

Malawi

Control of Tobacco Auction Floors Act

Chapter 65:03

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Control of Tobacco Auction Floors Act

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Control of Tobacco Auction Floors Act Chapter 65:03

Commenced on 10 December 1970

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide a Commission to control the tobacco auction floors, to confer powers and duties thereon and to make provision for matters incidental thereto or connected therewith

Part I – Preliminary

1. Short title

This Act may be cited as the Control of Tobacco Auction Floors Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**auction floor buyer’s licence**” means a licence to buy tobacco on the auction floors granted under section 21;

“**auction floor licence**” means a licence granted under section 18;

“**commercial grading of tobacco**” means the grading of tobacco by a grader;

“**Commission**” means the Tobacco Control Commission established under section 3;

“**grader**” means a person who carries on the business of grading tobacco for profit or gain but does not include a grower or buyer of tobacco who grades his own tobacco or any employee or servant of such a grower or buyer;

“**registered seller**” means a seller who is registered under section 23;

“**tobacco**” means un-manufactured tobacco, whether cured or uncured but does not include “nicotiana rustica” or oriental.

[9 of 1986]

Part II – Tobacco Control Commission

3. Tobacco Control Commission

- (1) There shall be a Commission to be known as the Tobacco Control Commission which shall be a body corporate having perpetual succession a common seal and shall be capable of suing and being sued, and of purchasing and alienating land, and, subject to this Act, of performing all such acts and things as bodies corporate may by law perform.
- (2) The Commission shall, in the exercise of its powers and the performance of its duties, under this Act or any other written law, be subject to the general or special directions of the Minister.

4. Composition of Commission

- (1) The Commission shall consist of the following members appointed by the Minister in his discretion—
- (a) a Chairman appointed by the Minister;
 - (b) two members to represent the Agricultural Development and Marketing Corporation;
 - (c) two members to represent the Tobacco Association;
 - (d) two members to represent the Tobacco Exporters Association;
 - (e) four members to represent tobacco farmers;
 - (f) two members to represent the Government.
- (2)
- (a) The members appointed under subsection (1) shall hold office during the Minister's pleasure and shall retire annually.
 - (b) Any members retiring as aforesaid shall be eligible for reappointment.
- (3) Any member appointed under subsection (1) may resign by notice given in writing to the Minister, such resignation to take effect on the date specified in the notice, or 7 days after receipt of the notice by the Minister, whichever is the later.

5. Meetings of Commission

- (1) The Commission shall meet not less than twice in each year and at such other times as the Chairman shall direct.
- (2) Five members of the Commission shall constitute a quorum. In the absence of both the Chairman and his alternate, the members present shall elect a Chairman.
- (3) The Chairman of any meeting shall have a deliberative vote and, in the case of equality of votes, a casting vote.
- (4) The members of the Commission shall be paid out of the funds of the Commission any reasonable expenses incurred by them in connexion with the business of the Commission.

6. Appointment of secretary and other officers

The Commission may appoint a secretary and such other officers as it may consider necessary for assisting in the proper execution of its duties and there shall be paid to such secretary or officers from the funds of the Commission such remuneration as the Commission may determine.

7. Duties and powers of the Commission

- (1) It shall be the duty of the Commission—
- (a) to advise the Government on the sale and export of tobacco;
 - (b) to promote and expand the sale of tobacco;
 - (c) to collate statistics relating to tobacco;
 - (d) to distribute market studies and information relating to tobacco;

- (e) to control and regulate the sale of tobacco on the auction floors in Malawi.
- (2) In addition to the other powers conferred upon it by this Act, the Commission shall, with the approval of the Minister, have power—
- (a) to acquire, lease or hire any property which it considers necessary for the purpose of exercising its functions;
 - (b) to insure against losses, damages, risks and liabilities which it may incur;
 - (c) to enter into contracts in connexion with the exercise of its functions or the performance of its duties;
 - (d) to incur expenditure in the furtherance of any scheme for the better marketing of tobacco or for the development of external markets for tobacco.

8. Protection of members of Commission

No member of the Commission shall be liable to any suit, claim or demand by reason of anything done in good faith or for any decision made in the rightful exercise of his discretion in his capacity as such member.

9. Appeals from decisions of Commission

Any person aggrieved by a decision of the Commission in the exercise of its functions or the performance of its duties under this Act may appeal to the Minister, whose decision thereon shall be final and shall not be questioned in any court.

Part III – Finances of Commission

10. Revenue of Commission

The revenue of the Commission shall include—

- (a) all charges levied by the Commission;
- (b) all other fees, cesses, dues or rents received by the Commission; and
- (c) the interest on money invested by the Commission.

11. Bank accounts

Unless the Minister shall otherwise permit, all moneys received by the Commission shall be paid into a bank registered under the Banking Act and shall be credited to such of the Commission's accounts as may be appropriate.

[Cap. 44:01]

12. Investment of moneys by Commission

The Commission may invest all or any part of its moneys—

- (a) in the purchase of any security issued by the Government of Malawi;

- (b) in deposits in any bank or building society registered under the Banking Act or the Building Societies Act, as the case may be; or

[Cap. 44:01]

[Cap. 32:01]

- (c) in such other manner as may be approved by the Minister and the Minister for the time being responsible for finance.

13. Expenses of Commission

- (1) The expenses of the Commission incurred in the execution of the functions, duties and powers conferred upon it, or in the discharge of any of its liabilities, shall be defrayed out of the funds of the Commission.
- (2) The Commission may create such general and other reserves as may be approved by the Minister and may credit to such reserves such appropriations as may be authorized in the annual estimates of the Commission.

14. Raising of loans by Commission

- (1) It shall be lawful for the Commission from time to time to raise loans, whether by way of bank overdraft or otherwise, in such amounts and on such conditions as may be approved under the Finance and Audit Act, for the proper carrying out of this Act.

[Cap. 37:01]
- (2) Such loans may be secured on the property and revenues of the Commission, including any lands which may be specifically placed at the disposal of the Commission under any law:

Provided that this section shall not be deemed to confer any powers of alienating such lands other than such powers as may be conferred by any such law.

15. Keeping of accounts

- (1) The Commission shall cause a true account to be kept of all its financial transactions during each financial year.
- (2) The Commission may keep such special accounts, including capital and renewals accounts, as it may consider necessary, and shall keep such further or other accounts as the Minister may from time to time direct.
- (3) All accounts of the Commission shall be open to inspection by any member of the Commission.

16. Audit of Commission's accounts

The accounts of the Commission shall be audited at the end of every one of the Commission's financial years by an auditor approved by the Minister.

17. Financial year of Commission

The financial year of the Commission shall be such as may be prescribed by the Minister with the approval of the Minister for the time being responsible for finance.

Part IV – Auction floor licences

18. Licensed auction floors

- (1) No person shall use any premises for the sale of tobacco by auction unless he holds a valid auction floor licence in respect of such premises in the prescribed form granted by the Minister and licensing such premises as a licensed auction floor.
- (2) The grant to an applicant of an auction floor licence shall be made on payment of the prescribed fee, subject to the discretion of the Minister, bearing in mind the number of such licences which have already been granted in the year in respect of which the application for a licence is made.
- (3) Every auction floor licence shall, unless previously surrendered, revoked or suspended, be valid until the 31st day of December in the year in which it is granted.
- (4) The Commission may, from time to time, after prior consultation with the holders of auction floor licences, and with the approval of the Minister, fix a tariff of weighing, selling and commission charges, which tariff shall be published in the *Gazette*, and it shall be a condition of every auction floor licence that the licensee's charges shall not exceed such tariff.
- (5) If the holder of an auction floor licence or his manager or any other person employed by him for conducting the sale of tobacco on the auction floor to which such licence relates—
 - (a) fails to comply with, or contravenes, any condition to which the licence is subject; or
 - (b) is convicted of an offence against this Act, the Minister may, in his discretion—
 - (i) forthwith revoke such licence; or
 - (ii) suspend such licence for such period as he may deem reasonable to enable appropriate investigations to be carried out, and thereafter revoke such licence or allow it to continue.
- (6) No part of the fee paid for such licence shall be refunded on the cancellation, revocation or suspension of such licence.
- (7) Any provision in any other Act which may require any person to hold a licence or permit to sell any article shall not apply to the holder of an auction floor licence or to his manager or to any other person employed by him for conducting the sale of tobacco on the licensed auction floor to which such licence relates in respect of the sale of such tobacco.
- (8) Every holder of an auction floor licence shall comply with all lawful directions of the Commission and shall render to the Commission the prescribed returns.
- (9) Whenever the Minister has reason to believe that sales on any auction floor are the subject of rigging or any other corrupt practice, or is otherwise satisfied that it is in the interests of fair trading so to do, he may order the holder of the auction floor licence concerned to suspend business on the auction floor until further notice.

19. Minister may require holder of auction floor licence to give information

- (1) The Minister may require any holder of an auction floor licence to disclose to him the amount of tobacco sold by such holder, or by his manager or other person employed by him, on behalf of any person, and the price for which such tobacco was sold, and any such holder who does not comply with such requirement or who, in complying with such request, knowingly or recklessly makes any false statement or gives any false information shall be guilty of an offence.

- (2) The Minister shall treat any information given to him by reason of a requirement made under subsection (1) as confidential:

Provided that where, the exercise of the Minister's powers under subsection (1) results in the disclosure of an alleged offence, such information may be used in the prosecution of such offence.

20. Sale days and hours

- (1) The Commission may from time to time appoint for each licensed auction floor days on which, or hours during which, tobacco of different type may be offered for sale, and it shall be a condition of every auction floor licence that tobacco may only be offered for sale on such days or during such hours.
- (2) Any appointment made by the Commission under subsection (1) shall—
- (a) be published by posting a copy, in a prominent position at the; licensed auction floor to which it applies and shall come into force upon the date of such publication;
 - (b) be broadcast as a public announcement by the Malawi Broadcasting Corporation.

21. Tobacco sold on auction floors to be graded

No person shall sell tobacco on a licensed auction floor unless such tobacco has been graded in accordance, with regulations made under this Act. Any person who contravenes this section shall be guilty of an offence.

Part V – Auction floor buyer's licence

22. Auction floor buyer's licence

- (1) No person shall buy tobacco on a licensed auction floor unless he is the holder of a valid auction floor buyer's licence, in the prescribed form, granted by the Minister.
- (2) The grant of an auction floor buyer's licence shall be at the discretion of the Minister and shall be subject to such conditions as the Minister may deem fit to impose.
- (3) There shall be paid on the grant of an auction floor buyer's licence such fee as may be prescribed, and no part of such fee shall be repaid on the cancellation, revocation or suspension of such licence.
- (4) An auction floor buyer's licence shall, unless previously surrendered, revoked or suspended, be valid until the 31st December of the year in which it is granted.
- (5) An auction floor buyer's licence may be granted to a company or partnership, and in any such case such company or partnership shall register with the Commission the name of every person who is authorized to buy tobacco in Malawi on its behalf, and every person so registered by any such company or partnership shall be deemed to be the holder of an auction floor buyer's licence.
- (6) If the holder of an auction floor buyer's licence or any person who is deemed by virtue of subsection (5) to be the holder of such licence—
- (a) fails to comply with, or contravenes, any condition to which such licence is subject;
 - (b) is convicted of an offence against this Act,
- the Minister may, in his discretion—
- (i) forthwith revoke such licence; or

- (ii) suspend such licence for such period as he may deem reasonable to enable appropriate investigations to be carried out, and thereafter revoke such licence or allow it to continue.
- (7) Where the holder of an auction floor buyer's licence has been convicted of an offence against this Act and the court has ordered the cancellation of such licence, or where such licence has been revoked by the Minister, the Commission may refuse to register such holder as a person authorized to buy tobacco in Malawi on behalf of a company or partnership which holds an auction floor buyer's licence.
- (8) Every company or partnership holding an auction floor buyer's licence in accordance with subsection (5) shall render to the Commission the prescribed returns and shall comply with all lawful directions of the Commission.
- (9) Any person who contravenes subsection (1) or who, being the holder of an auction floor buyer's licence, fails to comply with or contravenes any condition to which such licence is subject, shall be guilty of an offence.

Part VI – Registered sellers

23. Registration of tobacco sellers on the auction floors

- (1) No person shall sell his tobacco on an auction floor unless he is registered as a seller by the Commission.
- (2) Application for registration shall be made at such time to such persons in such places and in such manner as may be prescribed and may be refused for such reasons as may be prescribed.
- (3) Any person who is aggrieved by the refusal of his application for registration may appeal to the Minister whose decision shall be final and shall not be questioned in any court.
- (4) Registers for the purposes of this section shall be kept at such places, by such persons and in such form as may be prescribed, and shall be open to inspection at all reasonable times by the Minister or by any person authorized by him in writing in that behalf.
- (5) Upon the registration of such registered sellers under this section, the person keeping the register shall issue to such seller a certificate of registration in such form and subject to such conditions as may be prescribed:

Provided that such seller grows tobacco in accordance with Part 11 of the Tobacco Act within the scheduled areas declared under section 2 of the Tobacco Act.

[Cap. 65:02]

Part VII – Tobacco graders and grades

24. Minister to define tobacco classes and grades

- (1) The Minister shall from time to time define the classes and grades in which tobacco may be sold or bought.
- (2) The classes and grades in which tobacco may be sold or bought shall be the same as those defined under section 11 of the Tobacco Act.

25. No grading without prescribed licence

- (1) No person shall carry on the business of a grader unless the Minister has issued to him such licence as may be prescribed.
- (2) The Minister shall not license as a grader any person who is licensed as an auction floor buyer:
Provided that this subsection shall not come into operation until the Minister, by notice published in the *Gazette*, directs that it shall come into operation.
- (3) Any person who carries on the business of a grader without a licence shall be guilty of an offence.

26. Commercial grading premises shall be licensed

All premises where commercial grading of tobacco is carried out shall be licensed by the Commission after due consultation with the Minister.

27. Appointment of grading inspectors

- (1) With the approval of the Minister the Commission shall appoint a grading inspector or grading inspectors who will have the power of entry to all licensed commercial grading premises for the purpose of inspecting the premises themselves and the grading of tobacco on such premises.
- (2) A grading inspector shall have power to open any bale of tobacco presented for sale at any licensed auction floor or at any commercial grading premises.

28. Labelling of graded tobacco

- (1) Every grader shall label distinctively each bale of tobacco graded by him with his licensed name and number for identification purposes.
- (2) Any grader who wilfully fails to label his graded tobacco shall be guilty of an offence.

Part VIII – Commission—General**29. Tobacco used in manufacture**

- (1) No person shall use for the purpose of manufacture for sale any tobacco grown in Malawi which has not been sold to such person or his agent across a licensed auction floor:
Provided that this section shall not apply to tobacco grown on customary land in excess of the requirements of the Farmers Marketing Board or of a person authorized to buy such tobacco under section 12 of the Tobacco Act and made by the grower into roll, twist, snuff, coil or ball tobacco for local sale or trade.
- (2) Any person who uses tobacco for the purposes of manufacture in contravention of this section shall be guilty of an offence.

30. Commission may arrange for disposal of surplus tobacco

- (1) If at any time the Commission deems fit, it may, with the written approval of the Minister, arrange for the collection of surplus tobacco into pools and for the disposal of such tobacco through the Commission.

- (2) For the purposes of this section, “surplus tobacco” means tobacco delivered to a licensed auction floor for sale and remaining unsold and not removed therefrom after due notice given under section 31.
- (3) The powers, duties and functions of the Commission under this section shall be such as may be prescribed by the Minister.

31. Power of Commission to authorize destruction of tobacco left on floor

If at any time the owner of any tobacco left unsold on a licensed auction floor has failed to remove such tobacco after receiving such notice to do so as the Commission may deem sufficient, the Commission may authorize the owner of such licensed auction floor to destroy such tobacco without liability to pay compensation to the owner of such tobacco.

Part IX – Miscellaneous

32. Appeals

Any person aggrieved by a decision of the Commission may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

33. Hindrance of person performing duty

Any person who wilfully obstructs or hinders any person in the performance of his duties under this Act shall be guilty of an offence.

34. Failure to produce document

Any person who refuses to produce for inspection a licence or other document issued under or required by this Act to any person authorized under the Act to inspect such licence or other document shall be guilty of an offence.

35. Order prohibiting sale, etc., where licence, etc., believed violated

- (1) Where the Minister or a person authorized by him in that behalf has reasonable grounds to believe that the terms or conditions of a licence issued under Part IV, V and VII are not being complied with, he may issue an order prohibiting the sale, exchange, movement or grading of such tobacco until investigations therein have been completed.
- (2) Any person who fails to comply with such an order shall be guilty of an offence.

36. Power of entry

The Minister, a grading inspector or the Chairman of the Commission or any person authorized either by the Minister or by the Chairman of the Commission in writing in that behalf may enter upon any land or premises used for the purpose of buying or grading or handling tobacco for the purposes of ascertaining whether this Act is being complied with.

37. Offences and penalties

- (1) Any person who, in making any application under this Act or any return required by or under this Act, knowingly or recklessly gives false information or makes any false statement shall be guilty of an offence.

- (2) Any person who is guilty of an offence against this Act shall be liable to a fine of K200 and to imprisonment for three months.
- (3) When any person who holds a licence or permit under this Act is convicted of an offence against this Act, the Court may, in addition to any other penalty, order the cancellation of such licence or permit or order that any tobacco in respect of which an offence has been committed shall be forfeited.

38. Regulations

The Minister may make regulations for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

- (a) the forms to be used for any licence, return or application;
- (b) the fees for any licence or application;
- (c) general conditions to be attached to licences required under this Act;
- (d) the returns to be made for the purposes of this Act;
- (e) the penalties for breaches of the regulations;
- (f) any matter to be or which may be prescribed under this Act.