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CHAPTER 139

COCOA

Act 26 of 1981
Act 28 of 1992

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COCOA

To provide for the control of cocoa bean quality.

PART 1 – PRELIMINARY

1. Exclusion of seed cacao

(1) This Act shall not apply to or in relation to cacao beans used or intended to be used as seed material.

(2) The burden of proof that any cacao beans are or have been used or are intended for use at any particular time as seed material lies on the person alleging it.

2. Interpretation

In this Act, unless the context otherwise requires –

"cacao bean" means the seed of the cacao trees (*Theobrome cacao L*) which has not been passed through a fermentation and drying process;

"cocoa bean" means a whole cacao bean which has been fermented and dried;

"cocoa dealer" means any person who buys and sells cocoa beans;

"cocoa exporter" means the Vanuatu Commodities Marketing Board established under the Vanuatu Commodities Marketing Board Act [Cap. 133] or any person authorised by or under it;

"cocoa processing" means the process of fermenting and drying cacao beans, and includes any other process incidental thereto for the purpose of converting cacao beans into cocoa beans;

"cocoa producer" means a cacao grower;

"Director" means the Director of Agriculture or such other person as the Minister may appoint as Director for the purpose of this Act;

"fermentary" means any place or premises maintained for cocoa processing;

"person" includes a body corporate;

"Vanuatu Export Cocoa" means cocoa beans intended for export which comply with the standards prescribed by the Minister under section 10.

PART 2 – LICENSING OF COCOA FERMENTARIES AND DEALERS

3. Licence required for fermentaries and dealers

(1) No person shall –

(a) establish or maintain a fermentary; or

(b) carry on business as a cocoa dealer; or

(c) carry on business as both cocoa dealer and fermentary operator.

without being in possession of a valid licence issued by the Director.

(2) A person who establishes or maintains a fermentary solely for the processing of cacao beans which –

(a) are grown by such person, and

(b) are sold through a licensed cocoa dealer or exporter,

shall not require a licence.

4. Applications for licences

(1) Applications for the licensing of fermentaries or for carrying on business as cocoa dealers shall be made in the prescribed form to the Director.

(2) The Director may reject an application for a licence made under subsection (1) if he is satisfied that the applicant –

(a) has insufficient funds to operate a fermentary or carry on the business of a cocoa dealer; or

(b) has no adequate facilities or plans for adequate facilities, for the processing, quality control, handling, storage, transport and marketing of cacao beans or cocoa beans, as the case may be.

5. Licence

On payment of the prescribed fee, the Director may issue a licence in the prescribed form for a fermentary or cocoa dealer as the case may be.

6. Endorsement of licences

(1) The Director may endorse any licence issued under section 5 with such conditions and restrictions as he considers appropriate either at the time of issuing the licence or at any time thereafter, and details of all such endorsements shall be entered in a register of licences.

(2) The Director may suspend the licence for such period as he considers fit of any person who in his opinion fails to comply with any conditions and restrictions endorsed on such licence, and the Director may restore such licence upon such terms as he considers appropriate.

7. Validity of licence

A licence issued under section 5 shall remain valid until the 31st day of December next following the date of issue and may be renewed annually on payment of the prescribed fees.

8. Display of licence

(1) Every licence issued under this Act shall be prominently displayed on the premises of a licensed fermentary or cocoa dealer, as the case may be, by the holder thereof.

(2) The holder of a licence for a fermentary or a licensed cocoa dealer who uses any vehicle in his business shall prominently display on such vehicle the number of the licence and such other information as the Minister may prescribe.

9. Prices to be displayed

Every licensed cocoa dealer shall prominently display to the public at his place of business the current prices being offered for cacao beans and or cocoa beans as the case may be.

PART 3 – VANUATU EXPORT COCOA

10. Standards of Vanuatu Export Cocoa

The standard for Vanuatu Export Cocoa shall be based on accepted international standards and shall be prescribed by the Minister.

11. Examination by Cocoa Inspector of beans intended for export

Cocoa beans intended for export shall be submitted for examination to a Cocoa Inspector who shall issue a certificate in the prescribed manner therefor indicating whether or not the beans are of the prescribed Vanuatu Export Cocoa Standard and mark the bags in the prescribed form.

PART 4 – APPOINTMENT AND POWERS OF COCOA INSPECTORS

12. Appointment of Cocoa Inspectors

(1) The Minister on the recommendation of the Minister responsible for Vanuatu Commodities Marketing Board, may appoint Cocoa Inspectors by notice published in the Gazette.

(2) The Minister after consultation with the Minister responsible for Vanuatu Commodities Marketing Board may at any time by notice published in the Gazette revoke the appointment of a Cocoa Inspector.

13. Powers of Cocoa Inspectors

It shall be lawful for a Cocoa Inspector to enter at all reasonable hours onto any land or into any building or upon any structure for the purpose of inspecting, grading and taking samples of cocoa beans or of doing such other things as may be necessary for the purposes of this Act.

14. Immunity of Cocoa Inspectors

No proceedings shall lie against any Cocoa Inspector in respect of loss or damage caused by him by any act or omission arising out of or in the course of the exercise by him of the powers conferred on him under the provisions of this Act unless it is shown that any such loss or damage was caused maliciously or without reasonable cause or by reason of his negligence.

PART 4A – COCOA INDUSTRIES FUND

14A. Cocoa industries fund

(1) There is hereby established a fund to be known as the Cocoa Industries Fund.

(2) The Fund shall be administered by the Director of Agriculture.

(3) The Fund shall consist of –

(a) the proceeds of sale of cocoa seedlings;

(b) the proceeds of sale of rat bait;

(c) 1% of the export duty payable in respect of the export of cocoa under the Exports Duties Act [Cap. 31];

(d) any other money that may be lawfully paid into the Fund.

(4) The Fund shall be held and applied for the purpose of –

(a) training smallholders in cocoa management and cocoa processing;

(b) maintaining regional cocoa nurseries; and

(c) assisting smallholders in acquiring items which will promote and assist the development of cocoa industry.

(5) All moneys belonging to the Fund shall, pending its application in accordance with subsection (4), be paid into a commercial bank account to be called the Cocoa Industries Fund Account.

PART 5 – MISCELLANEOUS

15. Appeals against a decision of the Director or Cocoa Inspector

(1) Appeal against any decision of the Director made under this Act lies to the Minister.

(2) Appeal against any decision of a Cocoa Inspector made under this Act lies to a Cocoa Appeals Committee established under section 16.

(3) An appeal under subsection (1) or (2) shall be submitted in writing to the Minister or the Cocoa Appeals Committee, as the case may be, within 30 days from the date of the decision appealed against.

(4) The Minister or the Cocoa Appeals Committee, as the case may be, shall give their decision within a period not exceeding 15 days from receiving the appeal and their decisions shall be final and not subject to review by any Court.

16. Cocoa Appeals Committee

(1) The Minister shall by Order published in the Gazette constitute Cocoa Appeals Committees consisting of a chairman and three members appointed by the Minister as follows –

(a) a representative of the Department of Agriculture, chairman;

(b) two representatives of cacao growers, members;

(c) a representative of the Vanuatu Commodities Marketing Board, member.

(2) The Minister on appointing a member under subsection (1) shall nominate an alternate to such member who shall act during such member's temporary absence or inability to attend, whether or not such member is outside Vanuatu, and whether or not such inability is due to illness or other incapacity.

(3) The Minister may prescribe the rules of procedure to be followed by Cocoa Appeal Committees.

17. Offences

(1) Any person who contravenes sections 3, 8 or 9 is guilty of an offence.

(2) Any person who –

(a) obliterates, tampers with, or removes a prescribed inspection mark on a cocoa bag;

(b) adds to, removes from, or in any other manner tampers with the contents of a marked cocoa bag without the approval of a Cocoa Inspector;

(c) makes any unauthorised alteration or deletion to any certificate issued by a Cocoa Inspector;

is guilty of an offence.

(3) Any person who hinders or obstructs a Cocoa Inspector in the performance of his duties or in the exercise of his powers under the Act is guilty of an offence.

18. Penalties

(1) Any person convicted of an offence under section 17 is liable on conviction to a fine not exceeding VT 100,000 or imprisonment not exceeding 6 months, or to both.

(2) The Court may in addition to the punishment provided in subsection (1) order the forfeiture of any beans with regard to which the offence was committed.

19. Regulations

The Minister may by Order published in the Gazette make such regulations as may be necessary for carrying out the provisions of this Act, and may prescribe anything that may be prescribed.

Table of Amendments (since the Revised Edition 1988)

3(1)(c)	*Inserted by Act 28 of 1992*
12(1)	*Amended by Act 28 of 1992*
12(2)	*Amend by Act 28 of 1992*
14A	*Inserted by Act 28 of 1992*
16(1)	*Amended by Act 28 of 1992*
16(1)(c)	*Inserted by Act 28 of 1992*