseries;
- (c) co-ordinate the activities of stakeholders and organizations within the pyrethrum industry;
- (d) set required standards for pyrethrum products;
- (e) facilitate equitable access of benefits and resources of pyrethrum industry by all interested parties;
- (f) carry out and facilitate the flow of research findings to interested parties through the provision of effective extension services;
- (g) monitor the domestic and international market with a view to identifying and advising the Government and interested parties on any distortions and trends in the pyrethrum market;
- (h) facilitate the arbitration of disputes among interested parties;
- (i) promote and encourage the use of environmentally friendly technologies in the pyrethrum industry;
- (j) collect, collate and analyze pyrethrum industry statistics and maintain a data base for the pyrethrum industry;
- (k) promote the efficiency and development of the pyrethrum industry through the establishment of appropriate institutional linkages; and
- (l) perform such other functions as may, from time to time, be assigned by the Cabinet Secretary.

5. Powers of the Authority

The Authority shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have power to—

- (a) control, supervise and administer the assets of the Authority in such manner and for such purpose as best promotes the purpose for which the Authority was established;

- (b) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (d) lay down policy guidelines for the operations and management of all the funds collected by the Authority;
- (e) access all such relevant information as may be necessary for the efficient administration of the pyrethrum industry;
- (f) enter into association with other bodies or organizations within or outside Kenya as the Authority may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established; and
- (g) open a bank account or banking accounts for the funds of the Authority.

6. The Board of Management of the Authority

(1) There is established a board to be known as the Board of Management of the Authority which shall administer and manage the affairs of the Authority.

(2) The Board shall consist of—

- (a) a Chairperson nominated by the Cabinet Secretary and appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to agriculture or his representative;
- (c) the Principal Secretary in the Ministry for the time being responsible for finance or his representative;
- (d) the Principal Secretary for the time being responsible for industrialization;
- (c) five persons appointed by the Cabinet Secretary, of whom—
 - (i) two shall represent the interests of pyrethrum growers;
 - (ii) one shall represent the interests of formulators;
 - (iii) one shall represent the interests of pyrethrum processors; and
 - (iv) one shall possess knowledge and experience qualities which, in the Cabinet Secretary's opinion, shall benefit the Authority; and
- (f) the Chief Executive Officer of the Authority appointed under section 7.

(3) A person shall not be appointed a member of the Board under subsection (2) (a) and (e) unless that person holds at least a diploma from an institution recognised in Kenya.

(5) The Schedule shall apply in respect of the conduct and regulation of the business and affairs of the Board.

7. Appointment of the Chief Executive Officer

(1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Board on such terms and conditions as may be specified in the instrument of appointment.

(2) The Chief Executive Officer shall—

- (a) be responsible to the Board for the day-to-day management of the affairs of the Authority;
- (b) be an *ex officio* member of the Board;
- (c) be the Secretary to the Board; and
- (d) perform such other functions as the Board may direct.

(3) A person shall not be qualified for appointment under this section unless that person holds a degree from a university recognized in Kenya in agriculture, economics or business administration or related discipline and has at least five years experience in a managerial capacity.

8. Appointment of staff and Committees

(1) The Board may appoint such officers and other staff of the Authority as may be necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Cabinet Secretary may approve.

(2) The Board may establish and assign functions to such committees as it may consider appropriate, and such committees may consist partly or wholly of members of the Board.

9. Delegation of duties

The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

10. Remuneration of Board members

The Board shall pay to its members, such remuneration, fees or allowances for expenses as it may determine upon recommendation by the Salaries and Remuneration Commission.

11. Protection from liability

(1) An action shall not lie against the Board or any of its officers or other persons appointed or authorized to perform any function under this Act on behalf or in respect of anything done or omitted to be done by them in good faith in the exercise of or performance of any power, authority or duty conferred or imposed by them under this Act.

12. Liability of the Board for damages

The provisions of section 11 shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

PART III – FINANCIAL PROVISIONS

13. Establishment of the Fund

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

(2) The Fund shall consist of—

- (a) the development levy;
- (b) interest from loans and advances to pyrethrum growers and processors;
- (c) grants and donations made to the Authority; and
- (d) moneys from any other source approved by the Board.

(3) The Board shall apply the moneys received into the Fund to—

- (a) advance credit facilities to pyrethrum growers and processors for the establishment and development of or acquisition of pyrethrum processing equipment and plants;
- (b) conduct research activities; and
- (c) carry out the operations of the Authority.

(4) The percentages for the application of moneys under subsection (3) shall be prescribed by the Cabinet Secretary after consultation with the Board.

(5) The Board may, from time to time, issue guidelines for the better management of the Fund in the best interest of pyrethrum growers, formulators, dealers and processors and may, in the guidelines, provide the terms and conditions, the rate of interest, the period of repayment and the form of security of guarantee on which loans and advances are to be made and the manner of recovery of credit or advances from pyrethrum growers, formulators, dealers and processors.

(6) Unless the Treasury otherwise directs, the receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes of the Fund.

14. Pyrethrum Development Levy

(1) The Cabinet Secretary may, in consultation with the Board, impose a levy to be known as the Pyrethrum Development Levy.

(2) The percentage of Development Levy imposed under subsection (1) shall be prescribed by the Cabinet Secretary.

15. Financial year

The financial year of the Fund shall be the period of twelve months ending on the thirtieth June in each year.

16. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for all estimated expenditures of the Fund for the financial year concerned, and in particular shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff and members of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the matters specified under section 13(3); and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment or in respect of such other matters as the Board may consider appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval.

17. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Fund and of the Authority.

(2) Within three months after the end of each financial year, the Board shall submit to the Controller and Auditor-General the accounts of the Fund and the Authority including—

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Authority on the last day of the financial year.

(3) The accounts of the Fund and of the Authority shall be audited by the Controller and Auditor-General in accordance with the provisions of the Public Audit Act (Cap. 412B).

(4) As soon as reasonably practicable after the end of the financial year, the Controller and Auditor-General shall report on the examination and audit of the accounts of the Authority and to the Cabinet Secretary.

18. Investment of funds

(1) The Board may invest any of the funds of the Fund which are not immediately required for its purposes, in such securities as the Treasury may, from time to time, approve.

(2) The Board may, subject to the approval of the Treasury, place on deposit with such bank or banks as it may determine, any money not immediately required for the purposes of the Fund.

PART IV – LICENSING AND REGISTRATION

19. Requirement of licence

(1) A person shall not operate as a dealer, processor or commercial nursery operator unless that person is a holder of a current licence issued by the Authority for that purpose.

(2) Any person who contravenes the provisions of subsection (1) or acts in contravention of the conditions of any licence granted thereunder commits an offence and shall be liable, on conviction, to a fine of not less than one hundred thousand shillings but not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

20. Conditions for Issue of licence

(1) The Board shall not issue a licence under this Act unless—

- (a) it is of the opinion that the applicant is a fit and proper person to hold such a licence; and
- (b) it is satisfied that the applicant has sufficient knowledge, experience and capacity to enable him to conduct business or that he has, amongst his staff, a person with such knowledge and experience:

Provided that the issuance of a licence to an applicant under this section shall not be withheld without reasonable cause.

(2) Every licence shall specify the premises upon which the business of pyrethrum product may be carried on.

(3) Every licence shall, unless earlier revoked, be valid for a period of five years from the date of issuance.

(4) There shall be payable for the issue of a licence, such fees as the Cabinet Secretary, after consultation with the Board, may prescribe.

21. Catchment area to be defined

(1) Subject to section 20, a processor shall not be licensed to operate unless the processor's catchment area is defined.

(2) A catchment area may have more than one processor and no person shall be denied a licence to operate merely on the ground that the person shares a catchment area, in whole or in part, with another processor.

22. Access to intellectual property rights

The Authority shall in performance of its functions provide access of intellectual property rights to a licensed processor at a fee to be prescribed by the Cabinet Secretary.

PART V – MISCELLANEOUS

23. Seal of the Board

(1) The common seal of the Authority shall be authenticated by the signatures of the Chairperson and the Secretary to the Board.

(2) In the absence of the Chairperson, a member designated by him or by the Board for that purpose may authenticate the seal in his place, and in the absence of the Secretary to the Board, the person for the time being performing the functions of the Secretary may authenticate the seal in his place.

(3) Every document purporting to be an instrument issued by the Board and to be sealed with the seal of the Authority authenticated in the manner provided by subsection (1) or (2) shall be deemed to be such an instrument and shall be officially and judicially noticed.

24. Offences by corporate body

Where an offence under this Act is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

- (a) the act or omission constituting the offence took place without his knowledge; or
- (b) he took reasonable steps to prevent the commission of the offence.

25. General Penalty

A person who commits an offence under this Act for which no specific penalty is provided is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

26. Rules

The Cabinet Secretary may, after consultation with the Board, make Rules for the better carrying out of the provisions of this Act.

PART VI – REPEAL AND TRANSITIONAL PROVISIONS

27. Repeal of Cap. 340

- (1) The Pyrethrum Act is repealed.
- (2) Notwithstanding subsection (1)—
 - (a) all the funds, assets and other property, both movable and immovable, which immediately before the appointed day were vested in the former Board shall, by virtue of this paragraph, vest in the Authority;
 - (b) all rights, obligations, powers and liabilities which immediately before the appointed day were vested in, imposed on or enforceable against the former Board shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Authority;

- (c) any reference in any written law or in any document or instrument to the former Board shall, on and after the appointed day, be construed to be a reference to the Authority;
- (d) the annual estimates of former Board for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Authority for the remainder of that financial year:

Provided that such estimates may be varied by the Board in such manner as the Cabinet Secretary may approve;

- (e) the administrative directions made by the former Board or by the Cabinet Secretary which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Board or the Cabinet Secretary under this Act;
- (f) the Authority shall continue to carry out the commercial functions of purchasing and processing pyrethrum flowers, which were, before the commencement of this Act, carried out by the former Board, for a period of not more than three years upon commencement of this Act but the provisions of this paragraph shall not be construed to preclude the licensing of any new processors within the three year period.

(3) A person who, immediately before the commencement of this Act, was an officer, agent or member of staff of the former Board, not being then under a notice of dismissal or resignation shall, upon commencement of this Act, become an officer, agent or staff of the Authority.

(4) In this section—

- (a) “appointed day” means the date on which this Act shall come into force;
- (b) “former Board” means the Kenya Pyrethrum Board established under the Pyrethrum Act (now repealed).

SCHEDULE

[Section 7(5).]

Conduct of the Business and Affairs of the Board

1. Tenure of office

The Chairperson or a member of the Board other than an *ex officio* member shall hold office for a period not exceeding three years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for one more term of a period not exceeding three years.

2. Vacation of office

The Chairperson or a member other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing—
 - (i) in the case of the Chairperson, addressed to the Cabinet Secretary;

- (ii) and in the case of any other member, addressed to the Chairperson; or
- (b) be removed from office if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
 - (ii) is convicted of a criminal offence and sentenced to a term of imprisonment;
 - (iii) is adjudged bankrupt or enters into a scheme of composition or arrangement with his creditors; or
 - (iv) is incapacitated by prolonged physical or mental illness.

3. The Board shall meet at least four times in every financial year and not more than three months shall elapse between the date of one meeting and the date of the next meeting.

4. Notwithstanding paragraph 3, the Chairperson may at any time, and shall, within twenty-one days of the receipt by him of a written request signed by at least seven members of the Board, convene a special meeting of the Board.

5. The Quorum for the conduct of the business of the Board shall be at least three members excluding ex official members.

6. The Chairperson shall preside at every meeting of the Board at which he is present, but in the absence of the chairperson the members present shall elect one among their number to preside, and such member shall, as concerns that meetings have all the powers of the chairperson.

7. The decisions of the Board shall be carried by the votes of a majority of the members present, but in the case of an equality of votes the Chairperson or person presiding shall have a casting vote.

8. The members may appoint committees from among themselves or otherwise, to carry out such general or special functions as may be specified by the Board.

9. Any member who has a direct or indirect interest in any decision to be taken on any specific matter by the Board, shall disclose the nature of such interest at the meeting of the Board where such decision is being taken, and the disclosure shall be recorded in the minutes of the meeting, and if majority of the members of the Board believe that such member's interest in the matter is such as to influence his judgment, the member shall not participate in the deliberation or the decision of the Board on such matter.

10. Except as provided in this Schedule, the Board may regulate its own procedure.

