

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 388.

Cocoa.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Primary Industry at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in or in relation to this Chapter to—

“the Departmental Head”—should be read as a reference to the Secretary for Primary Industry;

“the Department”—should be read as a reference to the Department of Primary Industry.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 388.

Cocoa Act.

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SCHEDULE 1.—Exceptions and Modifications to the Public Bodies
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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 388.

Cocoa Act.

Being an Act relating to the control of the cocoa industry and for related purposes.

PART I.—PRELIMINARY.

1. Compliance with Constitutional requirements.

(1) This Act to the extent that it regulates or restricts a right or freedom referred to in Subdivision III. 3. C (*qualified rights*) of the Constitution, namely—

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the Constitution; and
- (b) the freedom of employment conferred by Section 48 of the Constitution; and
- (c) the right to privacy conferred by Section 49 of the Constitution,

is a law that is made for that purpose.

(2) For the purpose of Section 29 of the Organic Law on Provincial Government, it is declared that this law relates to a matter of national interest.

2. Interpretation.

In this Act, unless the contrary intention appears—

- “the Board” means the Cocoa Board, established by Section 4;
- “buy” includes acquire for a consideration other than money;
- “cacao bean” means a seed of a tree belonging to the botanical species *Theobroma Cacao* where the seed has not passed through a fermentation or drying process and includes a cacao pod;
- “cocoa bean” means a fermented cacao bean;
- “Cocoa Stabilization Fund” means the Fund established by Section 19;
- “this Act” includes the regulations.

3. Application.

This Act has no application to cacao beans used or intended to be used as seed material.

PART II.—THE COCOA BOARD.

4. Establishment of the Cocoa Board.

(1) The Cocoa Board is hereby established.

(2) The Board—

- (a) is a corporation with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold or dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Board affixed to a document, and shall presume that it was duly affixed.

5. Constitution of the Board.

(1) The Board shall consist of—

- (a) the Departmental Head or a person nominated by him; and
- (b) a Chairman and seven members all being, or representing, cacao growers appointed by the Minister, by notice in the National Gazette, from a list of names submitted to him by such organizations or bodies (which may include provincial governments) as, in the Minister's opinion, represent cacao growers.

(2) The Chairman and the members of the Board referred to in Subsection (1) (b)—

- (a) shall be appointed for a period not exceeding three years; and
- (b) are eligible for re-appointment; and
- (c) hold office on such terms and conditions as the Minister determines.

6. Deputy Chairman of Board.

(1) The Chairman and members of the Board shall elect a member to be the Deputy Chairman.

(2) If the Chairman is unable to act in relation to a matter the Deputy Chairman has and may exercise and perform the powers and functions of the Chairman.

7. Termination of appointment.

(1) The Minister shall, by notice in the National Gazette, terminate the appointment of the Chairman or a member of the Board appointed under Section 5(1)(b) if the Chairman or the member—

- (a) becomes permanently incapable of performing his duties; or
- (b) becomes bankrupt or insolvent, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or allowances for their benefit; or
- (c) in the Minister's opinion—is no longer a cacao grower or a representative of cacao growers; or
- (d) in the Minister's opinion—permanently resides outside the country; or
- (e) stands for election to, or becomes a member of, the Parliament or the legislative or executive arm of a provincial government; or
- (f) informs the Minister that he wishes to resign.

(2) The Minister may, by written notice, advise the Chairman or a member of the Board appointed under Section 5(1)(b) that he intends to terminate his appointment if the Chairman or the member—

- (a) without leave of the Board—is absent from three consecutive meetings of the Board; or
- (b) in the Minister's opinion—
 - (i) is unable to carry out efficiently his duties on the Board; and
 - (ii) has been guilty of misbehaviour or inefficiency when carrying out those duties.

(3) Within 14 days of the receipt of a notice under Subsection (2), the Chairman or member may reply in writing to the Minister who shall—

- (a) consider the reply; and
- (b) as soon as is practicable, deliver written notice of his decision to the Chairman or member.

(4) Where the Chairman or member referred to in Subsection (2) does not reply in writing to the Minister within 14 days of the receipt of a notice under that subsection, his appointment is terminated.

8. Meetings of the Board.

(1) Subject to Subsection (3), the Board shall meet at such times and places as the Chairman may determine but shall meet at least once every four months.

(2) The Chairman shall send notice of a meeting of the Board to each member at least seven days before the meeting.

(3) If requested to do so by—

- (a) the Minister; or
- (b) at least three members,

the Chairman shall call a meeting of the Board as soon as practicable.

(4) At a meeting of the Board—

- (a) five members, of whom one is either the Chairman or Deputy Chairman, is a quorum; and
- (b) The Chairman or, in his absence, the Deputy Chairman shall preside; and
- (c) all matters shall be decided by a majority of votes of the members present and voting; and
- (d) the person presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(5) The Board shall keep a record of its proceedings.

(6) Subject to this Act, the procedures of the Board are as determined by the Board.

9. Disclosure of interest.

The Chairman, or a member of the Board, who is directly or indirectly interested in a contract made or proposed to be made by the Board or under consideration by the Board (otherwise than as a member and in common with other members of an incorporated company consisting of not less than 25 persons) shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to a meeting of the Board and shall then—

- (a) take no part in deliberation or decision of the Board with respect to that contract; and
- (b) be disregarded for the purposes of constituting a quorum for any such deliberation or decision.

10. Function of the Board.

It is the function of the Board, acting in the best interest of cocoa growers of the country, and in accordance with any written directions given to it by the Minister—

- (a) to control and regulate the growing, processing, marketing and export of cacao, cacao beans, cocoa beans and cocoa products; and

- (b) to establish price stabilization, price equalization and stockholding arrangements within the cocoa industry; and
- (c) to promote the consumption of Papua New Guinea cocoa beans and cocoa products; and
- (d) to promote research and development programmes for the benefit of the cocoa industry; and
- (e) when required by the Minister—to act as agent for, and to carry out the obligations of, the State under any international agreement relating to cocoa, including meeting all financial obligations of the State or the Board under any international agreement (except membership fees of an international organization); and
- (f) generally to do such things as are necessary or convenient to be done by the Board for giving effect to this Act.

11. Powers of the Board.

(1) The Board has, in addition to other powers conferred by this Act, power to do all things that are necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, has power—

- (a) to require persons engaged in the cocoa industry to supply to the Board prescribed information in respect of their activities in the industry; and
- (b) to prohibit or restrict the sale or purchase of cacao beans or cocoa beans which fail to comply with prescribed minimum quality standards and to impose such conditions on the disposal of those beans as the Board thinks fit; and
- (c) to fix, by notice in the National Gazette, maximum and minimum prices at which a type or grade of cacao beans or cocoa beans may be bought or sold, and the places or circumstances at or in which those prices apply; and
- (d) to deal in cacao beans or cocoa beans; and
- (e) to enter into contracts; and
- (f) to erect and maintain buildings; and
- (g) to acquire, mortgage or charge, let, hold and dispose of property; and
- (h) to provide assistance to persons engaged in the cocoa industry; and
- (i) to do anything incidental to its powers.

(2) A person who—

- (a) fails to supply, or provides false or misleading information, to the Board when required to do so under Subsection (1) (a); or
- (b) sells or purchases cacao beans or cocoa beans which fail to comply with prescribed minimum quality standards contrary to a prohibition or restriction on the sale or purchase of those beans imposed by the Board under Subsection (1) (b) or fails to comply with or observe conditions imposed on the disposal of those beans imposed by the Board under that subsection; or
- (c) buys or sells cacao beans or cocoa beans at prices other than prices fixed by a notice under Subsection (1) (c) in circumstances where those prices apply,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

12. Vacancy on the Board.

A vacancy in the membership of the Board does not make invalid the exercise or performance of a power or function of the Board.

13. Delegation.

The Board may, by writing under its seal, delegate its functions and powers (except this power of delegation).

14. Appointment of agents by Board.

The Board may authorize a person to act as agent for the Board inside or outside the country.

15. Appointment of employees of Board, etc.

(1) The Board may appoint an Executive Officer and such other employees as it considers necessary for the efficient administration of its functions and powers.

(2) Subject to the provisions of the *Public Employment (Non-citizens) Act* the Board may determine the terms and conditions of employment of its employees.

(3) If a person appointed under this section was, immediately before his appointment, an officer of the Public Service, his service as an employee of the Board shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

(a) leave of absence on the ground of illness; and

(b) furlough or pay instead of furlough (including pay to dependants on the death of the officer).

(4) The provisions of Section 104 of the *Public Service Act* apply in relation to employees of the Board as if they had been specifically included in that section.

PART III.—FINANCE, ETC.**16. Application of Public Bodies (Financial Administration) Act.**

(1) The *Public Bodies (Financial Administration) Act*—

(a) applies to the Board subject to the exceptions and modifications set out in Schedule 1; and

(b) does not apply to the Cocoa Stabilization Fund otherwise than in relation to the audit of the Fund.

(2) For the purpose of Section 10 of the *Public Bodies (Financial Administration) Act* the Board is a trading enterprise.

17. Management levy.

(1) A levy, known as a management levy, is payable at the prescribed rate on cocoa beans and cocoa products intended for export.

(2) Different rates of management levy may be prescribed for different types or grades of cocoa beans and for different types of cocoa products.

(3) Subject to Section 18(a), the management levy shall be calculated, paid and collected as prescribed.

18. Use of excess money.

If at any time the Board is satisfied that it is in possession of more money than it requires for the performance of its functions or the exercise of its powers it may—

- (a) by notice in the National Gazette suspend the obligation to pay the management levy imposed by Section 17 for the period specified in the notice; or
- (b) transfer such amount as it considers appropriate to the Cocoa Stabilization Fund.

PART IV.—COCOA STABILIZATION FUND.**19. The Cocoa Stabilization Fund.**

(1) The Cocoa Stabilization Fund, is hereby established.

(2) The Cocoa Stabilization Fund is not an asset of the Board but the Board shall administer the Fund as trustee.

(3) The Board shall administer the Cocoa Stabilization Fund with the object of establishing price stabilization, price equalization and stockholding arrangements within the cocoa industry.

(4) Although a person may have contributed to the Cocoa Stabilization Fund he is not entitled—

- (a) to an interest in the Fund; and
- (b) to payment from the Fund except in accordance with this Act.

20. Payments into the Cocoa Stabilization Fund.

The Board shall pay into the Cocoa Stabilization Fund money—

- (a) received from the collection of the stabilization levy imposed under Section 21; and
- (b) received as interest from money standing to the credit of the Fund invested under Section 22; and
- (c) transferred to the Fund under Section 18(b); and
- (d) received from the sale of cacao beans, cocoa beans or cocoa products purchased with money from the Fund in accordance with Section 23.

21. Stabilization levy.

(1) The Minister may, after consultation with—

- (a) the Minister responsible for financial matters; and
- (b) the Board,

by notice in the National Gazette, impose a levy, known as the stabilization levy, on cocoa beans and cocoa products intended for export.

(2) Different rates of stabilization levy may be imposed for different types or grades of cocoa beans and for different types of cocoa products.

(3) A notice under Subsection (1) shall specify—

- (a) the rate or rates of stabilization levy; and
- (b) the date from which the stabilization levy is payable.

(4) The stabilization levy shall be calculated, paid and collected as prescribed.

22. Investment of money in Cocoa Stabilization Fund.

The Board may invest money in the Cocoa Stabilization Fund in such manner as the Minister responsible for financial matters approves.

23. Purchase of cocoa beans, etc., for stabilization of prices, etc.

If the Board is of the opinion that for the purpose of stabilizing or equalizing prices within the cocoa industry it is necessary for the Board to purchase cacao beans, cocoa beans or cocoa products in accordance with any international agreement relating to cocoa, it may do so with money in the Cocoa Stabilization Fund.

24. Payments from the Cocoa Stabilization Fund.

The Board shall not expend money in the Cocoa Stabilization Fund except—

- (a) in compliance with the Board's duty under Section 10(e); or
- (b) for the purchase of cacao beans, cocoa beans and cocoa products in accordance with Section 23; or
- (c) in payment of bounty under Section 25; or
- (d) with the Minister's approval—to recompense the costs necessarily incurred by the Board in administering the Fund.

25. Payment of bounty from Cocoa Stabilization Fund.

(1) The Minister may—

- (a) with the approval of the Minister responsible for financial matters; and
- (b) after consultation with the Board,

by notice in the National Gazette, make payable to cacao growers a bounty out of the Cocoa Stabilization Fund.

(2) Different rates of bounty may be made payable in respect of different types or grades of cacao beans.

(3) A notice under Subsection (1) shall specify—

- (a) the rate or rates of bounty; and
- (b) the date from which the bounty is payable.

(4) The bounty shall be calculated and payable as prescribed.

PART V.—REGISTRATION OF COCOA DEALERS.**26. Registration of Cocoa Dealers, etc.**

(1) The Board may, on payment of the prescribed fee, register—

- (a) a person as a person permitted to conduct a business of buying and selling or buying or selling cacao beans or partly processed cocoa beans; and
- (b) a person as a person permitted to manufacture cocoa beans or cocoa products; and
- (c) a person as a person permitted to export cocoa beans or cocoa products; and
- (d) premises, or proposed premises, as premises permitted to be used for processing or fermenting cacao beans.

(2) The Board, when registering persons or premises under Subsection (1), may make the registration subject to such conditions and restrictions as it considers appropriate in the circumstances.

(3) Following registration under Subsection (1) the Board shall issue to the registered person, or the owner or occupier of the registered premises, as the case may be, a Certificate of Registration, as prescribed.

(4) The Board shall endorse on a Certificate of Registration a note of any conditions or restrictions to which the registration has been made subject under Subsection (2).

(5) A registration under Subsection (1), unless cancelled under Subsection (6), remains in force until 30 September next following the date of registration.

(6) The Board may cancel a registration under Subsection (1) if it is satisfied that—

(a) the registration was obtained—

- (i) by means, or partly by means, of a false or misleading statement; or
- (ii) by other improper means; or

(b) the registered person, or in the case of registered premises, the owner or occupier of those premises—

- (i) has failed, in the Board's opinion, to comply with a condition or to observe a restriction noted on the Certificate of Registration issued to him under Subsection (3); or
- (ii) has been convicted of an offence against this Act; or
- (iii) has not, in the Board's opinion, adequate finance, facilities or organization for the storage, control of quality, handling or marketing of cacao beans, cocoa beans or cocoa products, as the case may be.

(7) The Board may refuse an application for registration under Subsection (1) if—

(a) in the case of an application by a person to be registered under Subsection (1) (a), (b) or (c)—in the Board's opinion the applicant has not adequate finance, facilities or organization for the storage, control of quality, handling or marketing of cacao beans, cocoa beans or cocoa products, as the case may be; or

(b) in the case of an application to register premises, or proposed premises under Subsection (1) (d)—the Board is not satisfied—

- (i) that the premises or proposed premises are or will be constructed, equipped or operated in an efficient manner; or
- (ii) that the proposed method of processing will in general produce cocoa beans which will conform to the prescribed quality for export cocoa beans; or
- (iii) that additional facilities are required; or

(c) the applicant—

- (i) has failed, in the Board's opinion, to comply with a condition or to observe a restriction noted on a previous Certificate of Registration issued to him under Subsection (3); or
- (ii) has been convicted of an offence under this Act; or

(d) the application, if granted, would not, in the Board's opinion, involve adequate—

- (i) ownership; or
- (ii) management or control, by citizens; or

(e) the application does not have, in the Board's opinion, the support of the people of the area in which the applicant would, if registered, operate.

(8) A person aggrieved by the Board's decision to—

- (a) grant registration under Subsection (1); or
- (b) cancel a registration in accordance with Subsection (6); or
- (c) refuse registration in accordance with Subsection (7),

may appeal to the Minister in the prescribed manner.

(9) The Minister, when considering an appeal under Subsection (8), is not bound to observe strict legal procedure or to apply technical rules of evidence.

(10) The Minister's decision on an appeal under Subsection (8) is final and shall be implemented as if it were a decision of the Board.

(11) A person who—

- (a) not being a person registered under Subsection (1) (a)—conducts a business of buying and selling or buying or selling cacao beans; or
- (b) not being a person registered under Subsection (1) (b) or (c)—manufactures or exports cacao beans or cocoa products, as the case may be; or
- (c) uses or permits premises owned or occupied by him, other than premises in respect of which he holds a Certificate of Registration issued under Subsection (3), to be used for processing or fermenting cacao beans or partly processed cacao beans; or
- (d) being a person to whom a Certificate of Registration has been issued under Subsection (3)—fails to comply with a condition or to observe a restriction endorsed on the Certificate; or
- (e) for the purposes of obtaining a registration under Subsection (1)—gives false or misleading information to the Board,

is guilty of an offence.

Penalty: A fine not exceeding K1 000.00, or imprisonment for a term not exceeding six months or both.

(12) Where a person is convicted of an offence under Subsection (11) in relation to any cacao beans, cocoa beans or cocoa products the court which convicts him may, in addition to, or instead of, imposing any other penalty, order that the beans or products be forfeited to the Board.

(13) Beans or products forfeited to the Board under Subsection (12) are the property of the Board.

PART VI.—INSPECTORS.

27. Appointment of Cocoa Board Inspectors and Cocoa Inspectors.

(1) The Board may, by notice in the National Gazette, appoint Cocoa Board Inspectors for the purposes of the Board.

(2) The Minister may, by notice in the National Gazette, appoint Cocoa Inspectors for the purposes of this Act.

28. Powers of Inspectors.

(1) For the purposes of this Act, Cocoa Board Inspectors and Cocoa Inspectors may at all reasonable times, with or without assistants—

- (a) enter and inspect any place, premises, aircraft, vehicle or vessel; and
- (b) seize and detain, pending an order of a court, cacao beans, cocoa beans or cocoa products in respect of which they have reasonable grounds for suspecting that an offence against this Act has been or is being committed; and
- (c) take samples of any cacao beans, cocoa beans or cocoa products; and
- (d) examine and take extracts from or copies of, documents evidencing the purchase, sale, delivery, ownership, place of production or destination of cacao beans, cocoa beans or cocoa products; and
- (e) require a person taking part, or apparently taking part, in the affairs of a business—
 - (i) buying or selling; or
 - (ii) processing or fermenting; or
 - (iii) exporting,

cacao beans, cocoa beans or cocoa products, as the case may be, to provide information relating to the affairs of that business.

(2) A person who—

- (a) hinders or obstructs a Cocoa Board Inspector or a Cocoa Inspector in the exercise or performance of his powers, functions or duties under this Act; or
- (b) fails or refuses, when requested by a Cocoa Board Inspector or a Cocoa Inspector, to produce a document in his possession or under his control for examination by an Inspector under Subsection (1) (d); or
- (c) fails or refuses to provide information when required under Subsection (1) (e),

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) The person in charge of any place, premises, aircraft, vehicle or vessel on or in which cacao beans, cocoa beans or cocoa products are produced, treated, handled, packed, stored or transported, who fails to give all reasonable assistance to a Cocoa Board Inspector or a Cocoa Inspector for the purpose of the exercise or performance of his powers, functions and duties under this Act is guilty of an offence.

Penalty: A fine not exceeding K500.00.

29. Powers of Cocoa Inspectors in relation to export cocoa.

(1) Cocoa beans shall not be exported unless they have been examined by a Cocoa Inspector and the container in which those beans are packed has been marked in accordance with Subsection (3).

(2) For the purposes of making an examination of cocoa beans intended for export a Cocoa Inspector shall sample the beans in the prescribed manner.

(3) If a Cocoa Inspector, after examining cocoa beans intended for export, is satisfied that they conform to the prescribed quality for export cocoa he shall mark each container in which those beans are to be exported with the prescribed inspection mark.

(4) If a Cocoa Inspector, after examining cocoa beans intended for export, is satisfied that they do not conform to the prescribed quality for export cocoa he shall—

- (a) mark each container in which those beans were to have been exported with the prescribed rejection mark; and
- (b) give the owner or exporter of the cocoa beans a written statement of the reason for his decision.

(5) A person aggrieved by a decision of a Cocoa Inspector under this section may appeal to the Cocoa Appeal Committee of the province.

(6) A person who—

- (a) exports cocoa—
 - (i) which has not been examined in accordance with Subsection (1); or
 - (ii) in a container not marked in accordance with Subsection (3); or
- (b) obliterates, removes or tampers with—
 - (i) an inspection mark placed under Subsection (3); or
 - (ii) a rejection mark placed under Subsection (4); or
- (c) after a container of cocoa beans intended for export has been marked under Subsection (3)—adds to, removes from, or in any other way tampers with, the contents of the container without a Cocoa Inspector's approval,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

30. Power of Inspectors to condemn storage space.

(1) A Cocoa Board Inspector or a Cocoa Inspector may prohibit premises from being used for the storage of cocoa beans if he considers those premises unsuitable for that purpose.

(2) A person aggrieved by a decision of a Cocoa Board Inspector or a Cocoa Inspector under Subsection (1) may appeal to the Cocoa Appeal Committee of the province.

(3) A person who knowingly stores cocoa beans in premises where such storage has been prohibited under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

31. Immunity of Inspectors.

Cocoa Board Inspectors and Cocoa Inspectors are not liable for damage necessarily caused by them in carrying out their powers, functions or duties under this Act.

PART VII.—MISCELLANEOUS.

32. Cocoa Appeal Committee of a province.

(1) The Cocoa Appeal Committee of a province shall consist of—

- (a) an officer of the Department of the province responsible for primary industries, who shall be Chairman; and

(b) two persons, not being officers, who represent cacao growers in the province, appointed by the Board after consultation with the Head of the Department of the province.

(2) The Chairman of the Cocoa Appeal Committee shall determine—

(a) the time and place of; and

(b) the procedure to be followed at, meetings of the Committee.

(3) The method of appeal is as prescribed.

(4) The Cocoa Appeal Committee is not bound to observe strict legal procedure or to apply technical rules of evidence.

33. Sale of cocoa beans not in accordance with sample.

A person who sells or agrees to sell cocoa beans for export by sample and subsequently, wilfully or negligently exports, on the basis of that sample, cocoa beans which do not substantially conform to that sample is guilty of an offence.

Penalty: A fine not exceeding K500.00.

34. Prohibited exports.

Cocoa beans or cocoa products intended for export in respect of which a provision of this Act has not been complied with are prohibited exports under the *Customs Act*.

35. Restricted areas.

(1) The Minister may, after consultation with the Board, by notice in the National Gazette, declare that—

(a) part of the country is a restricted area; and

(b) only persons—

(i) registered under Section 26(1) (a); and

(ii) who are citizens or citizen-controlled corporations,

shall deal in cacao beans or partly processed cocoa beans within the restricted area; and

(c) cacao beans or partly processed cocoa beans shall not be carried in a vehicle within the restricted area unless—

(i) the vehicle is—

(A) being operated by, or on behalf of, a person registered under Section 26(1) (a); and

(B) bears the prescribed distinguishing letters; or

(ii) the vehicle is being operated by, or on behalf of, the grower of the cacao beans.

(2) Subject to Subsection (3), a person who—

(a) deals in; or

(b) carries in a vehicle,

cacao beans or partly processed cocoa beans contrary to a declaration made under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months.

(3) The Minister may, after consultation with the Board, exempt a person, or a class of persons, from compliance with all or any terms of a declaration made under Subsection (1).

36. Board not to engage in politics.

The Board shall not—

- (a) spend money for a purpose connected with politics or a political party; or
- (b) become affiliated with a body, association or organization having political objectives.

37. Regulations.

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing—

- (a) information to be provided to the Board by persons engaged in the cocoa industry; and
- (b) quality standards for cacao beans, cocoa beans and cocoa products; and
- (c) rates of management levy payable under Section 17, and the manner in which that levy is to be calculated, paid and collected; and
- (d) the manner in which a stabilization levy imposed under Section 21 is to be calculated, paid and collected; and
- (e) the manner in which bounty to be paid out under Section 25 is to be calculated and paid; and
- (f) the manner of sampling cacao beans, cocoa beans and cocoa products whether intended for export or otherwise; and
- (g) marks to be placed on containers, containing cocoa beans intended for export, by—
 - (i) Cocoa Inspectors; and
 - (ii) exporters; and
- (b) the types, sizes and construction of containers to be used for cocoa beans intended for export; and
- (i) the method of appeal to the Cocoa Appeal Committee and the Minister; and
- (j) distinguishing marks for vehicles used by persons dealing in cacao beans or partly processed cocoa beans; and
- (k) fees to be paid to the Board; and
- (l) all matters relating to the implementation of the non-financial obligations of membership of any international cocoa organization including—
 - (i) requirements relating to export documentation; and

- (ii) the forms of returns to be provided relating to—
- (A) production; and
 - (B) consumption; and
 - (C) price; and
 - (D) stocks,
- of cacao beans, cocoa beans and cocoa products, as the case may be; and
- (iii) the marking of containers in which cocoa beans are exported; and
- (m) restrictions and conditions on the times during which and the manner in which cacao beans, cocoa beans and cocoa products may be transported; and
- (n) penalties, including minimum penalties, of fines not exceeding K1 000.00 and default penalties of fines not exceeding K50.00, for offences against the regulations; and
- (o) where a conviction of an offence against the regulations relates to any cacao beans, cocoa beans or cocoa products—that a court may order the beans or products be forfeited to the Board.

(2) Regulations under Subsection (1) may prescribe acts, matters or things by reference to acts, matters or things so prescribed from time to time by an international cocoa organization.

38. Repeals.

The *Cocoa Industry Act* and *Cocoa Stabilization Levy (Validation) Act 1976*, are repealed.

SCHEDULE 1.

Sec.16.

EXCEPTIONS AND MODIFICATIONS TO THE PUBLIC BODIES (FINANCIAL ADMINISTRATION) ACT.

Provision	Modifications, etc.
Section 1	Applies as though the definition of "financial year" refers to the year ending on each successive 30 September.
Section 9	Not applicable.
Section 11	Not applicable.
Section 13	Not applicable.
Section 14	Not applicable.
Section 15(3)	Not applicable.
Section 15(5)	Applies as if references to 31 December were references to 30 September.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 388.

Cocoa Regulation.

ARRANGEMENT OF SECTIONS.

1. Interpretation—
 - "broken bean"
 - "defective bean"
 - "double bean"
 - "flat bean"
 - "foreign matter"
 - "foul or foreign odour"
 - "fragment"
 - "germinated bean"
 - "identification mark"
 - "inspection mark"
 - "licensed bank"
 - "the management levy"
 - "slaty bean"
 - "the stabilization levy"
 - "threshold price".
2. Supply of information to Board.
3. Carriage of cacao beans, etc.
4. Manner of sampling.
5. Quality standard for export.
6. Marking of containers.
7. Inspection mark.
8. Sealing containers.
9. Quality, etc., of containers.
10. Certificate of inspection.
11. Calculation of management levy.
12. Calculation of stabilization levy and bounty.
13. Payment of management levy and stabilization levy.
14. Certificate of payment of management levy and stabilization levy.
15. Fees payable.
16. General penalty.
17. Appeal against decision of Inspector.
18. Appeal against decision of Board.

SCHEDULES.

SCHEDULE 1.—

FORM 1.—Certificate of Inspection of Cocoa Beans.

SCHEDULE 2.—Sampling.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 388.

Cocoa Regulation.

MADE under the *Cocoa Act*.

1. Interpretation.

(1) In this Regulation, unless the contrary intention appears—

“broken bean” means a cocoa bean of which a fragment is missing;

“defective bean” means a cocoa bean that is affected by internal mould or internal insect infestation;

“double bean” means two or more cocoa beans strongly adhering to each other;

“flat bean” means a cocoa bean of which the cotyledons are too thin to cut to give the surface of a cotyledon;

“foreign matter” includes—

(a) any matter extraneous to cocoa beans; and

(b) any part of cocoa (other than cocoa beans) including broken beans, double beans, germinated beans, fragments and pieces of pod and placenta;

“foul or foreign odour” means a smoky odour or an odour that is foreign to good quality cocoa;

“fragment” means a piece of cocoa bean equal to or less than 50% of the original bean;

“germinated bean” means a cocoa bean, the shell of which has been pierced, slit or broken by the growth of the seed germ;

“identification mark” means the mark denoting—

(a) the grower; or

(b) the registered fermentary in which the cocoa beans were processed; or

(c) the registered exporter by whom the cocoa beans are being exported;

“inspection mark” means the mark on a bag of cocoa beans denoting that the contents have been examined and conform to Papua New Guinea export cocoa;

“licensed bank” means a bank licensed under the *Banks and Financial Institutions Act*;

“the management levy” means the management levy imposed under Section 17 of the Act;

“slaty bean” means a cocoa bean that shows a slate colour on 50% or more of its surface exposed by a cut lengthwise through its centre;

“the stabilization levy” means the stabilization levy imposed under Section 21 of the Act;

“threshold price” means the threshold price calculated under Section 12.

2. Supply of information to Board.

(1) A person engaged in the cocoa industry shall promptly supply to the Board, when required by it, information verified by statutory declaration in respect of—

- (a) the number of cocoa trees planted or intended to be planted by him; and
- (b) details of contracts relating to the purchase or sale of cacao beans, cocoa beans or cocoa products to which he is a party including any contracts that, at the time of receipt of the requisition he proposes or intends to become a party, specifying the places at which delivery of the cocoa is to be effected; and
- (c) details of all cacao beans, cocoa beans or cocoa products acquired, purchased, sold or exported by him during the period specified in the requisition not exceeding two years before the receipt of the requisition; and
- (d) details of prices paid or to be paid by him for cacao beans, cocoa beans or cocoa products during the period specified under Paragraph (c); and
- (e) estimates of the destination of cacao beans, cocoa beans or cocoa products that are held in store or are likely to be exported by him during a specified period not exceeding two years.

(2) A person who fails to supply information under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00 and in addition a fine not exceeding K50.00 for every day that the offence continues.

3. Carriage of cacao beans, etc.

(1) Where, under Section 35 of the Act, a restricted area has been declared, a person who is registered under Section 26(1) (a) of the Act or a grower of cacao beans may apply to the Board for the allocation of distinguishing letters, marks, figures or symbols to the vehicle he operates for the purpose of carriage of cacao beans or partly processed cocoa within the restricted area.

(2) The distinguishing letters, marks, figures or symbols referred to in Subsection (1) shall—

- (a) be on a plate provided by the Board or in such other form as approved by the Board; and
- (b) be preceded by the words "Cocoa Dealer"; and
- (c) be clearly and prominently displayed on the front of the vehicle in such manner as approved by the Board.

(3) A person who transports cacao beans or partly processed cocoa or permits them to be transported by road—

- (a) except in a vehicle bearing the distinguishing letters prescribed under this section; and
- (b) without the prior written consent of the Board—between the hours of 6.30 pm of any day and 5.30 am of the following day,

is guilty of an offence.

Penalty: A fine not exceeding K1 000.00.

Default Penalty: A fine not exceeding K50.00.

4. Manner of sampling.

(1) Cocoa beans or cocoa products intended for export shall be examined by a Cocoa Inspector in accordance with this section.

(2) The Cocoa Inspector shall—

- (a) estimate the total weight of cocoa in each consignment by weighing at least one container containing cocoa beans or cocoa products in that consignment; and
- (b) draw samples of cocoa beans or cocoa products from each consignment in accordance with Subsection (3).

(3) Where—

- (a) a flow sampler is available the sample shall be obtained by tipping into the flow sampler the contents of—
 - (i) in the case of a consignment consisting of not more than three containers—all containers; and
 - (ii) in any other case—the containers taken at random in accordance with Schedule 2,

and from this shall be extracted sub-samples each being in size 10% by weight of the cocoa beans or cocoa products forming the sample; and

- (b) a flow sampler is not available, a sample shall be obtained by taking 25% of the containers in the consignment at random and the containers shall be sampled by extracting at random from each container not less than 0.25kg of cocoa beans or cocoa products by means of a stabber approved by the Board.

(4) The sub-samples shall be combined and the following tests made :—

- (a) the Cocoa Inspector shall select 100 cocoa beans at random that shall—
 - (i) be cut lengthwise to expose a surface of cotyledon; and
 - (ii) be inspected to ascertain if they conform to the requirements of Section 5 (a), (c), (d) and (e); and
- (b) the balance shall be ground into powder and the Cocoa Inspector shall inspect the powder to ascertain if it conforms to the requirements of Section 5(b); and
- (c) the Cocoa Inspector shall, where a moisture meter is installed, ascertain if the sub-sample conforms to the requirements of Section 5(e).

5. Quality standard for export.

Cocoa beans intended for export as Papua New Guinea export cocoa shall—

- (a) be beans that have been through fermenting and drying processes approved by the Board; and
- (b) be free from foul or foreign odours; and
- (c) contain—
 - (i) not more than 1% by count of slaty beans; or
 - (ii) not more than 5% by count of flat, double, broken or germinated beans; or
 - (iii) not more than 5% by count of defective beans; or
 - (iv) not more than 1% by weight of foreign matter; and
- (d) be evenly dried; and

- (e) contain a moisture content of between 5.5% and 7.5% by weight; and
- (f) have not more than 1 000 cocoa beans per kilogram.

6. Marking of containers.

(1) Marking of containers of cocoa beans or cocoa products intended for export shall be in black indelible ink, each letter or symbol being not less than 60mm and not more than 80mm high, and 6mm thick.

(2) A container of cocoa beans or cocoa products intended for export shall be clearly marked in accordance with Subsection (1) with the following in separate lines one beneath the other at a space of 26mm :—

- (a) the letters "PNG"; and
- (b) the words "Cocoa Beans" or "Cocoa Products", as the case may be; and
- (c) the identification mark.

(3) A clear space of 150mm shall be left between the top of the container and the mark specified in Subsection (2) (a) in which the inspection mark shall be applied by the Cocoa Inspector.

7. Inspection mark.

(1) The inspection mark to be applied to containers of cocoa beans or cocoa products conforming to Papua New Guinea export quality shall—

- (a) be in red indelible ink; and
- (b) be in the form of a solid equilateral triangle, each side being not less than 100mm long; and
- (c) be made with the apex of the triangle referred to in Paragraph (b) pointing to the top of the container.

(2) The inspection mark to be applied to containers of cocoa beans or cocoa products rejected as not conforming to Papua New Guinea export quality shall—

- (a) be in green indelible ink; and
- (b) be in the form of a stripe along the mouth of the container.

8. Sealing containers.

(1) Containers of cocoa beans or cocoa products that have been passed as conforming to Papua New Guinea export quality shall be sealed by means of a metal plomb attached to the top of the container in a manner to prevent the container being opened without obviously disturbing the seal.

(2) The seal referred to in Subsection (1) shall have on one face the letters "PNG".

(3) Where a container of cocoa beans or cocoa products intended for export is a bag, it shall be securely sewn.

9. Quality, etc., of containers.

(1) Containers for cocoa beans and cocoa products intended for export shall be new, sound, clean, dry and insect free.

(2) Where a Cocoa Board Inspector or a Cocoa Inspector finds that a container for cocoa beans or cocoa products is damaged, unserviceable or not in accordance with the requirements of Subsection (1), the contents shall be transferred to a new container.

(3) Where the contents of a container have been transferred under Subsection (2), the cost of the transfer and of the new container are a debt due by the owner to the State.

(4) Where a container for cocoa beans or cocoa products intended for export is a bag, the gross weight shall be 63.5kg.

10. Certificate of inspection.

(1) After examination of a consignment of cocoa beans or cocoa products intended for export, the Cocoa Inspector shall issue to the registered exporter a certificate in Form 1.

(2) The certificate referred to in Subsection (1) shall be forwarded to the Comptroller of Customs.

(3) A certificate issued in respect of Papua New Guinea export quality cocoa beans or cocoa products under Subsection (1) shall cease to be valid after the expiration of three months from the date of examination unless a later date is specified by the Cocoa Inspector on the certificate.

11. Calculation of management levy.

(1) The Minister shall, by notice in the National Gazette, fix the rate for the management levy under Section 17 of the Act not exceeding—

(a) in the case of cocoa beans and nibs—K40.00 per tonne; and

(b) in the case of cocoa residue—K8.00 per tonne; and

(c) in the case of cocoa products—K40.00 per tonne of bean equivalent of those products.

(2) A person who has not paid to the Board the levy fixed in accordance with Subsection (1) prior to exporting cocoa beans or cocoa products is guilty of an offence.

Penalty: A fine not exceeding K500.00 in respect of each consignment exported without payment of the levy.

(3) For the purposes of Subsection (1)—

(a) the bean equivalent of cocoa products is the amount obtained by multiplying the weight of the cocoa product by the relevant conversion factor specified in Paragraph (b); and

(b) conversion factors are—

(i) cocoa butter—1.33; and

(ii) cocoa cake and cocoa powder—1.18; and

(iii) cocoa liquor and cocoa nibs—1.25.

12. Calculation of stabilization levy and bounty.

(1) For the purposes of Sections 21 and 25 of the Act, an annual threshold price shall be calculated by ascertaining the annual average price of cocoa beans or cocoa products in constant terms for the past 120 months.

(2) Where the price of cocoa beans or cocoa products at the same stage in the process of marketing as that for which the threshold price is calculated, is above the threshold price, a stabilization levy shall be collected from the exporter unless the Minister makes payable a bounty.

(3) Where the price of cocoa beans or cocoa products, at the same stage in the process of marketing as that for which the threshold price is calculated, is below the threshold price, stabilization bounty shall be paid to the grower.

(4) For the purposes of Subsections (2) and (3), the price of cocoa beans or cocoa products may be for each delivery or consignment or for an average of all deliveries or consignments over a period specified by the Minister.

13. Payment of management levy and stabilization levy.

(1) A registered exporter intending to export cocoa or cocoa products from the country shall lodge with a branch of a licensed bank—

- (a) the particulars of the cocoa proposed to be exported; and
- (b) an amount equal to the management levy on the cocoa; and
- (c) an amount equal to the stabilization levy on the cocoa.

(2) The manager of a branch of a licensed bank shall, as soon as practicable after receiving an amount referred to in Subsection (1), remit that amount to the Papua New Guinea Banking Corporation in Rabaul for crediting to the account of the Board.

(3) A copy of particulars required under Subsection (1) (a) shall be forwarded to the Board by the registered exporter.

14. Certificate of payment of management levy and stabilization levy.

The manager of a branch of a licensed bank shall, as soon as practicable after receiving an amount referred to in Section 13(1) (b) or (c), or both, issue or cause to be issued, a certificate showing—

- (a) the amount of the management levy paid; and
- (b) the amount of the stabilization levy paid; and
- (c) the particulars of the cocoa in respect of which that levy has been paid.

15. Fees payable.

(1) In this section—

“major port” means a port from which more than 2 000 tonnes of cocoa was shipped in the year ending on the preceding 30 September;

“minor port” means any port other than a major port.

(2) The fee payable for registration under Section 26(1) (a) of the Act as a registered cocoa dealer is K60.00¹.

(3) The fee payable for registration under Section 26(1) (b) of the Act as a registered manufacturer of cocoa is K1 000.00.

(4) Subject to Subsection (5), the fee payable for registration under Section 26(1) (c) of the Act as a registered cocoa exporter shall be calculated at the rate of—

- (a) K600.00 for each major port¹; and
- (b) K240.00 for each minor port¹,

through which the cocoa exporter is permitted to export cocoa.

(5) The fee payable for registration under Section 26(1) (c) of the Act as a registered cocoa exporter by a person—

- (a) not previously registered as a cocoa exporter; or
- (b) registered as a cocoa exporter for not longer than the previous year,

shall be calculated at the rate of K200.00 for each port through which the cocoa exporter is permitted to export cocoa.

¹Amendment deemed to come into force 1/10/1984. See National Gazette G.23, 9/5/1985.

SCHEDULE 2.

Reg. Sec. 4(3) (a) (ii).

SAMPLING.

Number of containers in a consignment.	Number of containers to be sampled.
Not less than 4 and not more than 10	3
Not less than 11 and not more than 17	4
Not less than 18 and not more than 30	5
Not less than 31 and not more than 42	6
Not less than 43 and not more than 56	7
Not less than 57 and not more than 72	8
Not less than 73 and not more than 90	9
Not less than 91 and not more than 110	10
Not less than 111 and not more than 132	11
Not less than 133 and not more than 156	12
Not less than 157 and not more than 182	13
Not less than 183 and not more than 210	14
Not less than 211 and not more than 240	15
More than 240	The number being the square root of the number of containers in the consignment taken to the nearest whole number.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 388.

Cocoa Act.

APPENDIX 1.

SOURCE OF THE COCOA ACT.

Part A.—Previous Legislation.

Cocoa Act 1981 (No. 37 of 1981).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	1	21	20
2	3	22	21
3	2	23	22
4	4	24	23
5	5	25	24
6	6	26	25
7	7	27	26
8	8 (in part)	28	27
9	8 (in part)	29	29
10	9	30	30
11	10	31	28
12	11	32	31
13	12	33	32
14	13	34	34
15	14	35	33
16	15	36	35
17	16	37	36
18	17	38	37
19	18		
20	19	Schedule 1.	Schedule

¹Unless otherwise indicated, references are to the Act set out in Part A.

APPENDIX 2

SOURCE OF THE COCOA REGULATION.

Part A.—Previous Legislation.

Cocoa Regulation 1982 (No. 1 of 1982)

as amended by—

Cocoa (Amendment) Regulation 1982 (Statutory Instrument No. 14 of 1982)*Cocoa (Amendment) Regulation* 1984 (Statutory Instrument No. 20 of 1984).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	1	11	11
2	2	12	12
3	3	13	13
4	4	14	14
5	5	15	15
6	6	16	16
7	7	17	17
8	8	18	18
9	9	Schedule 1	Schedule 1
10	10	Schedule 2	Schedule 2

¹Unless otherwise indicated, references are to the regulation as set out in Part A.