

THE CAPITAL MARKETS (COFFEE EXCHANGE) REGULATIONS

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THE CAPITAL MARKETS (COFFEE EXCHANGE) REGULATIONS

[Legal Notice 40 of 2020]

PART I – PRELIMINARY**1. Citation**

These Regulations may be cited as the Capital Markets (Coffee Exchange) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Capital Markets Act (Cap. 485A);

"auction" means the auction system under which clean coffee is offered for sale at a coffee exchange and includes the place at which, or a facility by means of which, whether electronic or otherwise, offers or invitations to sell, buy or exchange coffee contracts are regularly made on a centralized basis, but does not include—

- (a) the office or facilities of a coffee buyer or service provider; or
- (b) or the office or facilities of a clearing house;

"auction levy" means such fee per sixty-kilogram bag of coffee or other less volume of coffee sold at a coffee exchange, payable by millers, roasters and buyers;

"Authority" means the Capital Markets Authority established under section 5 of the Act;

"bid" means an offer to pay a particular amount of money for a given lot of clean coffee being offered for sale at a coffee exchange;

"broker" means a person cleared by the exchange and licensed by the Authority, who may be appointed by a coffee grower or an association of coffee growers in accordance with the Crops (Coffee) (General) Regulations (sub. leg) to sell their coffee on their behalf through the Exchange;

"coffee buyer" means an incorporated company licensed under the Crops (Coffee) (General) Regulations (sub. leg) to buy clean coffee at the exchange for export, local sale or value addition or to import clean coffee for secondary processing in Kenya;

"clean coffee" means coffee bean or dried seed of the coffee plant separated from non-food tissues of the coffee fruit where the silver skin is reduced to the maximum possible extent;

"clearing house" means an entity approved by the Authority, and recognized as a clearing institution on behalf of a coffee exchange, providing the services of clearing and settlement of transactions and guaranteeing settlement on behalf of the exchange;

"clearing and settlement" means the procedure by which a clearing house acts as an intermediary between a buyer and seller for exchange traded transactions in order to reconcile orders between transacting parties and ensure the physical or financial settlement of the transaction;

"coffee exchange" means a company incorporated under the Companies Act (Cap. 486) and licensed by the Authority as an exchange for trading in clean coffee;

"coffee miller" means a person licensed under the Crops (Coffee) (General) Regulations (sub. leg) to conduct the business of coffee milling;

"coffee roaster" means a person licensed by the respective county government to buy clean coffee under the Crops (Coffee) (General) Regulations (sub. leg) for value addition for local sale;

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"coffee sales proceeds" means monetary consideration received at the direct settlement system in exchange for clean coffee sold at an exchange or, where applicable, through direct sales;

"coffee sample" means a small quantity of coffee, drawn out of a coffee lot to be a representative of that lot of coffee for purposes of display, testing, quality analysis, archiving, marketing or other legal purpose;

"coffee warrant" means an instrument prepared by the warehouseman of which the person named therein, or the last endorsee thereof, shall for all purposes be deemed to be the owner of the coffee to which it relates;

"collateral manager" means a person qualified under the Crops (Coffee) (General) Regulations and appointed by the warehouseman or any other person who has an interest in coffee stored in a warehouse with the intention of monitoring or taking custody of the coffee;

"commodity" means clean coffee;

"direct settlement system" means a banking facility provided by commercial banks regulated by the Central Bank of Kenya for clearing and settlement of coffee proceeds;

"electronic warehouse receipt" means an authorized, verifiable and transferable warehouse receipt that has been generated, sent, received or stored by electronic, optical or similar means, conferring legal title to the depositor for commodities received in a licensed warehouse accredited by the Agriculture Food Authority;

"grower" means any person who cultivates coffee in Kenya and may for purposes of licensing under the Crops (Coffee) (General) Regulations and includes co-operative societies, unions, associations and estates;

"grower miller" means a grower licensed under the Crops (Coffee) (General) Regulations, who mills own parchment or *buni* or its members' coffee and includes a co-operative society, unions, association, estate or any other legal entity comprised of growers;

"lot" means a saleable quantity of coffee specified in the sales catalogue designated for bidding;

"marketing of coffee" means identification of competitive prices and facilitation of transactions relating to sale of coffee;

"net warrant weight" means the net weight of coffee at the point of sale per lot after allowing for all required samples;

"no bid" means a lot that has not attracted any bids at the auction;

"out-turn number" means a reference number assigned by a coffee miller to a coffee consignment delivered to a mill;

"prompt date" means a date specified in the sales catalogue and shall not be more than five working days from the date of the sale on which coffee sales proceeds are to be received by the grower through and from the buyer through the clearing house;

"service provider" means a person who may have contractual dealings with the coffee growers and shall include cooperative societies, millers, warehousemen, transporters and financiers;

"settlement account" means an account in the direct settlement system into which all coffee sales proceeds sold at the exchange are paid;

"reserve price" means the price set as the minimum price before the auction by a miller in consultation with the grower;

"sample deposit fee" means an amount of money payable in advance to an exchange, by buyers or roasters as security for collecting offer samples at an exchange, this being such an amount as may be determined by that exchange from time to time;

"sample fee" means the price payable to an exchange by a buyer or a roaster for the offer sample collected at the sample room, based on the average price of coffee traded at that exchange in the month that the sample was collected;

"sample room" means the physical space provided by an exchange for reception, display and distribution of coffee samples;

"settlement bank" means a bank as defined under section 2 of the Banking Act (Cap. 488), approved by the Authority to facilitate the maintenance of a segregated account and to establish and operate a direct system for settlement and payment of coffee sales proceeds to growers;

"sweepings" means the balance of coffee samples in the exchange sample room and spillages collected from millers' milling activities for sale at the exchange and the proceeds paid to growers on *pro-rata* basis;

"sales catalogue" means a standard document prepared by a miller or a broker in consultation with the exchange for sale of clean coffee at the exchange;

"sale" means the offering of clean coffee for sale;

"trading floor" means the physical and electronic space and all the facilities including items, equipment, records and assets provided by or belonging to or in use by an exchange for purposes of coffee auction;

"warehouse" means any building, structure or other protected enclosure duly licensed by the relevant authority to be used for the storage or conditioning of coffee for the purposes of trading at an exchange and is specifically designed to guarantee quantity, quality and safety of the coffee;

"warehouse inspector" means a person empowered by the relevant authority to inspect warehouses and coffee kept therein to ensure that the warehouse operator complies with the law and the conditions of the operator's licence;

"warehouseman" means a person duly licensed by the Agriculture and Food Authority to engage in the business of operating a warehouse for receiving, storing, shipping or handling coffee for the purposes of trading at an exchange; and

"warehouse receipt" means a receipt issued by a licensed warehouseman in respect of coffee stored or handled in a licensed warehouse for the purposes of trading at an exchange, certifying that the specified coffee is of the stated quantity and quality and is located at the specified location, and includes an electronic warehouse receipt.

3. Object, purpose and application

The purpose of these Regulations is to—

- (a) to give effect to section 12 (1) of the Capital Markets Act (Cap. 485A);
- (b) provide for the establishment and regulation of coffee exchanges;
- (c) provide for the licensing of coffee brokers;
- (d) provide for the establishment and operationalization of direct settlement system for expedited and transparent payment of coffee sales proceeds;
- (e) provide for the promotion and maintenance of an efficient coffee exchange;
- (f) give directives, principles and conditions for trading of clean coffee at an exchange;
- (g) ensure the trading is conducted in a secure, stable and transparent manner in an environment of fair competition; and
- (h) provide for the protection of the interests of the grower, the buyer and other stakeholders at an exchange.

PART II – COFFEE EXCHANGE

4. Regulation of coffee exchanges

(1) A person shall not carry on the business of a coffee exchange unless he has applied for approval and licensed as a coffee exchange by the Authority in such manner as the Authority may provide.

(2) An application under paragraph (1) shall be made in Form A as set out in the First Schedule and accompanied by —

- (a) the copies of memorandum and articles of association, certificate of incorporation, and rules governing the operations of the exchange, which —
 - (i) are in a form satisfactory to the Authority; and
 - (ii) restrict the applicant to the business of operating a coffee commodity market and services incidental thereto;
- (b) details of trading, clearing and settlement systems proposed to be adopted by the applicant;
- (c) the application fees set out in the Second Schedule;
- (d) satisfactory bank references;
- (e) a business feasibility plan evaluated by an entity with a proven track record and expertise; and
- (f) any such additional documents as the Authority may require.

(3) In order to be entitled to apply for a licence under regulation 3, an applicant shall, unless otherwise expressly exempted by the Authority, be required to—

- (a) be demutualized;
- (b) have a minimum authorized, issued and paid up equity share capital to support initial infrastructural investments and three years' operating capital;
- (c) satisfy requirements relating to ownership and governance structure specified in these Regulations;
- (d) have its directors and shareholders who hold or intend to hold share, determined as fit and proper persons as provided under section 24A of the Act;
- (e) satisfy the Authority on the exchange's financial capacity functional expertise and infrastructure;
- (f) have in its employment, sufficient number of persons with adequate professional and other relevant competencies and experience; and
- (g) comply with any other conditions as may be specified by the Authority.

(4) The Authority may, if satisfied that the applicant has demonstrated that it is capable of complying with the requirements under this regulation and upon payment of the licensing fee set out in the First Schedule, grant the applicant a licence to operate as a coffee exchange.

5. Rules and obligations of a coffee exchange

(1) An applicant seeking approval to operate as a coffee exchange shall develop its rules, which shall provide for—

- (a) the clear demarcation of roles and responsibilities of the board, chief executive officer and the committees of the board;
- (b) the appointment of directors and a fair representation of persons in the selection of members of the board and administration of its affairs including the professions relevant to coffee industry;
- (c) the powers of the chief executive officer including in emergency situations;
- (d) the qualifications for membership;
- (e) the exclusion from membership of persons who do not meet the minimum criteria on integrity;

- (f) the expulsion, suspension or disciplinary action against members for conduct inconsistent with just and equitable principles relating to trading in coffee, or for a contravention of the rules of the coffee exchange;
- (g) specify qualifications for applicants for membership and provisions for accepting applicants as trading participants, imposing conduct and other requirements on them;
- (h) provide for the governance of the conduct activity of participants, including their responsibility to act with integrity and in the interests of maintaining a proper market, paying such fees and charges as may be applicable and abiding by the rules of the clearing house;
- (i) prohibit market abuse practices;
- (j) provide mechanisms for effectively investigating breaches of the rules, enforcing the rules and providing for appeals;
- (k) make default provisions for the taking of proceedings or other action if a clearing member has failed, or appears to be unable, or likely to become unable, to meet his obligations for any unsettled or open market contracts to which he is a party;
- (l) specify qualifications for trading membership, imposing conduct and other requirements on them and, where appropriate, for the procedure for their removal as trading members;
- (m) the making of reports to the Authority by the exchange whenever it rejects any application for membership, where it suspends or expels a member or where it suspends trading;
- (n) procedures for developing warrants and receipts to be traded on the exchange;
- (o) the terms and conditions under which coffee or contracts may be traded;
- (p) an audit system relating to proprietary trading by members;
- (q) the standard coffee grades that may be traded by members and the terms and conditions governing trading by members;
- (r) fair and properly supervised trading practices;
- (s) measures to prevent market abuse in its coffee market;
- (t) preventing the excessive use of credit by way of initial or maintenance margin in respect of the purchase or carrying of any coffee;
- (u) the recording and publishing of details of trading, clearing and settlement;
- (v) dues, fees and other charges levied by the exchange and its other sources of revenue;
- (w) internal procedures to ensure the proper handling of complaints and to ensure that any appropriate remedial action on those complaints is promptly taken;
- (x) the resolution of disputes and provision for appeal;
- (y) the carrying on the business of the coffee exchange generally, including the development of a regional exchange, with due regard to the interests and protection of growers and investors; and
- (z) any other provisions specified by the Authority.

(2) The rules established and adopted by the exchange under paragraph (1) shall be approved by the Authority before being applied by the exchange.

(3) The rules of a coffee exchange shall apply to the officers of the exchange, members and employees of the members of the exchange and the member shall be responsible to ensure their employees' compliance with the rules.

(4) The Authority may require a coffee exchange to comply with such additional requirements as may be imposed on a commodities exchange under any written law.

[Subsidiary]**6. Systems, staffing and record keeping**

A coffee exchange shall—

- (a) provide and maintain a transparent and an efficient system for coffee trading;
- (b) ensure that it has employed qualified staff for the undertaking of its activities;
- (c) ensure that it has in place proper and adequate infrastructure in terms of office space, equipment and software to enable it undertake its activities;
- (d) ensure the proper training of its staff in activities related to its activities;
- (e) accord reasonable access to the auction of all persons licensed under the Crops (Coffee) (General) Regulations (sub. leg) to trade;
- (f) maintain a data base for records of coffee sales at the auction floor and other related trade activities;
- (g) comply with the regulatory requirements of the Authority;
- (h) comply with the directives of the Authority;
- (i) establish a linkage between the direct settlement system provider and licensed coffee warehouses to facilitate release of coffee to coffee buyers or roasters upon payment;
- (j) establish a direct link between its systems and software and the Authority; and
- (k) disseminate market information for every coffee auction and an analysis of performance on a daily, weekly and monthly basis.

PART III – COFFEE BROKERS**7. Obligation to seek a licence**

A person shall not carry on or purport to carry on business as a coffee broker unless that person is licensed by the Authority.

8. Licensing of coffee brokers

(1) A person who intends to operate as a coffee broker shall submit an application to the Authority for a licence to operate as such in Form B as set out in the First Schedule.

(2) An application under paragraph (1) shall be accompanied by—

- (a) the fees as set out in the Second Schedule;
- (b) the documents, information and declarations specified under regulation 9; and
- (c) a letter from the coffee exchange stating that the applicant meets all the relevant requirements of that exchange and that the exchange will admit the applicant if licensed by the Authority.

9. Consideration for grant of licence

An applicant seeking a licence under regulation 8 shall be required to—

- (a) be a company limited by shares;
- (b) have a chief executive officer who is a fit and proper person as described under section 24A of the Act and who has experience of not less than five years in the business of buying, selling or dealing in coffee, commodities or other securities;
- (c) have the necessary infrastructure including office space, equipment and trained staff to effectively discharge its activities;
- (d) have as its directors and key personnel, persons who are fit and proper as described under section 24A of the Act; and
- (e) have a minimum net capital and minimum net worth as determined by the coffee exchange and approved by the Authority from time to time.

10. Furnishing of information, clarifications etc.

(1) The Authority may, in considering an application made under regulation 8, require an applicant to furnish such further information regarding any previous dealings in securities, commodities and any other related matter as the Authority may consider necessary.

(2) An applicant or its key personnel shall, if required by the Authority, appear before the Authority to make personal representations.

11. Grant of licence

(1) The Authority, shall, within thirty days from the date of application, grant a licence to an applicant, if the Authority is satisfied that the applicant is eligible to be licensed as a coffee broker.

(2) The Authority shall duly inform the coffee exchange and the applicant of the grant of a licence under paragraph (1).

(3) A licence granted under paragraph (1) shall remain valid until suspended or revoked.

(4) The Authority shall not refuse to grant a licence without first giving the applicant an opportunity to be heard.

(5) Where the Authority, after hearing the applicant, refuses to grant the applicant a licence, the Authority shall communicate the decision to the applicant and the coffee exchange within fourteen days of the hearing, stating the grounds for refusal.

(6) An applicant aggrieved by the decision of the Authority under paragraph (5) may appeal against such refusal to the Capital Markets Tribunal within fifteen days of receipt of the decision of the Authority.

12. Annual licence fees

A coffee broker shall pay an annual licence fee as set out in the Second Schedule.

13. Suspension of a licence

(1) Where the Authority is satisfied that a coffee broker has—

- (a) failed to comply with the Act, these Regulation or any directions made or given thereunder;
- (b) failed to comply with any conditions subject to which the licence was granted under these Regulations;
- (c) contravened the rules of the coffee exchange;
- (d) failed to adhere to any requirement of the code of conduct laid down under these Regulations or other laws;
- (e) failed to comply with the directives of the Authority in respect of business conduct, dealings with clients and financial prudence;
- (f) failed to furnish any information relating to transactions of the coffee broker as may be required by the Authority;
- (g) failed to submit periodical returns as required by the Authority;
- (h) furnished the Authority or the exchange with wrong or false information;
- (i) failed to settle an investor complaint where such complaint has been adjudicated by the exchange, a committee of the exchange, the Authority, the Capital Markets Tribunal, or a court of law;
- (j) not co-operated in any enquiry or inspection conducted by the Authority;
- (k) indulged in market manipulation, price rigging or cornering activities at a coffee exchange;
- (l) experienced or is experiencing financial position deterioration to such an extent that the Authority is of the opinion that the continuance of the coffee broker in the business is no longer in the interest of investors;
- (m) been suspended by the exchange; or

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(n) failed to pay the annual fees; or it is necessary in the public interest to do so, the Authority may, by an order in writing, suspend the licence of a coffee broker for such period as may be specified in the order or take such administrative action as it may consider necessary.

(2) The Authority shall, before issuing an order of suspension or other administrative action under paragraph (1), give a coffee broker an opportunity to be heard.

14. Revocation of a licence

(1) The Authority may, by order in writing, revoke the licence of a coffee broker where it is satisfied that—

- (a) the reasons for suspension of a licence under regulation 13 continue during the period of such suspension;
- (b) a coffee broker whose licence has been suspended —
 - (i) is engaging or has engaged in insider trading, market manipulation or any other unfair practice or market abuse;
 - (ii) has been found guilty of fraud or convicted of a criminal offence;
 - (iii) has not complied with a directive of the Authority;
- (c) the membership of that coffee broker has been cancelled by a coffee exchange or another securities exchange; or
- (d) it is necessary for the protection of investors.

(2) The Authority shall, before issuing an order of revocation under paragraph (1), give the coffee broker an opportunity to be heard.

15. Automatic revocation of a licence

A licence granted under regulation 11 shall automatically be revoked if the coffee broker —

- (a) ceases to be a trading member of a coffee exchange;
- (b) is declared a defaulter by a securities exchange or a coffee exchange and is not re-admitted to membership within a period of six months from such declaration;
- (c) surrenders its membership in all coffee exchanges where it is a member;
- (d) is declared insolvent by a court of law;
- (e) voluntarily surrenders the licence to the Authority; or
- (f) is wound up by a court order.

16. Appeal against suspension or revocation of licence

A coffee broker aggrieved by the decision of the Authority to suspend or revoke its licence may, within fifteen days of being notified of the decision of the Authority, appeal to the Capital Markets Tribunal.

17. Coffee broker to clear liabilities

Despite a suspension or revocation of a licence, a coffee broker shall be responsible for clearing all its outstanding obligations up to the date on which that coffee broker has been operating as such.

18. Continuing obligations

A coffee broker shall, as a condition of continued admission as a coffee broker, provide to the Authority through the coffee exchange a certified copy of —

- (a) the net capital balance;
- (b) net worth statements; and
- (c) a report of the auditor,

in a form that may be recommended by the Authority from time to time, on a quarterly basis within thirty days of the end of the quarter.

PART IV – COFFEE SAMPLING

19. Central sample room

(1) An exchange shall maintain a central sample room where samples of coffees to be offered for sale shall be held for distribution to buyers and roasters, and for display and archiving.

(2) An exchange shall maintain an on-line portal in which information on coffee samples, quality and quantity of coffee on offer at the exchange will be accessible to intending buyers and interested persons.

20. Sample deposit

(1) Every buyer and roaster operating at an exchange shall be required to deposit such amount of money as determined by the exchange from time to time, as security for collecting offer samples at the exchange.

(2) An exchange shall operate a coffee sample deposit account in a bank to be determined by the exchange in which all the sample deposits paid by buyers and roasters shall be deposited.

(3) Interest earned or accruing from such deposits shall form part of the earnings of the exchange and provided further, that the only permitted drawings from this account shall be—

- (a) sample fees netted off against samples collected by buyers and roasters;
- (b) refunds to buyers and roasters ceasing to trade; and
- (c) such interest earned or accruing from the sample deposit account.

(4) A buyers or roaster who fail to pay the raised sample fees invoices within the due dates shall be suspended by the exchange from further collection of samples until such top ups are made.

(5) Any refunds under paragraph (3)(b) shall be made without interest and net of any indebtedness by the buyer or roaster to the exchange.

(6) No interest shall accrue to the benefit of the buyers or roasters in respect of the sample deposit.

21. Offer sample

An offer sample out of a lot of coffee presented for sale at an exchange shall be availed by the exchange to licensed buyers and roasters prior to the auction.

22. Sample fee

Every buyer or roaster shall within fourteen days of receipt of an invoice from an exchange pay a sample fee in respect of all the selling samples collected.

23. Recovery of sample fee

A buyer or roaster shall be given a fourteen days' notice to pay the outstanding sample fee and in default thereof, the fees shall be recovered from the sample deposit provided that all buyers and roasters shall maintain a minimum sample deposit balance of an amount to be determined by the exchange.

24. Deduction and remission of sample fee

An exchange shall deduct the sample fee invoiced from the forfeited sample deposit.

25. Representative samples

(1) A miller or an appointed broker shall deliver to the sample room, representative samples out of a lot of coffee being offered for sale at an exchange in such quantities as may be determined from time to time by the exchange.

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(2) The samples delivered by the millers or appointed brokers to the sample room shall be in accordance with the prevailing procedures as determined by the exchange from time to time.

26. Reference sample

(1) A reference sample of coffee shall be drawn from each lot and retained by an exchange for archival storage, for at least six months from the date of the sale for verification in case of a dispute:

(2) Notwithstanding paragraph (1), where a dispute exceeds six months, an analysis of the sample shall be done by an expert and the quality report submitted to the exchange.

27. Buying sample

A buying sample of coffee shall be drawn from each lot of coffee purchased at the auction to be availed to the buyer or roaster who has purchased the lot for verification.

28. Display sample

A display sample shall be drawn for display in the sample room.

29. Sample records

The exchange shall maintain records relating to —

- (a) receipt of coffee samples from the millers;
- (b) distribution of coffee samples to buyers, roasters and the exchange; and
- (c) release of sweepings to the millers or other agent of the growers on a lot prorated basis for sale.

30. Sale of sweepings to benefit growers

Proceeds of sale for sweepings shall be remitted to growers through the direct settlement system provider on a prorated basis and shall have unique codes.

31. Submission of sample returns

(1) A miller or broker shall submit returns to an exchange and the Coffee Directorate on remission of monies received from samples and sweepings to the growers.

(2) An exchange shall make weekly, monthly, biannual and annual auction returns to the Coffee Directorate.

(3) An exchange shall prepare monthly reports on its performance and forward the same to the Coffee Directorate, buyers, roasters, millers, growers or growers' representatives and other interested parties.

32. Resolution of disputes

(1) In the event of a dispute arising out of coffee traded at an exchange and at the request by a complainant made to the exchange or the licensing authority, a random representative sample shall be redrawn from the lot or consignment in dispute for comparison with the reference sample.

(2) The instructions to draw each sample shall be lodged at the exchange or the licensing authority which shall in turn instruct the licensed warehouseman to allow redrawing of samples by the aggrieved party and any interested party may witness the exercise.

(3) In the event of a marked difference between the reference sample and the redrawn sample, additional samples shall be drawn from each bag in the lot and such individual sample together with the bag from which it has been drawn shall be referenced accordingly.

(4) In the event that the dispute is unresolved by the exchange or the licensing authority, it shall be referred to the Capital Markets Tribunal established under the Capital Markets (Cap. 485A).

PART V – TRADING AT THE AUCTION FLOOR

33. Participation at the trading floor

(1) Only licensed persons under these Regulations and other relevant laws shall participate on the trading floor of a coffee exchange.

(2) The participants on the trading floor shall be required to pay to the exchange the applicable auction levy.

34. Holding of auctions at the Exchange

(1) The exchange shall, in consultation with millers or appointed brokers, as the case may be, set the volumes, lot sizes, dates and times for holding of coffee auctions.

(2) Notwithstanding paragraph (1) provided that no suspension or cancellation of any auction shall be done without notification to the Authority.

35. Sales catalogue

(1) A sales catalogue shall be prepared by the grower miller or an appointed broker in accordance with the Third Schedule.

(2) The exchange shall, in consultation with grower millers or appointed brokers as the case may be, determine the order of the sales catalogues for every sale and the exchange shall ensure that reasonable access to the auction is given to all persons licensed to trade under the Crops (Coffee) (General) Regulations.

(3) A draft of the sales catalogue of each grower miller or broker shall be made available to buyers and roasters in accordance with the prevailing procedures of an exchange.

(4) The final sales catalogue shall be made available to the exchange by the grower miller or broker in accordance with the prevailing procedures of an exchange.

36. Disclosure of bulked coffee

A miller shall disclose to the broker and the exchange, details of all bulked coffees and justify its basis.

37. Conditions of auction sales

Trading at the auction shall be in US Dollars or any other currency as may be determined by the exchange with the approval of the Authority.

38. Process of trading at the exchange

(1) The process of trading at the exchange shall be in accordance with these Regulations and shall comprise the following—

- (a) a miller shall deposit clean and graded coffee at a designated licensed warehouse, and where the clean coffee is a bulk, the respective coffee growers and the proportions of their coffee will be stated in writing;
- (b) the coffee shall meet defined quality standards for commodity trading at the exchange at which the coffee will be offered for sale;
- (c) the warehouseman shall issue a coffee warrant as set out in the Fourth Schedule or transferable warehouse receipts as the case may be, stating the quantity and quality of the coffee deposited and ensure traceability of the coffee;
- (d) the warehouseman shall guarantee delivery of the coffee described in the coffee warrant or warehouse receipt as the case may be, and in the event of loss or failure of delivery, the warehouseman shall be liable;
- (e) a coffee warrant or warehouse receipt as the case may be, issued shall be transferred to a new holder who is entitled to take delivery of the coffee upon presentation of the coffee warrant or warehouse receipt at the warehouse;

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- (f) when the owner of coffee deposited in a warehouse decides to trade and is acting through a broker, the owner shall contact the broker and give authority to sell;
- (g) for purposes of sale, the miller shall input the details of the coffee warrant or warehouse receipt as the case may be, into the central registry of the exchange at which coffee will be offered for sale;
- (h) the collateral manager, where applicable, shall confirm that the warehouse receipt as the case may be, is valid by inspecting and auditing underlying commodities in warehouse;
- (i) upon verification, details in the central registry shall be confirmed into the central order book ready for trading;
- (j) once the sale of coffee is complete, successful bidders shall be invoiced by the miller or broker and payments of the proceeds shall be effected through direct settlement system net of contract and any statutory charges;
- (k) upon confirmation of payment by the direct settlement system provider and endorsement by the exchange, title to coffee shall be transferred to the buyer by changing ownership details in the coffee warrant or warehouse receipt, as the case may be, at the central registry; and
- (l) new owners will thereafter be at liberty to take delivery of the coffee.

(2) The grower or the grower's agent shall set the reserve price for each lot in the sales catalogue.

(3) An exchange shall not disclose the reserve price to a buyer, roaster or any other party whatsoever provided such reserve prices shall be disclosed to the Authority when requested.

(4) In the event that the highest bid for any lot is equal to or higher than the reserve price it shall be confirmed.

(5) Where the bid has not been confirmed, the miller or other agent of the grower shall disclose the reserve price at the trading floor.

(6) Where the disclosure of the reserve price does not attract any competitive offers, the coffee shall be withdrawn and re-offered for sale at a subsequent auction.

(7) A "No-Bid" lot shall be re-offered for sale at a subsequent auction.

(8) All trading in coffee shall be concluded at the trading floor.

39. Withdrawal of a lot

(1) A miller or broker may, by written communication to an exchange, made at least three working days prior to the date of sale, withdraw a lot that was destined for sale and such written communication shall also state the reasons for withdrawal.

(2) The exchange shall communicate the withdrawal in writing to all buyers and roasters at least two working days prior to the date of sale.

(3) Samples of lots withdrawn shall not be compensated.

40. Prompt date

(1) The prompt date shall be specified on the sales catalogue and shall be not more than five working days following the date of the sale.

(2) All coffees shall be paid for within the prompt date against an invoice presented by the miller.

PART VI – SETTLEMENT OF SALES PROCEEDS

41. Direct settlement system

(1) A direct settlement system shall be established by a licensed commercial bank competitively selected by an exchange subject to approval from the Authority and managed by that exchange.

(2) The requirements for the operation of the direct settlement system shall be as set out in the Fifth Schedule.

(3) The proceeds of the sale of coffee at the auction shall be remitted by a coffee buyer or roaster through a direct settlement system for onward settlement to the service providers and net payment to the grower.

(4) A coffee grower or the grower's authorized representatives, shall after the commencement of these Regulations, supply through the coffee exchange all the necessary particulars of the grower to the appointed financial institution providing the direct settlement system to the grower, for purposes of initiating the settlement system.

(5) The grower or the grower's authorized representatives shall also through the coffee exchange lodge with the financial institution providing the direct settlement system, any relevant contracts of service for which payment will be due from the grower, and any other document showing outstanding liabilities payable by the grower, for purposes of settlement through the system.

(6) The grower or the grower's authorized representatives shall ensure that the information provided under paragraphs (4) and (5) above is correct and relevant and they shall be liable for any loss or other consequences resulting from any incorrect information given to the commercial bank, through the coffee exchange, providing the settlement system.

(7) A coffee exchange shall indemnify the grower's authorized representatives in the event that it provides incorrect information different from the one submitted by grower's authorized representatives for onward transmission to the commercial bank providing the settlement system.

(8) The miller or broker shall generate invoices for coffee sold at an exchange and send a copy to the buyer or roaster and the exchange shall send the transaction file to the direct settlement system provider to validate the information supplied by the miller.

(9) The commercial bank operating the direct settlement system and the exchange where coffee is offered for sale, shall maintain records of all trade transactions.

(10) The commercial bank in which the direct settlement system is housed shall make the operations of the direct settlement system electronically accessible to interested parties or their authorized representatives.

(11) The commercial bank operating the direct settlement system shall prepare monthly and annual reports on its operations for submission to the exchange and the exchange shall make the reports accessible to interested parties.

(12) For purposes of payment by the direct settlement system, a service provider shall supply authenticated documents in support of any claim not later than three months of that service provided that such claims are supported with prior agreements between the growers and such service providers and lodged with the direct settlement service provider through the coffee exchange.

(13) The commercial bank operating the direct settlement system shall be responsible for provision of clearing, delivery and settlement services of proceeds from coffee traded at the exchange.

(14) The operations of the direct settlement system shall be in accordance with laws relating to banking and finance and any laws governing the exchange.

(15) The commercial bank operating a direct settlement system shall be responsible for—

- (a) settling trading accounts;
- (b) collecting and maintaining margin monies;
- (c) reporting trading data;
- (d) maintaining a database for trading activities;
- (e) receiving millers' invoices for processing; and
- (f) authenticating the millers' invoices against the transaction file.

[Subsidiary]

(16) The direct settlement system of payment of coffee proceeds shall be put in place by the exchange within a period not exceeding twelve months upon the commencement of these Regulations.

42. Settlement of bank charges

(1) Any bank charges incurred by the buyer or roaster upon making payment shall be settled by the buyer or roaster, whilst those incurred by the miller upon receipt of coffee sale proceeds shall be deducted directly by the clearing house into which the proceeds have been paid.

(2) A buyer or roaster who will not have settled his payments in full by the set deadline as per rules or operations of the exchange shall be considered a defaulter.

(3) In the event of default by a buyer or roaster to pay by the set deadline, the bank shall immediately issue a notification of the outstanding payments and the interest rates chargeable to the defaulter with a copy to the miller and the exchange and the buyer or roaster shall be automatically suspended from participating on the trading floor until the buyer or roaster pays the outstanding amounts in full and the interest.

(4) The interest on the outstanding payments shall accrue effective from the day following the prompt date at the prevailing commercial bank lending rate at the settlement bank in USD.

(5) If the defaulter does not pay the outstanding amounts together with interest thereon within five working days from the prompt date, the defaulter shall be liable to pay a penalty and the coffee shall be reoffered for sale at a subsequent auction.

(6) In the event that after reselling the coffee, any shortfall in value from the original bid occurs, the miller shall notify the Authority and the exchange of the shortfall, all accrued interest and any other related expenses and losses for the purpose of recovery of the entire amounts from the defaulter or from the performance bond of the defaulter.

(7) A buyer, roaster or miller who fails to pay any outstanding obligations to the exchange or to a grower shall be suspended by the exchange with notice to the Authority.

(8) The exchange shall lift a suspension upon settlement of outstanding obligations.

(9) The exchange shall report any buyer, miller or roaster who has defaulted more than twice within a period of six months, to the relevant authority for suspension or cancellation of the license.

43. Dispute relating to coffee trade

(1) Where a dispute arises in regard to coffee quality, a claim may be brought within sixty days of sale.

(2) The claim shall be based on samples drawn and sealed by a licensed certified warehouse in the original storage location.

(3) In the event of a quality difference between the offer and buying samples, and the actual coffee lot, the buyer or roaster shall make an immediate claim to the miller or appointed broker within three working days and reference may be made to the reference samples.

(4) Where the actual coffee lot does not conform to the buying sample, the parties may, by mutual consent, negotiate a settlement which may include compensation for opportunity cost of funds involved payable by the person who is responsible for the coffee quality difference.

(5) The parties shall be at liberty by mutual consent to agree to a settlement that may also include sorting, bulking, price adjustment or refund.

(6) Incorrect information on the packaging material used for a specific lot shall give the right to a buyer or roaster to charge the miller for all the costs of re-bagging.

(7) In the event that the dispute remains unresolved, it shall be referred to the exchange or the licensing authority.

(8) In the event that an aggrieved party is dissatisfied with the decision of the exchange or the licensing authority, the party shall have the right of appeal to the Capital Markets Tribunal established under the Capital Markets Act (Cap. 485A).

44. Disputes relating to coffee weight loss

(1) A licensed warehouseman shall be responsible for any weight loss which shall be the difference between the weight indicated in the coffee warrant or the warehouse receipt as the case may be, and the weight indicated in the weight note provided to the buyer or roaster at the time of release of coffee.

(2) The weight loss claim will be limited to a period of thirty days from the date of the sale and shall be presented by the buyer or roaster to a licensed warehouseman except when such a claim on weight loss is within the acceptable tolerance levels as determined by the exchange from time to time.

(3) Where the disputing parties fail to reach an amicable settlement, the dispute shall be referred to the exchange.

(4) In the event that an aggrieved party is dissatisfied with the decision of the exchange, the party shall refer the matter to the Authority for resolution, failing which the Authority shall put in motion the arbitration process.

PART VII – GENERAL PROVISIONS

45. Assumption of risk

Prior to payment of the purchase price by the buyer, the property in the coffee shall remain in the grower and it shall be upon the warehouseman to ensure that the coffee is insured at all times prior to receipt of payment and release of the coffee.

46. Accounts and Audit

(1) An exchange shall cause proper books of accounts to be kept with respect to—

- (a) all sums received and expended by the exchange and matters in respect to which the receipt and expenditure took place;
- (b) all sales and purchase of goods by the exchange; and
- (c) the assets and liabilities of the exchange.

(2) The exchange shall prepare an annual report containing audited financial statements within four months of the close of the financial year.

(3) A complete set of financial statements includes the following components—

- (a) balance sheet;
- (b) income statement;
- (c) a statement showing either—
 - (i) all changes in equity; or
 - (ii) changes in equity other than those arising from capital transactions with owners and distributions to owners;
- (d) cash flow statement; and
- (e) accounting policies and explanatory notes.

47. Operating capital of an exchange

An exchange shall comply with the minimum operating capital requirements covering twelve months of its operating costs.

48. Appeal

(1) Any person aggrieved by an act or omission of an exchange may within thirty days after being notified of such act, omission or decision, appeal to the Authority.

(2) Where an applicant is dissatisfied with the decision of the Authority in sub regulation (1), the applicant may seek judicial recourse within thirty days of the decision.

[Subsidiary]

49. Declaration of stocks

(1) All licensed buyers, roasters and millers shall be required to declare held stocks to an exchange to facilitate scheduling of coffee auctions.

(2) Coffee offered and sold at an exchange shall not be re-offered at any other exchange.

50. Certificate of purchase

(1) An exchange shall, after every sale of coffee, issue to the purchaser a certificate of purchase in such form, and containing such details of the coffee purchased, as the Authority may prescribe.

(2) A person shall not alter any certificate or other document issued or prepared for the purposes of these Regulations.

(3) A licensed buyer or other person exporting any coffee shall, within fourteen days of the export of that coffee, submit to the exchange a copy of the relevant certificate of origin or certificate of re-export, as the case may be, stamped by the Commissioner of Customs and Excise, together with a non-negotiable bill of lading relating to the coffee.

51. Exemptions

Nothing in these Regulations shall apply to the export or dispatch of any coffee when the coffee concerned—

- (a) consists only of a sample or a parcel not exceeding twenty kilograms in weight; or
- (b) is fully ground or processed coffee for consumption on ships, aero planes or other international carriers.

52. Approval from the Authority

A coffee exchange carrying on trading in coffee shall, within twelve months of commencement of these Regulations seek the approval and licence from the Authority in compliance with these Regulations.

53. Transitional provisions

A person carrying on trading at a coffee exchange prior to the commencement of these Regulations, shall be required to make an application to the Authority for licensing within a twelve months after the commencement of these Regulations.

FIRST SCHEDULE

[r. 4(4)]

FORMS**FORM A**

(r. 4)

APPLICATION FORM FOR A LICENSE TO CONDUCT THE BUSINESS OF A COFFEE EXCHANGE

Note—

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of application

1. Name of the Company Limited
2. Registered office
3. Date of incorporation
4. Address

5. E-mail
6. Location, address and telephone number of principal office
7. Location, address and telephone number of branch offices
8. Details of capital structure:
- (a) Nominal/authorized capital (Kshs.)
- (b) Number of shares
- (c) Paid-up capital (Kshs.)

9. Shareholders (Please attach list)

Name	Address and telephone number	Number of shares held
------	------------------------------	-----------------------

(a) Directors (Please attach a list)

Name	Identity card/ Passport number	Date of appointment/ Birth	Date	Permanent address and telephone number	Academic and professional qualification	Number of shares held in the company
------	--------------------------------	----------------------------	------	--	---	--------------------------------------

(b) Secretary

Name

Address

Institute of Certified Secretaries of Kenya Registration No.

(c) Chief Executive Officers and other key personnel

Name	Identity card or Passport number	Date of appointment/ Birth	Date	Permanent address and telephone number	Academic and professional qualification	Number of shares held in the company
------	----------------------------------	----------------------------	------	--	---	--------------------------------------

11. Particulars of other directorship (s) of the directors and secretary

.....

12. Particulars of shares held by the directors and secretary in other companies.....

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt or compounded with or made an assignment for the benefit of his creditors in Kenya or elsewhere? Yes/No. If "Yes", give details

14. Has any director, secretary or key personnel of the applicant been a director of a company that has been:

- (a) denied any license or approval under the Capital Markets Act or equivalent in any other jurisdiction: Yes/No.

If Yes, give details

.....

- (b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appointing authority: Yes/No. If Yes, give details

.....

Capital Markets

[Subsidiary]

- (c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/No. If Yes, give details

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in the violation of the Capital Markets Act or Regulations thereunder or equivalent law outside Kenya? Yes/No. If Yes, give details

16. Is the applicant or a person associated with the applicant is subject to any proceedings that that could result in a "yes" answer to question 15? Yes/No. If "yes" give details

17. (1) is the applicant, any shareholder, director or secretary of the applicant a member or director of a member company of any securities exchange, derivatives exchange or commodity exchange? Yes/No. If "yes" give details.

(2) have any of the above persons been—

- (a) refused admission as a commodity member of any securities organization? Yes/No. if Yes, give details

- (b) expelled from or suspended from trading on any securities organization? Yes/No if Yes, give details subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No if Yes, give details

18. Business references:

Name	Address	Telephone number(s)	Occupation
------	---------	---------------------	------------

19. Profile of the chief executive officer and key personnel in the applicant company

20. List of office facilities of the applicant

21. Any other additional information considered relevant to this applicant

We (Director)

(Director) and (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).

FORM B _____ (r. 8(1))
APPLICATION FOR A LICENSE TO CONDUCT THE BUSINESS OF A
COFFEE BROKER

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s) should be identified as such and signed by the signatory of this application.

Information provided should be as at the date of the application or renewal.

1. Name of company Limited
2. Registered office
3. Date of incorporation
4. Address
5. E-mail
6. Location, address and telephone number of principal office
7. Location, address and telephone number of branch offices
8. Details of capital structure:
 - (a) Nominal capital (Kshs.)
 - (b) Number of shares
 - (c) Paid-up capital (Kshs.)

9. Shareholders (please attach a list)

Name

Address & telephone number

Number of shares Held

- (a) Directors (please attach a list)

Name

Identity card/Passport number

Date of appointment

Date of Birth

Permanent address and telephone number

Academic or professional qualification

Number of shares held in the company

- (b) Secretary

Name

Address

Institute of Certified Secretaries of Kenya Registration No.

- (c) Chief executive and other key personnel

Name

Identity card/Passport number

Date of appointment

Date of Birth

Capital Markets

[Subsidiary]

Permanent address and telephone number

Academic or professional qualification

Number of shares held in the company

11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any license or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No. If Yes, give details.

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose license has been revoked by the appropriate authority? Yes/No.

If Yes, give details.

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details.

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes', give details.

.....

17. (1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities, derivatives or commodity exchange? Yes/ No. If 'yes', give details.

.....

(2) Have any of the above persons been—

(a) refused membership of any securities organization? Yes/No. If 'yes', give details

.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details

.....

(c) subjected to any other form of disciplinary action by any securities, derivatives or commodity exchange? Yes/No. If 'yes', give details.

18. Business references:

Name

Address

Telephone number(s)

Occupation

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant**20. Profile of the chief executive and key employees in the applicant company:**

Name

Post Qualifications

Experience

21. List the office facilities of the applicant**22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a license from the Capital Markets Authority****23. Any other additional information considered relevant to this application:**

We (Director), (Director) and
(Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

Please attach the documents and details referred to in regulation 4(2).

SECOND SCHEDULE

[rr. 4, 8]

APPLICATION, LICENSING AND ANNUAL REGULATORY
FEES FOR COFFEE EXCHANGES AND COFFEE BROKERSCoffee Exchanges

Application fees Kshs. 10,000

Annual regulatory fees Kshs. 2,500,000/-

Coffee Brokers

Application fees Kshs 10,000/-

Annual regulatory fees Kshs 50,000/-

Capital Markets

[Subsidiary]

THIRD SCHEDULE

[r. 35(1)]

SALES CATALOGUE

1. The sales catalogue shall be prepared by a grower miller, or an appointed broker in consultation with a commercial miller, in accordance with the Coffee General Regulations and these Regulations, and forwarded to the Exchange.

2. The details to be included in the sales catalogue shall include-

- (a) The name of the grower;
- (b) The name of the miller;
- (c) Name of broker, if any;
- (d) Sale number;
- (e) Day, date and time of the auction;
- (f) The place of the auction shall be at the exchange;
- (g) Total number of bags of coffee to be offered for sale;
- (h) Name of the warehouse where the coffee is stored;
- (i) The prompt date being the date on or before which proceeds are payable to the direct settlement system provider managed by the exchange;
- (j) Terms and conditions of sale;
- (k) The date on which rent charges in respect of purchased coffee shall be due from the buyers to warehousemen at which the coffee is stored;
- (l) The net weights as per warehouse weights (and unless otherwise stated coffee shall be packed in bags of 60 kg net, tare weight 1.1 Kgs but bids shall be on the basis of 50 Kgs), the bags used shall conform to the international coffee packaging standards;
- (m) Lot numbers arranged serially per miller or appointed broker for all coffee offered for sale;
- (n) The out-turn Number shown against each lot number and the registered distinguishing mark of the grower miller (whether Bulk, E/Bulk, P/Bulk, T/Bulk; Spillage, or sweepings) and out-turn Number arising from operations of grower/miller;
- (o) Grade of the coffee;
- (p) Number of bags in the lot (a saleable lot shall not be less than ten bags);
- (q) Net weight of coffee in kilograms respectively;
- (r) Adequate space for inserting big prices by buyers.

3. The sales catalogue shall be prepared weekly or as frequently as the Authority may determine in consultation with a grower or his agent.

4. The saleable lots in the special auction dedicated to local roasters may comprise less than ten bags.

FOURTH SCHEDULE

[r. 38(1)(c)]

COFFEE WARRANT

NAME OF WAREHOUSEMAN

Entered byon the account of the lot of coffee DULY Deliverable to or assigns by endorsement hereon.

Capital Markets

[Subsidiary]

Coffee season and out-turn no.	Mark and code	Grade	Number of bags	Net weight of pockets (kgs)	Total net weight (kgs)
--------------------------------	---------------	-------	----------------	-----------------------------	------------------------

This Coffee is lying at warehouse awaiting instruction and collection.

This warrant is valid only if signed by any two of category A or any one of category A and one of category B signing jointly

Category A

Chief Finance Officer
Head of supply Chain
Head of Middle Office

Category B

Finance Manager
Legal Manager-Regional Co Secretary
Sea Exports Manager

NAME OF WAREHOUSE

-SIGNATURES-

Rent Commences:

Rates:

Warehouse handling:

Storage:

Warrant fee:

CONDITIONS

1. A warrant is issued in respect of each consignment.
2. All deficiencies or losses on or damage to goods must whenever possible be notified in writing to ("the Company") prior to removal of the goods from the Company premises so as to afford an opportunity for checking by the Company, and in all cases where such notification is not possible, such deficiencies, losses or damage must be notified to the Company in writing within two days of the removal from the premises of the Company of the goods concerned if this condition be not complied with, the Company will in no case accept liabilities whatsoever for such deficiencies, losses or damages however caused.
3. Every warrant is transferable by endorsement and entitles the person named herein, or the last endorsee therefore named in the endorsement, to the goods specified therein, and the goods so specified shall for all purposes be deemed to be his property.
4. Upon lodging a warrant duly endorsed, the person there under entitled to the goods may transfer or obtain possession of the goods subject to the payment of all charges.
5. The contents of one warrant may be divided into others for smaller quantities at the will of the person entitled to the goods subject to the payment of all appropriate charges.
6. If a warrant is lost, written notice must at once be given to the Company. In such a case, before delivery of goods can be made, the loss of the warrant must be advertised in the *Official Gazette* and a copy of such publication containing the advertisement together with a guarantee signed by the applicant and countersigned by a bank approved by the Company to identify the Company against losses, claims, or damages, must be lodge with the Company in no circumstances will duplicate warrants be issued.
7. The Company takes all reasonable measures to protect goods against loss or damage but does not accept liabilities for—
 - (a) Loss or damage, arising otherwise than through the Company's negligence;
 - (b) Loss, damage or deficiency cause by or contributed to any of the following causes; Whether such loss, damage or deficiency be also in part caused by or contributed to by a neglect, wrongful act or default of the Company, it's

[Subsidiary]

servant or agents or other persons for whose acts the Company might apart from this clause be liable:

- (i) Vermin;
- (ii) Frail, unsuitable, insufficient or defective packing;
- (iii) Strikes, combinations or lock-outs of any person in the employ of the Company or in the service of others;
- (iv) Improper, insufficient, indistinct or erroneous marking or addressing of goods or packages;
- (v) Fire;
- (vi) Civil commotion;
- (vii) Earthquake
- (viii) Loss of weight or damage in consequence of atmospheric conditions of humidity due to heat, damp or drought, or howsoever caused.

8. This warrant, if referring to coffee bulked:-

- (a) The Company accepts no financial liability under any circumstances for the even mix of the bulk, but undertakes to re-bulk free of charge provide that:
 - (i) The person first entitled under the warrant shall lodge the claim within seven days of receiving the warrant; and
 - (ii) The person first entitled under warrant shall satisfy the Company that rebuilding is necessary or advisable, the Company being prepared to accept the advice of an Arbitrator.
- (b) The Company guarantees that the component coffees of the bulk are exactly those instructed by mark and quantity.
- (c) The Company does not accept liability in respect of any divergence of the bulk from the expected resultant quality by reason of a variation in quality of one or more components of the bulk. The bonus of proof of the use of coffee other than the stipulated components shall rest upon the instructing dealer and in the event of such proof the Company agrees to submit to the normal quality arbitration under the Arbitration Regulations of the Kenya Coffee Traders Association as shall be amended from time to time.

9. This warrant is subject to the condition that the Company shall have a general as well as a particular lien on the goods specified therein in respect of any monies owing to the Company by the person first or subsequently entitled under the warrant.

10. The acceptance of this warrant in the first place and subsequent presentation of this Warrant implies implicit acceptance of the conditions enumerated above.

Deliver to on payment of all charges

Signed Date 20

Deliver to on payment of all charges

Signed Date 20

Deliver to on payment of all charges

Signed Date 20

FIFTH SCHEDULE

[r. 41(2)]

REQUIREMENTS FOR THE OPERATION OF THE DIRECT SETTLEMENT SYSTEM

PART A – CRITERIA FOR SELECTION OF
DIRECT SETTLEMENT SYSTEM PROVIDER

1. Request for expression of interest by the exchange.
2. Licensed commercial Banks.
3. Past experience in the management of centralized processing and settlement system for commodities.
4. Demonstrate capacity to expedite settlement and direct payment of coffee proceeds to coffee growers and service providers.
5. Demonstrate the network to reach out to all coffee growing and other areas.
6. Demonstrate an ICT infrastructure for information gathering, processing, dissemination and archiving.
7. Past experience in handling proceeds of agricultural commodities.
8. Demonstrate understanding and willingness to comply with government regulations.
9. Be approved by the Authority.
10. Be connected to the national payments system.

PART B – REQUIREMENTS FOR COMMENCEMENT OF DIRECT
SETTLEMENT SYSTEM ARRANGEMENTS AND OPERATIONS

1. The Authority may, on application made to it by the exchange, approve in writing the commencement of the direct settlement system operations if it is satisfied that the direct settlement system provider has adequate systems and safeguards for the issuance and transference of coffee warrants or Electronic Warehouse Receipts as the case may be and to prevent manipulation of records and transactions and it complies with the requirements specified in these Regulations and other relevant law.
2. In considering an application made under paragraph 1 above, the Authority shall take into account all matters which are relevant for the efficient and orderly functioning of the direct settlement system and in particular whether the —
 - (a) The mode of operation of the direct settlement system has been approved by the Exchange;
 - (b) The systems provider has systems to open and maintain separate accounts in the name of each coffee grower whose coffee is traded;
 - (c) Any changes in Depositors' account are supported by electronic instructions or any other mode of instructions received from the Clearing House and the designated Warehouses;
 - (d) The direct settlement system has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its internal accounting controls and systems;
 - (e) The direct settlement system provider has a system to reconcile records of every depositor on a daily basis;
 - (f) Automatic data processing systems of the direct settlement system are protected against unauthorized access, alteration, destruction, disclosure or dissemination of records and data;
 - (g) network through which electronic means of communications are established between the direct settlement system provider, the Clearing House, licensed Warehouses is secure against unauthorized entry or access;

[Subsidiary]

- (h) The direct settlement system provider has established standard transmission and encryption formats for electronic communications of data between the direct settlement system, the Clearing House, the exchange, licensed Warehouses;
- (i) The direct settlement system provider has established adequate procedures and facilities to ensure that its records are protected against loss or destruction and arrangements have been made for maintaining back up facilities at a location different from that of the direct settlement system;
- (j) Physical or electronic access to the premises, facilities, automatic data processing systems, data storage sites and facilities including back up sites and access to the electronic data communication network connecting the direct settlement system, the Clearing House, licensed Warehouses is controlled, monitored and recorded;
- (k) The direct settlement system has an operations manual explaining all aspects of its functioning, including the interface and method of transmission of information between the direct settlement system provider, the Clearing House, the exchange, licensed Warehouses;
- (l) The direct settlement system has, either through the Exchange or otherwise, made adequate arrangements including insurance for indemnifying the Depositors for any loss that may be caused to such Depositors by the wrongful act, negligence or default of the direct settlement system provider or any of its employee and agents
- (m) The direct settlement system provider has a mechanism in place to ensure that the interest of Depositors are adequately protected and to register the transfer of coffee warrants or Electronic Warehouse Receipts as the case may be, in the name of the transferee only after the system provider is satisfied that payment for such transfer has been made;
- (n) The direct settlement system provider has adequate mechanisms for the purposes of reviewing, monitoring and evaluating its controls, systems, procedures and safeguards; and
- (o) The direct settlement system provider has adequate mechanisms to ensure that the integrity of the automatic data processing systems is maintained at all times and all precautions necessary to ensure that the records are not lost, destroyed or tampered with and in the event of loss or destruction, ensure that sufficient back up of records is available at all times at a different place.

PART C – RECORDS TO BE MAINTAINED BY A COFFEE
EXCHANGE AND INFORMATION SHARING ARRANGEMENTS
WITH A DIRECT SETTLEMENT SYSTEM PROVIDER

1. The exchange shall maintain and avail to the direct settlement system provider the following records and documents relating to coffee sold at a coffee exchange —
 - (a) records of every coffee warrant or warehouse receipt received, or created and the Delivery Notices issued and any cancellations thereof;
 - (b) names of transferors, transferees, and the dates of transfer of the coffee warrant or warehouse receipts as the case may be;
 - (c) records of requests received from and sent to the designated warehouses and clearing house; and
 - (d) details of the buyers or roasters.
2. The coffee exchange shall, when required to do so, disclose to the Authority the place where the records and documents are maintained.
3. The coffee exchange shall preserve records and documents for a minimum period of 10 (ten) years.
4. External monitoring, review, evaluation of systems/controls and reports to the Authority.

A coffee exchange shall cause an inspection of its controls, systems, procedures and safeguards to be carried out annually and forward a copy of the report to the Authority.

5. Inspection

1. The Authority may undertake inspection of the books of accounts, records, documents and infrastructure, systems and procedures, or may investigate the affairs of a Coffee Exchange in relation to the direct settlement system provider, the Clearing House or Designated Warehouses, for any of the following purposes —

- (a) to ensure that the books of account are being maintained by the Exchange and its members in the manner specified in these Regulations;
- (b) to look into the complaints received from millers, buyers and roasters;
- (c) to ascertain whether the systems, procedures and safeguards being followed by the Exchange, the direct settlement system provider, Clearing House and Designated Warehouses, or their agents are adequate to enable the direct settlement system to carry out its purpose; and
- (d) to ensure that the affairs of the Exchange in relation to the direct settlement system provider are being conducted in a manner which are in the interest of the coffee growers, millers, buyers, roasters and the public.

2. The Authority shall give the Exchange and its members, as the case may be, not less than 10 (ten) days' notice before ordering or conducting an inspection or investigation.

3. Notwithstanding anything contained in paragraph 2 of this Article, where the Authority is satisfied that in the interest of growers, millers, buyers and roasters no such notice should be given, it may, by an order in writing direct that such inspection be taken up without such notice.

PART D – APPLICATION BY A COMMERCIAL BANK FOR SELECTION BY THE EXCHANGE TO PROVIDE DIRECT SETTLEMENT FUNCTIONS FOR COFFEE SALES PROCEEDS

1. A Bank shall submit an application to the exchange with the approval of the Authority for appointment as a direct settlement system provider for receipt and disbursement of coffee proceeds, which must include in the application a showing that it complies with the requirements and conditions set forth by the exchange and also demonstrate that it will continue to comply with the said requirements.

2. Application Procedure for selection as a direct settlement system provider:

The Bank shall make an application for appointment through a selection process established by the exchange (and further approval by the Authority) which must include the following —

- (a) the particulars of the applicant's proposed affiliation with the exchange; The particulars include:
 - (i) Name and Registered Address/Physical Location/Head Office of the bank;
 - (ii) Names of the Board of Directors of the bank;
 - (iii) Copy of the banking/regulator license and confirmation of current licensing status;
 - (iv) Number of branches including their location;
 - (v) Credit rating of the bank;
 - (vi) Names and Designation of key contact personnel of the bank;
 - (vii) Details of the banks Auditors;
 - (viii) Undertaking to comply with the rules of the Exchange and applicable regulations;
 - (ix) Commitment to pay exchange membership fee;

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- (x) Evidence of adequate risk management framework;
 - (xi) KYC (know your customer)/AML (anti-money laundering) management processes;
 - (xii) Plans to deploy ICT systems to support the exchange; and
 - (xiii) Evidence of technical staff capacity to run Direct Settlement System.
- (b) a representation by the Bank that it will operate in accordance with the definition of a direct settlement system relating to settlement of coffee transactions at the exchange as set out by the exchange;
 - (c) a demonstration of how the Bank is able to satisfy each of the requirements for a direct settlement system specified under the Regulations;
 - (d) any agreements entered into or to be entered into with the exchange or otherwise, that will enable the Bank to comply with the requirements specified under Regulations. The agreements must identify the services that the Bank will provide as a direct settlement system provider. If a submitted agreement is a draft, the application must include evidence that will demonstrate that such services will be provided as soon as exchange operations require;
 - (e) descriptions of system test procedures, tests conducted or test results, that will enable the applicant to comply with the requirements specified in these Regulations; and
 - (f) where the applicant with sufficient particularity identifies information in the application it deems confidential, a request for confidential treatment and with evidence to support such request.

3. Except as provided for under these Regulations, the Exchange shall consider the application for recognition as a Bank within 7 (seven) working days of the filing of the application. The Exchange may in consultation with the Authority approve or deny an application or if deemed appropriate, select the applicant Bank subject to conditions to be specified. If the Exchange notifies the applicant Bank the application is incomplete and specifies the deficiencies in the application, the process date will be stayed until the application is resubmitted in a complete form.

4. The Exchange may grant temporary appointment to the Bank on an expedited basis to give room for the bank to meet full criteria. The temporary appointment under this sub-rule may be subject to conditions and an expiry date as the Exchange may stipulate.

5. An applicant Bank shall apply for permanent selection status when conditions of its selection are met and before the expiry of the temporary selection

6. If the Exchange denies an application by a Bank, it shall specify the grounds for the denial. In the event of a refusal to select a Bank, any person that has made an application for selection shall be afforded an opportunity for a hearing on the record before the Authority, with the right to appeal an adverse decision after such hearing to the High Court.

7. The Exchange in consultation with the Authority is authorized to suspend for a period not to exceed 30 days or to revoke the selection of a Bank on a showing that —

- (a) The Bank is not enforcing or has not enforced its operations, standards, procedures and rules made a condition of its selection as a direct settlement system provider.
- (b) The Bank, or any director, officer, agent, or employee of such Bank, is violating or has violated any of the provisions of these Regulations or any of the directives, or orders of the Exchange or the Authority.

8. In the event of a denial of selection or suspension or revocation in accordance with these Regulations, any person that has made an application for selection as a direct settlement system provider whose selection has been suspended or revoked shall be afforded an opportunity for a hearing on the record before the Authority, with the right to appeal an adverse decision after such hearing to the High Court.

9. The testimony and evidence taken or submitted before the Exchange or the Authority, duly filed as per these Regulations as part of the record, shall be considered by the High Court as evidence in the case.

10. The High Court may affirm or set aside the order of the Authority and the Exchange or may direct it to modify its order. However, no such order of the Authority shall be modified or set aside by the High Court unless it is shown by the applicant Bank that the order of the Authority is unsupported by the weight of the evidence or was issued without the appropriate notice and a reasonable opportunity for a hearing.

11. An application may be withdrawn by filing with the exchange such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the exchange or the Authority based upon action, activities, or events occurring during the time the application was pending with the exchange or the Authority.

12. If an applicant Bank or financial institution proposes to make—

- (a) any amendment to its constitution which has an impact on its function as a provider of a direct settlement system;
- (b) any business rules that have an impact on its function as a direct settlement system provider; or
- (c) any amendments to its existing business rules having impact on its function as a direct settlement system provider, the Bank shall, as soon as practicable, give a written notice to the exchange.

13. The notice shall—

- (a) set out the text of the proposed amendment;
- (b) state the date on which the amendment are proposed to be put into force; and
- (c) contain an explanation of the purpose of the proposed amendment.

14. The exchange shall, within 30 (thirty) days or such longer period as may be agreed between the exchange and the Bank after the receipt, notify the Bank in writing of its decision on the proposed amendment or the proposed business rules, as the case may be.

15. Where the exchange does not approve any proposed amendment or business rule, the notice to the Bank shall identify or specify it.

16. In addition to the power conferred upon the exchange, the exchange may in consultation with the Authority and by notice in writing to the Bank, amend the Bank's constitution or any of its business rules relating to the clearing and settlement system for payment of coffee proceeds.

17. A notice by the exchange to the Bank —

- (a) may contain provisions as to the manner in which the amendments made by the exchange shall take effect; and
- (b) shall state when the amendments shall take effect, specifying a period for the Bank to make a response.

18. A Bank shall comply with a notice given to it under these Regulations once the stipulated period expires.

19. Where it is shown that a Bank, any director, officer, agent, or employee of a Bank has failed to comply with, observe, enforce or give effect to these Regulations and conditions of its selection, or that the Bank, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of these Regulations or any of the orders of the exchange, the exchange may take one or more of the following actions —

- (a) direct the Bank to suspend the business of such Bank as it relates to the exchange. A direction under this Rule shall only be after a written notice, specifying the grounds for the action, served upon the Board or the CEO of the Bank not less than 7 (seven) working days before such proposed action and a hearing on the record;

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- (b) require the Bank, any director, officer, agent, or employee of the Bank to act in a particular manner to enforce or comply with, as the case may be, with these Regulations or other directives of the Authority;
- (c) reprimand the Bank or individual concerned; and
- (d) require the Bank, director, officer, agent or employee concerned to take such steps as the Authority may direct to remedy or mitigate the effect of such breach.

20. The Authority shall give the Bank, director, officer, agent or employee thereof, notice of not less than fifteen working days, of its intention to take any of the actions under these Regulations and the notice shall specify the grounds for the action taken.

21. A recognized Bank may terminate its recognition by filing such a request with the exchange. Termination of selection shall not affect any action taken or to be taken by the exchange based upon action, activities, or events occurring during the time the application was pending with the exchange or the Authority.

22. A Bank shall (through the exchange) receive from growers or the growers' authorized representatives all the relevant particulars of the growers and the growers' service providers, maintain these records and submit the same to the exchange and the Authority regularly as follows —

- (a) The Bank shall submit a report to the exchange showing transactions matched and approved for settlement by it; and
- (b) Each selected Bank which receives funds belonging to growers, shall monthly submit to the exchange a report showing separately for each grower or service provider, the dates when such funds were received, the identity of the depositor, the dates such funds were debited, withdrawn or disposed of otherwise, together with the facts and circumstances of such debit, withdrawal or disposition, including the authorization thereof.

23. The Bank shall prepare and avail to the grower through the exchange, a comprehensive sales statement to account for each coffee lot sold through the exchange and paid for through the Bank.
