

# REPRINT

## COMMODITIES EXPORT MARKETING AUTHORITY ACT (CAP. 36)

**As in force at: 1 October 2009**

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This version is that in force at the date stated above. It does not include amendments made since that date.

For list of amendments see Endnotes

**AN ACT** TO ESTABLISH A PUBLIC AUTHORITY BY THE NAME OF THE COMMODITIES EXPORT MARKETING AUTHORITY, WITH A VIEW TO PROVIDING FOR THE DEVELOPMENT OF THE PRODUCTION OF CERTAIN COMMODITIES FOR THE PURPOSE OF THEIR EXPORT AND FOR PROMOTING AND REGULATING THEIR MARKETING AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

# COMMODITIES EXPORT MARKETING AUTHORITY ACT (CAP. 36)

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# COMMODITIES EXPORT MARKETING AUTHORITY ACT (Cap. 36)

As in force at: 1 October 2009

## PART I PRELIMINARY

### 1 Short title

This Act may be cited as the *Commodities Export Marketing Authority Act*.

### 2 Interpretation

In this Act, unless the context otherwise requires:

**“activity”** means any activity or dealing of whatever description, which results in producing, processing, buying, selling, storing, marketing, transporting or shipping of any commodity for the purpose of its export, whether such activity or dealing is carried on by a person for himself or for the benefit of any other person, or as an agent or trustee of any other person, and includes such other activity or dealing so carried on for the purpose of the export of a commodity, as the Minister may, by notice published in the *Gazette*, specify;

**“agriculture”** has the meaning assigned to it by the *Agriculture and Livestock Act*, and includes horticulture; but does not include silviculture and timber industry;

**“buy”** means to procure any commodity, in return for payment of money as the price thereof, or in exchange for goods, or services, and includes any agreement for such buying;

**“Chairman”** means the Chairman of the Authority;

**“commodity”** means any product specified in Schedule 1 for the purpose of export, and includes a part, by-product, or waste product of such product,

**“dealing”** means any form of participation in an operation or transaction for the export of a commodity, whether or not such

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participation is incidental or ancillary to any activity;

**“General Manager”** means the General Manager of the Authority appointed under paragraph 2 of Schedule 2;

**“licence”** means a licence issued, renewed or varied under this Act;

**“machinery”** means a combination of moving parts of mechanical elements which may be put into motion by physical or mechanical force, together with their complimentary stationary members;

**“member”** means a member of the Authority;

**“person”** includes the Authority or any member acting as such under this Act or any employee or agent of the Authority acting within the scope of his employment with the Authority;

**“prescribed activity”** means such activity as the Minister may, in consultation with, or on the recommendation of, the Authority, by notice published in the *Gazette*, prescribe for the purposes of this Act;

**“processing”** in relation to a commodity includes:

- (a) making any commodity;
- (b) drying, fermenting, cleaning, washing, finishing, altering, assembling, repairing, ornamenting, or the breaking up or demolition of any article or thing or carrying of any other operation in the course of, or with a view to producing or manufacturing any commodity or adapting the article or thing for use as a commodity;

**“product”** means a product of agriculture, or any other industry, not being agriculture, whether derived with or without the use of machinery;

**“producer”** means a person engaged in the production of a commodity, and includes a person who is engaged in any prescribed activity in that commodity;

**“port”** includes an airport or air strip used for the carriage of passenger or cargo by air;

**“shipment”** includes air-lifting;

**“sell”** means to dispose of any commodity in exchange for payment of money as the price thereof, or in exchange of goods or services and includes any agreement for such selling.

### **3 Amendment of Schedule 1**

The Minister may, in consultation with, or on the recommendation of the Authority, by order published in the *Gazette*, amend Schedule 1 for the purposes of this Act.

### **4 Overriding effect of Act**

- (1) This Act shall have effect as supplementary to but not in derogation of the provisions of the *Customs and Excise Act*, any law relating to foreign investment, and any other law, in so far as those provisions apply to, or in relation to, a prescribed activity in any commodity and the compliance by a person of those provisions shall not absolve him from his obligation to comply with the provisions of this Act.
- (2) Save as provided in subsection (1), the provisions of this Act shall have effect, notwithstanding anything to the contrary contained in any of those laws.

## **PART II THE COMMODITIES EXPORT MARKETING AUTHORITY**

### **5 Establishment of the Authority**

- (1) There is hereby established an authority to be known as the Commodities Export Marketing Authority, which shall be a body corporate under that name with perpetual succession and a common seal; which may, in such name, sue or be sued, may enter into contract and subject to the provisions of this Act may acquire, purchase, take, hold and enjoy real and personal property of every description and may convey, assign, surrender and yield up, charge, mortgage, transfer or otherwise dispose of, or deal with, in real or personal property, and may do all other things necessary for or incidental to its functions under this Act.
- (2) The members of the Authority shall be responsible for the policy and

management of the Authority in accordance with the provisions of this Act.

- (3) Schedule 2 relating to the appointment, remuneration, procedure and the other matters concerning members shall have effect subject to the provisions of Schedule 3 relating to the first appointment of the members.
- (4) Schedule 3 which contains transitional provisions, shall have effect.

## **6 Functions of the Authority**

- (1) For the purpose of promoting the export of commodities, the Authority shall be responsible for the development of their production, and for securing their efficient and regulated marketing.
- (2) In particular, and without prejudice to the generality of the foregoing provision, the functions of the Authority shall be:
  - (a) to promote, assist and develop commodities industries, whether by way of implementing any national plan prepared by it and approved by the Minister in this behalf, or otherwise, in such manner as it may think fit;
  - (b) with a view to securing efficient marketing in commodities for the purpose of their export to:
    - (i) collect, collate or prepare information or estimates with respect to:
      - (A) prices of, and supply, demand and other market conditions relating to, the commodities;
      - (B) publication or dissemination of such information or estimates to persons engaged in any prescribed activity in any commodity;
    - (ii) specify appropriate standards with respect to the quality, weight, ingredients, use and other particulars of the commodities, for the purpose of designation of their grades to indicate their suitability for export, and for the rejection of the commodities for export for failure to

comply with such standards;

- (iii) require the marking of the commodities with such standards;
  - (iv) fix by order published in the *Gazette*, the prices of commodities, for their buying or selling having regard to the cost of any prescribed activity in a commodity, the margin of profit expected by a producer from the export of the commodity, prevailing price of similar products in the local market in Solomon Islands, and other relevant considerations, and stabilise such prices, as far as possible, by taking such measures as it may consider necessary, notwithstanding fluctuations in the prices of the commodities overseas;
  - (v) advertise such prices in such other manner as it may think fit;
  - (vi) engage in buying or selling of commodities at such prices as it has fixed or to engage in any other prescribed activity for the promotion of, or for the protection of persons engaged in, the export of commodities; and
  - (vii) secure the availability of the commodities for the purpose of export by taking appropriate measures for the prevention of their hoarding and unhealthy competition between persons engaged in their production;
- (c) to make such grants and loans, provide such guarantee and to secure such other credit facilities on such conditions, as may be approved by the Minister, in consultation with the Minister of Finance to persons engaged in carrying on any prescribed activity, with a view to promoting export of any commodity;
  - (d) to undertake studies, surveys, investigations and research into any matter affecting any prescribed activity in any commodity, and to provide appropriate facilities for the training and education of, and consultancy services to, persons engaged in any prescribed activity;
  - (e) to monitor the implementation of the provisions of this Act by



making such enquiries and investigations as it may think fit;

- (f) to initiate, invite and induce investments into, or to receive contributions or any form of assistance, financial or otherwise, from any source for the purpose of development of the production of any commodity;
  - (g) to co-operate with other persons, whether citizens or foreign nationals, in any such joint scheme or project of the promotion of export of a commodity, as may be approved by the Minister; and
  - (h) to carry out such other functions as are conferred on the Authority under this Act, or any other law.
- (3) In performing its functions, the Authority shall ensure, by negotiations with the owners of customary land, or otherwise, that their interests are safeguarded and that they get, as far as possible under the provisions of this Act, best returns for any commodity produced on their land, or from the carrying on of any other prescribed activity with respect to that commodity.

## **7 Additional functions**

- (1) Where it appears to the Minister, in consultation with, or on the recommendation of, the Authority, that for the purpose of encouraging or improving trade with other countries, it is necessary so to do in the public interest, he may by order require the Authority to perform such functions, with respect to such product, not being a commodity or with respect to any activity, not being a prescribed activity, as may be specified in the order, and the Authority shall perform such functions.
- (2) Such provisions of this Act shall apply to the performance of the functions under subsection (1) and to the other matters involving the performance of those functions, and subject to such amendments, as may be specified by the Minister by an order published in the *Gazette*.

## **8 Powers of the Authority**

For performing its functions under this Act, the Authority may:

- (a) appoint such employees as it reasonably requires, upon such terms and conditions and on such remuneration, as it thinks fit;
- (b) with the written consent of the Minister, contribute to any scheme for pensions, gratuities and retiring allowances for its employees;
- (c) appoint, on such terms and conditions and on such remuneration as it thinks fit, agents to carry out its functions;
- (d) fix and advertise prices for, and buy, any prescribed commodity which has been suitably graded;
- (e) act as consultant to the persons engaged in any prescribed activity, and desiring to obtain any service falling within the scope of the functions of the Authority;
- (f) act as agent or trustee for persons desiring to invest property or money in a business or enterprise connected with any prescribed activity in a commodity;
- (g) charge fees for services performed by the Authority;
- (h) acquire, hold and dispose of securities and equity or commercial interests in companies, partnerships or joint ventures; and
- (i) form subsidiary corporations in compliance with the *Companies Act* to carry on any commercial activity approved by the Minister.

## **9 Directions of the Minister on general matters of policy**

- (1) The Authority shall prepare and submit to the Minister such interim reports as he may require on the operations of the Authority.
- (2) Upon considering the report submitted to him under subsection (1), or otherwise, the Minister may give to the Authority such directions of general character as to any matter of policy with respect to the implementation of any provision of this Act as appear to him to be requisite in public interest:

Provided that the Authority shall be consulted before giving any such

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direction otherwise than on considering the report of the Authority.

- (3) If a question arises as to whether any matter is a matter of policy, the decision of the Minister shall be final.
- (4) The Authority shall comply with the directions given under subsection (2).
- (5) Where, in the opinion of the Minister, the Authority or any member is guilty of persistent disregard of any direction given under subsection (2), he may, by order, take such action, including removal from office, of any member who is guilty of disregard of such direction, as he considers necessary to secure compliance of his directions:

Provided that no action under this subsection shall be taken without giving the Authority or the member so guilty, an opportunity to show cause why the action proposed by him should not be taken, and without considering the cause, if any, shown by the Authority or the member, as the case may be, against the proposed action.

**10            Directions of the Minister for temporary prohibition of export of, or of any other prescribed activity, in a commodity**

- (1) Where the Minister is satisfied, in consultation with, or on the recommendation of, the Authority, or otherwise, that it is in the public interest to prohibit the export of any commodity, or the carrying on any other prescribed activity in that commodity, for such period as he considers necessary, having regard to the scarcity in the availability of any product for domestic use within Solomon Islands, or the relations of Solomon Islands with, or the conditions prevailing in, any foreign country, he may, by order, prohibit the export of the commodity or the carrying on of that prescribed activity in that commodity, hereafter in this section referred to as the prohibited commodity and prohibited activity respectively, for such period as may be specified in the order.
- (2) An order under subsection (1) may be made in respect of export of the prohibited commodity to all foreign countries, or to any particular country as may be specified in the order.
- (3) Where an order is made under subsection (1):

- (a) the Authority and every person licensed under this Act shall forthwith stop export of the prohibited commodity and the carrying on the prohibited activity in that commodity for such period as is specified in the order;
  - (b) any licence issued or renewed in respect of the prohibited commodity before the issue of the order, shall, notwithstanding the currency of such licence, remain suspended during the period specified in the order; and
  - (c) neither the Authority nor the person referred to in paragraph (a), shall have any claim for compensation against the Minister or the Government, for any loss caused by the order, or by the suspension of licence for the export of the prohibited commodity, or by the stoppage of the carrying on of the prohibited activity in that commodity, by virtue of that order.
- (4) During the period of operation of the order, it shall be lawful:
- (a) for the Authority to purchase any prohibited commodity and sell the same to any person within Solomon Islands;
  - (b) for any person to purchase or sell the same within Solomon Islands,

at such price as the Authority may fix, having regard to the cost of any prescribed activity in that prohibited commodity, the margin of profit which would have been expected by its producer if it had been exported, the prevailing price of similar products in the local market at the place of purchase or sale in Solomon Islands and any other relevant consideration.

### **PART III                      REGULATION OF EXPORT AND OTHER PRESCRIBED ACTIVITIES**

#### **11                      Restrictions on export, etc.**

Upon the commencement of this Act, no commodity shall be exported, nor any other prescribed activity in relation to the export of a commodity shall be carried on except:

- (a) by the Authority, or by an agent of the Authority, appointed by

a general or special order, made in that behalf, and such export or other prescribed activity is carried on, in accordance with the provisions of this Act, or the regulations made thereunder; or

- (b) by any other person licensed by the Authority, and such export or other prescribed activity is carried on, in accordance with the conditions of the licence issued or renewed or varied by the Authority under this Act.

## **12 Issue or renewal of a licence**

- (1) A person may apply to the Authority for the issue of a licence to carry on the export of a commodity or any other prescribed activity in that commodity:

Provided that where he intends to carry on the export of more than one commodity, or more than one other prescribed activity, he shall make separate application to the Authority for such licence for the export of each commodity or for carrying on each other prescribed activity in a commodity.

- (2) An application under subsection (1) shall:
  - (a) be in the prescribed form and shall be accompanied by such fees as may be prescribed;
  - (b) specify the commodity for the export of which, or the other prescribed activity in a commodity to carry on which the application is made; and
  - (c) contain such other information or be accompanied by such relevant documents relating to the suitability of the commodity for export, or the suitability of the person to carry on the export of or other prescribed activity in a commodity, as may be prescribed or as the Authority may, by order made in writing, require, to comply with any provision of this Act or the regulations made thereunder.
- (3) The Authority shall examine the application, and if in its opinion, the application is incomplete with respect to any matter specified in subsection (2), the Authority shall return the application to the applicant for re-submission after completion, directing his attention

to the deficiency noticed by the Authority.

- (4) On receipt of a completed application, if the Authority is satisfied that the commodity in respect of which the licence is applied for is suitable for export or the applicant is suitable to carry on the export of, or other prescribed activity in, a commodity having regard to the provisions of this Act and the regulations made thereunder, that the applicant has complied with the directions, if any, given by the Authority, and that, in its opinion, there is no valid reason to refuse such application, the Authority may, subject to the other provisions of this Act, issue to the applicant, the licence applied for, in the prescribed form, on such conditions as may be specified therein.

- (5) Where the Authority is not satisfied as stated in subsection (4), it shall reject the application:

Provided that no application for a licence shall be rejected except after giving to the applicant an opportunity of showing cause why the application be not rejected, and after considering the cause, if any, shown by the applicant.

- (6) Every application for a licence made under subsection (1) shall be disposed of within a period of three months from the date of its submission or re-submission, whichever is later.
- (7) A copy of the order giving reasons of the rejection of an application for the issue of licence shall be given to the applicant forthwith.
- (8) Unless sooner revoked pursuant to this Act, a licence issued under this section shall remain in force for a period of one year from the date of its issue, and may be renewed by the Authority on payment of such fee as may be prescribed and the provisions of subsections (2) to (7) shall apply to the renewal of a licence under this section as they apply to its issue.
- (9) The Authority shall keep a register of licences issued or renewed under this section and the conditions of those licences subject to which they were issued or renewed, in the prescribed form; and where such licence relates to the carrying on of the production of a commodity the Authority shall allot to such licensee a distinguishing mark to be used by him in respect of each producing unit maintained or operated by him for the production of the commodity so as to

identify the commodity produced in each such unit.

### **13 Revocation or variation of licences**

- (1) The Authority may, by order made at any time during the currency of a licence issued or renewed under section 12, or at the time of its renewal:
  - (a) revoke any licence, if the licensee contravenes or fails to comply with any of the conditions of the licence issued or renewed to him; or
  - (b) revoke or vary any condition subject to which it was issued or renewed, as the case may be:

Provided that no such revocation of the licence or revocation or variation of any condition thereof shall be made except where, in the opinion of the Authority, such variation or revocation is necessary having regard to the provisions of this Act and the regulations made thereunder or the directions made by the Authority, and except after giving to the licensee an opportunity to show cause why the proposed variation or revocation be not made and after considering the cause, if any, shown by the licensee.

- (2) Where a person who holds a licence is convicted of any offence against this Act, the Authority may, within three months of the conviction, revoke the licence.
- (3) A licensee may apply to the Authority for variation of any condition of the licence stating in the application the reasons for its variation and if the Authority is satisfied that it is just and equitable to vary that condition having regard to the provisions of this Act and the reasons given therefore, it may vary that condition for such period as it may order, and the licence so varied shall have effect for that period only.
- (4) Where any licence is revoked under this section, the person who held that licence may apply to the Authority to temporarily continue to carry on the prescribed activity covered by such licence, for the purpose of winding up or closure of that activity.
- (5) On receipt of an application under subsection (1), the Authority may fix a date not exceeding a period of three months from the date of

revocation of the licence on which that person shall cease to carry on the prescribed activity covered by that licence, and until that date such person may, notwithstanding anything contained in this Act, carry on that prescribed activity only for the purpose of winding up or closure of his affairs in relation to that prescribed activity.

#### **14 Arrangements for enforcement of Act**

- (1) As soon as may be, after the commencement of this Act, the Authority shall by order make arrangements, and empower in writing, such number of its employees to be designated as Chief Inspecting Officer, and other Inspecting Officers, to enforce and carry out such provisions of this Act as may be specified in the order.
- (2) Every Inspecting Officer shall exercise his powers or perform his duties under the supervision and control of the Chief Inspecting Officer, and the Chief Inspecting Officer shall function under the supervision and control of the Authority.
- (3) The Minister may, by order, published in the *Gazette* appoint ports from which a commodity may be exported.
- (4) No commodity shall be exported by the Authority or by any person except from such appointed ports and except after it has been examined by an Inspecting Officer at such port and graded and marked in accordance with the provisions of subsection (5).
- (5) Every person exporting a commodity in accordance with the provisions of this Act shall submit the commodity to an Inspecting Officer at the port of export who shall examine and grade the commodity in accordance with the prescribed standards and the prescribed procedure, upon payment of the prescribed fee, and shall seal and mark, in the prescribed manner, every bag or container of commodity graded by him:

Provided that the Inspecting Officer shall reject the commodity for export, if as a result of such examination, he is of the opinion that the commodity does not conform to the prescribed standards:

Provided further that upon payment of further prescribed fee, such person may require a sample of the commodity so graded in any grade or rejected by the Inspecting Officer, to be re-examined and



re-graded by the Chief Inspecting Officer, who shall, after such examination:

- (a) re-grade the commodity at a higher grade, if that conforms to such higher grading according to the prescribed standards, and in such case make an order for the refund of the prescribed fee paid for his examination and re-grading; or
  - (b) make an order rejecting the commodity for export, if he is of the opinion that the commodity does not conform to the prescribed standards; and
  - (c) forthwith give to such person a copy of the order containing reasons of such rejection.
- (6) If after the grading or re-grading of a commodity is completed and before shipment the commodity suffers damage of a nature likely, in the opinion of the Inspecting Officer, to affect the quality thereof, the Inspecting Officer may order the commodity to be re-graded and in such case, the licensee shall not export the commodity until it has been examined again and graded according to the prescribed standards and the prescribed procedure.

## **15 Producers to provide information**

- (1) The Authority may, by notice in writing, require a producer to provide it with such information as the Authority reasonably requires for the performance of its functions under this Act, and the notice may state the time within which the information is to be provided.
- (2) The Authority and any member, Inspecting Officer, or other employee, agent or auditor of the Authority shall not, except in legal proceedings or in the performance of a duty or function under this Act, divulge or communicate any information acquired pursuant to subsection (1) without the consent of the person by whom or on whose behalf the information was provided.

## **16 Appeals**

- (1) Any person aggrieved by any order specified below, may appeal on payment of prescribed fees:

- (a) to the Minister:
    - (i) against an order of the Authority fixing any price of a commodity under section 6(2)(iv) or fixing any price of a prohibited commodity under section 10(4);
    - (ii) against an order of the Authority, rejecting his application for the issue or renewal of a licence; or
    - (iii) against an order of the Authority revoking or varying any licence issued or renewed by it or revoking or varying any condition of such licence, or refusing to vary any such condition, and
  - (b) to the Authority against an order of the Chief Inspecting Officer rejecting any commodity for export.
- (2) Every appeal made under subsection (1) shall:
- (a) contain the grounds of appeal and be accompanied by the copy of the order with which the appellant is aggrieved; and
  - (b) be made within sixty days from the date on which the copy of such order is given to him.
- (3) The Minister or the Authority before whom an appeal is made under subsection (1) shall co-opt, on such remuneration as may be prescribed, one or more public officers or other persons having experience in the controversy involved in the appeal and who may be not connected with the Authority, for hearing and determining the appeal, and the Minister or Authority, as the case may be, together with the person or persons so co-opted shall, for the purposes of this section, constitute the Appellate Tribunal.
- (4) Notice of the appeal shall be sent by the Appellate Tribunal to the Authority or the Chief Inspecting Officer against whose order the appeal is made. In pursuance of the notice, any representative of the Authority or the Chief Inspecting Officer, as the case may be, as well as the appellant or his representative shall, if they so desire, be heard by the Appellate Tribunal on the date fixed by it and notified to both the parties to the appeal.

- (5) After hearing the parties to the appeal as may be present at the time of the hearing, and considering the contentions raised in the appeal, the Appellate Tribunal may by order:
- (a) reject the appeal, if in its opinion there are no reasons for interfering with the order appealed against; or
  - (b) remand the order appealed against to the Authority or the Inspecting officer who made the order for re-considering it, by following such directions as may be specified in the order of remand, having regard to the provisions of this Act and the regulations made thereunder; or
  - (c) accept the appeal, and shall:
    - (i) in an appeal under subsection (1)(a)(i), direct the Authority to re-fix the price of a commodity or prohibited commodity, as the case may be, after taking into consideration such matters as are specified in the direction; or
    - (ii) in an appeal under subsection (1)(a)(ii), direct the Authority to issue or renew the licence, as the case may be; or
    - (iii) in an appeal under subsection (1)(a)(iii), direct the Authority to issue or renew the licence or to quash the order of revocation or variation of the conditions or vary the condition for which such appeal was filed in such manner as may be specified in the direction; or
    - (iv) in an appeal under subsection (1)(b), direct the Inspecting Officer to re-grade the commodity in such grade as may be specified in the direction, and to allow export of the commodity so re-graded.
- (6) The costs of appeal which shall include the amount of remuneration payable to the co-opted members, shall be determined by the Appellate Tribunal, and specified in the order made under subsection (5), and shall be payable:
- (a) by the appellant to the Authority, if the appeal is rejected,

- (b) by the Authority to the appellant, if the order appealed against is remanded, or the appeal is accepted.
- (7) The order of the Appellate Tribunal shall be final and shall not be questioned by any court except on any ground specified in section 18 of the *Constitution*.

## **17 Power to enter and search**

- (1) The Chief Inspecting Officer, or any Inspecting Officer of the Authority, or any person authorised in writing by the Authority, or any police officer may, for the purpose of finding out whether the provisions of this Act are being complied with, or where he reasonably suspects that they are not being complied with:
  - (a) enter and search any premises or vehicle, ship, boat or airplane or any other conveyance where there is being carried on any prescribed activity, for the purposes of inspecting or examining any commodity or the carrying on of any prescribed activity in any commodity or for taking any sample of a commodity:

Provided that no such entry or search shall be made except between the hours of eight in the forenoon and four-thirty in the afternoon;
  - (b) demand from any person who is carrying on a prescribed activity in a commodity the production of that person's licence to do so; or
  - (c) require a person who is in possession of any commodity to give an account of the manner in which he became possessed of it.
- (2) The officer referred to in subsection (1) shall forward to the Authority a report on the result of the entry and search made by him except where he seizes any property as required by section 18.
- (3) Upon perusal of the report or its copy forwarded to it under subsection (2) of this section or under subsection (2) of section 18, the Authority shall take such action as it considers necessary for the enforcement of the provisions of this Act if it is satisfied there has been contravention of those provisions.

## **18            Seizure and forfeiture of property**

- (1) Where in the course of an inspection carried out under section 17, or otherwise, the Chief Inspecting Officer, or any Inspecting Officer or any person authorised by the Authority in writing, or any police officer, has reason to believe that any such property as comprises any commodity, tool, machinery, equipment, boats, vehicles and other property or documents, is being or has been used in the commission of an offence under this Act, he shall seize that property and take it in his possession or control.
- (2) Every officer seizing any property under this section shall place on such property, or on the receptacle, if any, in which it is contained, a mark indicating that it has been so seized and shall, as soon as reasonably possible, make a report of such seizure to a Magistrate, and shall forward to the Authority, a copy of that report.
- (3) As soon as reasonably possible after such seizure, the Authority shall give notice by service, or if service is not reasonably possible, by such publication as is appropriate, to all persons who it has reason to believe are interested in the property.
- (4) Any person claiming to be so interested may seek court action against the seizure of such property:
  - (a) within one month of the date of receipt of the notice, if notice is given by service, or
  - (b) within two months of the date of publication, if notice is given by publication.
- (5) If any property seized is subject to natural and speedy decay, the court may direct sale of the property and deal with the proceeds of sale in such manner as it considers just and proper under the circumstances of the case, unless the person from whom the property is seized is prosecuted for an offence under this Act, in which case the court shall act as provided under subsection (6).
- (6) Property seized or proceeds from sale under subsection (5) shall be subject to forfeiture if a conviction is obtained, or shall vest absolutely in the Authority if the suspected offender is unknown or unavailable to court jurisdiction, but only after the end of the notice period or the

decision of any court proceedings taken under subsection (4).

- (7) A forfeiture or vesting under subsection (6) shall be in addition to any other penalties for the offence under this Act.

## **19 Penalties**

- (1) Without prejudice to any action that may be taken under this Act, where a person:
- (a) contravenes the provisions of section 10(3) or section 13(4) or section 14(4); or
  - (b) carries on any prescribed activity:
    - (i) in contravention of any provision of this Act or the regulations made thereunder, prescribing the manner in which it is to be carried on; or
    - (ii) without a licence issued or renewed or varied; or
  - (c) alters, defaces or adds to any mark or seal placed on any bag or container of a commodity to indicate the grading of that commodity made under the provisions of this Act; or
  - (d) buys or sells or exports any commodity at a price other than the price therefor, if any, fixed under this Act or the regulations made thereunder; or
  - (e) obstructs the Chief Inspecting Officer or any Inspecting Officer or any member or any agent of the Authority in the execution of his duty imposed on him by this Act or the regulations made thereunder; or
  - (f) makes any false statement or gives any false information, or makes such statement or gives such information that he does not believe to be true:
    - (i) in an application for issue or renewal of a licence, or for variation of any condition of a licence; or
    - (ii) in an appeal made under this Act; or

- (iii) in response to a notice under section 15; or
- (g) falsely represents himself as any member, Inspecting Officer or other employee or agent of the Authority, and does any act under this Act in that false character,

shall be guilty of an offence and shall be punishable with fine which may extend to 5000 penalty units, or to a term of imprisonment which may extend to two years, or both such fine and imprisonment:

Provided that where such person is convicted by a court other than the High Court or the Court of Appeal, such punishment shall not be less than a fine of 500 penalty units, or an imprisonment of one month, or both, unless the court convicting the person is of the opinion, for reasons to be recorded by it in its judgment, that there are mitigating circumstances justifying any lesser sentence of fine or imprisonment, or both, than such minimum sentence, in which case it may award such lesser sentence:

Provided further that where any such offence is committed by such person with the consent or connivance of any member, employee or agent of the Authority, the member, employee or agent as well as the first-mentioned person shall also be guilty of that offence and to the like punishment as aforesaid.

- (2) Where a member, an Inspecting Officer, or other employee or auditor, or agent of the Authority:
  - (a) makes any disclosure in contravention of subsection (1) of section 29 whether intentionally or negligently; or
  - (b) accepts any gift in contravention of subsection (4) of that section;

he shall be guilty of an offence and on conviction shall be punishable with a fine which may extend to 500 penalty units or with imprisonment which may extend to six months, or with both such fine and imprisonment and the gift so accepted shall be liable to be forfeited to the Crown, and the provisions of section 43 of the *Penal Code* shall apply to the forfeiture of any gift under this subsection as they apply to the forfeiture of any property upon conviction under the sections of that Code referred to in that section.

- (3) A member who contravenes paragraph 10(1) of Schedule 2, shall be guilty of an offence punishable with fine which may extend to 1000 penalty units or with imprisonment which may extend to one year or with both such fine and imprisonment.
- (4) A producer who, without any lawful excuse, fails to comply with a notice given pursuant to subsection (1) of section 15 shall be guilty of any offence and shall be punishable with fine which may extend to 200 penalty units.
- (5) No prosecution for an offence under this section shall be instituted except by the Director of Public Prosecutions, or by any other person acting under the general or specific directions of the Director of Public Prosecutions.

## **PART IV            FINANCE**

### **20            Funds to be established**

- (1) The Authority:
  - (a) shall establish a development fund for each commodity;
  - (b) may, where necessary, establish a development fund for a product which is not a commodity; and
  - (c) may with the approval of the Minister establish any other fund for a commodity or any prescribed activity.
- (2) Each fund established under subsection (1) shall be kept in a separate account.
- (3) Moneys from a fund established pursuant to this section shall not, except by order of the Minister, be used in relation to a product or commodity which is not the product or the commodity for which that fund was established.

### **21            Sources of funds of Authority**

Subject to the provisions of this Act, the funds shall be at the disposal of the Authority and shall consist of:

- (a) moneys transferred to the Authority from funds of the Copra

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Board pursuant to Schedule 3 (transitional provisions) which shall be paid into a fund established pursuant to section 20(1) for copra;

- (b) fees payable under this Act or the regulations, in each case, which shall be paid into a fund established for the commodity in relation to which it has been paid and where such fee is not related to any one commodity then the fee may be paid into one or more such funds at the discretion of the Authority;
- (c) interest or other returns accruing from investment, which interest or returns shall:
  - (i) where they can be related to a particular commodity be paid into a fund established for that commodity; and
  - (ii) where they cannot be related to a particular commodity be paid, with the approval of the Minister, into one or more of the funds established pursuant to section 20(1);
- (d) moneys derived from the sale of a commodity by the Authority, which moneys shall in each case be paid into the fund established for that commodity;
- (e) moneys received by or falling due to the Authority in respect of any loan made by it or the interest payable in respect of such a loan, which moneys shall in each case be paid into the fund established from which the loan was made; and
- (f) any other moneys from any source at any time granted or allocated or loaned to the Authority or otherwise earned by the Authority, which moneys shall where they are granted, allocated, loaned or earned in relation to a particular commodity be paid into the fund established for that commodity.

## **22        Borrowing powers**

The Authority may from time to time raise or borrow such sums of money for or in connection with the purposes of this Act and on such terms and conditions as are approved in writing by the Minister after consultation with the Minister of Finance.

## **23 Guarantees**

The Authority may, from time to time and only with the written approval of the Minister given after he has consulted with the Minister for Finance, guarantee in such manner, as it thinks fit, the repayment of the principal of and interest and other charges on a loan by a bank made to a producer for the production of a commodity or for carrying on any other prescribed activity in a commodity, on the recommendation of the Authority.

## **24 Lending powers**

The Authority may, from time to time and only with the written approval of the Minister given after he has consulted with the Minister for Finance, lend money to a producer for or in connection with the purposes of this Act, on such terms and conditions as it thinks fit.

## **25 Powers of investment**

The Authority may, from time to time and only with the written approval of the Minister given after he has consulted with the Minister for Finance, invest the funds at its disposal in such manner and on such terms and conditions as it thinks fit.

## **26 Application of funds**

The Authority shall in accordance with this Act apply the funds at its disposal or such part of the funds as it, from time to time, sees fit:

- (a) to and in connection with the purchase of commodities;
- (b) in the exercise of its powers and in the carrying out of its functions; and
- (c) to the payment of the remuneration, allowances and salaries payable to its members and employees and agents.

## **27 Accounts, audit and annual report**

- (1) The Authority shall keep true and full accounts of all its transactions and shall prepare and submit to the Minister not more than three months after the end of each financial year, such statements and accounts as the Minister may require.

- (2) Part VIII of the *Public Finance and Audit Act* shall apply to the Authority by an order made by the Minister under that Act.
- (3) The Authority shall, at the beginning of each financial year, prepare a report of its operations for the past financial year and shall submit it to the Minister and the Minister shall cause it to be laid before Parliament.

## **28 Exemption from income tax**

The income of the Authority shall not be liable to income tax.

## **PART V MISCELLANEOUS**

### **29 Authority not to disclose**

- (1) A member, or an Inspecting Officer or other employee, agent or auditor of the Authority shall not (except in the performance of his duties or functions under this Act) disclose to any person any information with regard to a matter determined by the Authority to be a matter to which this section applies.
- (2) The Authority may determine that any matter connected with a commodity or a prescribed activity is a matter to which this section applies, and shall inform the members, Inspecting Officers, other employees, agents and auditors of the Authority who deal with the matter, that it has made such a determination.
- (3) A person contravenes subsection (1) whether the disclosure made is intentional or negligent.
- (4) A member of the Authority or an Inspecting Officer or other employee, agent or auditor of the Authority shall not accept on his own behalf any gift from a person who is licensed or whose activities are otherwise regulated by the Authority or with whom the Authority transacts any business pursuant to this Act.

### **30 Offender liable to Authority**

Where an offence committed under this Act by any person causes any loss of profit or other damage to the Authority, the person shall be liable to the Authority for the value of that loss or damage.

**31 Protection for matters or things done in good faith**

A member, an Inspecting Officer or other employee, or agent of the Authority shall not be subject to any action, liability, claim or demand for any matter or thing done or contract entered into by the Authority if the matter or thing is done or the contract entered into is in good faith for the purposes of exercising a power or performing a function or duty of the Authority under this Act.

**32 Exemptions**

The Minister may, by order published in the *Gazette*, exempt any person or class of persons from such provisions of this Act or of the regulations made thereunder as may be specified in the order, if he is satisfied that such exemption is necessary in public interest, having regard to the nature and size of any prescribed activity in a commodity, the relations of Solomon Islands, with any foreign country, the protection of the trading interest of the people of Solomon Islands against conditions prevailing in any foreign country, and other relevant considerations.

**33 Relations with other Ministries and public bodies**

Any Ministry or any other public body or authority shall notify the Authority in writing any plan or project for which it has some responsibility where the plan or project could reasonably be expected to affect a matter in which the Authority, shall pursuant to this Act is concerned and such Ministry and other public body or authority take into consideration the comments, if any, made by the Authority in such plan or policy so as to ensure that the provisions of this Act and the regulations made thereunder are complied with in giving effect to such plan or project.

**34 Power to make regulations**

The Minister may, after consultation with, or on the recommendation of, the Authority, make regulations for, or with respect to any matter or thing that by this Act is authorised or required to be prescribed or that is necessary to be prescribed, or for carrying out the provisions of this Act, and without affecting the generality of the foregoing power, may make regulations prescribing:

- (a) the standards of the quality control of a commodity, including its inspection and grading for the purpose of export;
- (b) conditions under which a person holding a licence under this Act may carry on a prescribed activity;
- (c) the manner of appointment and the duties and powers and procedures of the Chief Inspecting Officer, Inspecting Officers and the employees of the Authority to enforce and carry out the provisions of this Act and the regulations;
- (d) the establishment of and operation at places where grading may be done and the methods and procedures for grading;
- (e) the storing, warehousing, freighting, loading, transporting and shipping of commodities, including safety regulations;
- (f) the standards, labels and markings for bags and other containers of a commodity and for requiring use of such standards, labels or markings;
- (g) the restrictions as to the carrying on of any prescribed activity in any green or immature part of a commodity;
- (h) the rejected commodities which may be exported and the conditions of their export;
- (i) fees for services provided by the Authority for appeals and other matters;
- (j) penalties not exceeding 500 penalty units or imprisonment not exceeding six months, for any breach of the regulations in cases for which no punishment is elsewhere provided in the Act; and
- (k) forms and procedures for the administration of this Act or the regulations.

### **35 Parliamentary procedure for subsidiary legislation**

- (1) Section 62 of the *Interpretation and General Provisions Act* does not apply to any subsidiary legislation made under this Act.

- (2) Such subsidiary legislation shall come into operations as provided in section 61 of that Act.
- (3) Subsidiary legislation made under this Act shall be laid before Parliament.
- (4) If within 15 sitting days from the day on which the subsidiary legislation is laid before Parliament, Parliament resolves that the subsidiary legislation is annulled or shall have effect subject to such amendments as may be specified in the resolution, the subsidiary legislation shall cease to have effect or continue to have effect, subject to those amendments but without prejudice to the validity of anything previously done under the subsidiary legislation.

## SCHEDULE 1

(Section 2)

### Products and their Description

Coconut and coconut products.	The fruit of the palm tree ( <i>Cocos nucifera</i> ) and any product of that fruit whether in green or dried form.
Copra.	The kernel or meat of the coconut (fruit of the palm tree) ( <i>Cocos nucifera</i> ) when it has been extracted from the nut and dried.
Cocoa pods.	The fruit of the cocoa tree ( <i>Theobroma Cacao Linnaeus</i> ).
Unfermented cocoa beans.	Seeds from the fruit of the cocoa tree ( <i>Theobroma Cacao.Linnaeus</i> ) which have not been subjected to a fermentation and drying process.
Fermented cocoa beans and products.	Seeds from the fruit of the cocoa tree ( <i>Theobroma Cacao Linnaeus</i> ) which have been subjected to a fermentation and drying process.
Palm oil.	Oil extracted from the fruit of the oil palm tree ( <i>Elaeis guineensis</i> ).
Palm based products	Extracts or distillations from the fruit of the oil products.palm ( <i>Elaeis guineensis</i> ).
Spices.	Any aromatic or pungent substance of vegetable origin commonly used to flavour food or as condiments and includes ginger, chillies, tumeric, cardamon or distillation of any such substance.
Coffee.	The fruit of the shrubs ( <i>Coffea arabica and canephora</i> ), Arabica and Robusta varieties, or derivatives and any products of the fruit whether green or dried form.

Ngalinut.	Dried ngalinut-in-shell, dried kernel separated from the shell of the fruit, the shell or resins from the ngalinut tree ( <i>Canarium spp.</i> ) including but not restricted to the following species, <i>C.indicum</i> , <i>C. Salomonense</i> , <i>C.harveyi</i> ( <i>Var.nova-hebridiense</i> ).
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## SCHEDULE 2

[Section 5(3)]

### THE MEMBERS OF THE AUTHORITY

1.

(1) The Authority shall consist of the following 13 members, namely:

- (a) seven members, one from each of the seven provinces, all of whom are producers, to represent the producers engaged in the production of commodities in their respective provinces;
- (b) two members who are producers, to represent the producers engaged in the production of commodities;
- (c) two members with practical experience in foreign investments, foreign trade or marketing of products;
- (d) two *ex officio* members one of whom shall be the Permanent Secretary of the Ministry for the time being administering this Act or the Under Secretary of that Ministry nominated by the Permanent Secretary to represent that Ministry; and the other *ex officio* member shall be the General Manager appointed pursuant to paragraph 2(1) of this Schedule.

(2) The Chairman, the Deputy Chairman and other members who are not *ex officio* members shall be appointed by the Minister by notice published in the *Gazette*, on such other terms and conditions of service as may be specified in their respective letters of appointment for a term of not more than three years and may be re-appointed at the end of their terms.



(3) Any remuneration or allowances which are payable to a member in consequence of his office shall be paid out of the funds of the Authority in accordance with this Act.

(4) A member who is not an *ex officio* member:

- (a) may be removed from office by the Minister under section 9, or for any other misconduct in the discharge of his functions as a member of the Authority under this Act, or in public interest:

Provided that no member shall be removed from office on the ground of misconduct unless the allegation of his misconduct is enquired into by an independent and impartial person appointed by the Minister in that behalf, and the member concerned is given an opportunity to defend himself in such enquiry, and the person holding the enquiry advises the Minister for the removal of the member as a result of his enquiry; or

- (b) may resign, at any time, from membership of the Authority by notice in writing addressed to the Minister.

2.

(1) The Authority shall:

- (a) appoint a person to be General Manager of the Authority; and
- (b) where by death, removal or resignation or otherwise, there is a vacancy in the office of the General Manager, the Authority may appoint a person to act as the General Manager until the vacancy is filled by making a regular appointment to the office of the General Manager.

(2) The general Manager shall be responsible for the day-to-day administration of the Authority subject to the general or special directions of the Authority.

3.

(1) Where any member other than the General Manager, is unable, whether on account of illness or otherwise, to perform the duties of his office the

Minister may appoint a person to act in the place of that member during the period of his inability.

(2) A person appointed under the preceding sub-paragraph to act in the place of a member shall while so acting:

- (a) have all the rights and duties and perform all the functions of the member for whom he is acting; and
- (b) be paid the same remuneration and allowances (if any) as would be payable to the member in whose place he is acting.

4.

(1) The Minister shall appoint from amongst the members a Chairman and a Deputy Chairman of the Authority.

(2) The Chairman shall preside at a meeting of the Authority at which he is present and in his absence the Deputy Chairman shall preside and if neither the Chairman nor the Deputy Chairman is present then the General Manager shall preside at such meeting.

5. The Authority may appoint a Secretary to the Authority who shall be paid out of the funds of the Authority.

6.

(1) A majority of the members of whom one shall be either the Chairman, the Deputy Chairman or the General Manager, shall constitute a quorum.

(2) Subject to the presence of a quorum, the Authority may act notwithstanding any vacancy in its membership.

(3) The powers and functions of the Authority may be exercised in accordance with the majority of the votes of the members present at any meeting and in the event of an equality of votes the person presiding shall have a casting vote.

(4) The members shall meet at such times and at such places as may be determined by the Chairman.

(5) The Authority may regulate its own procedure not inconsistent with the provisions of this Act.

7. An act or decision of the Authority is not invalid by reason only of a vacancy in the office of a member or of any irregularity in or in connection with the appointment of a member or in the case of a person appointed to act in the place of a member (including the General Manager) or by reason that the occasion for his so acting had not arisen or had ceased.

8. The common seal of the Authority shall be kept in the custody of a person authorised by the Authority and shall only be affixed to an instrument or document in the presence of two officers of the Authority authorised in that behalf by the Authority with an attestation by the signature of those officers of the fact of the affixing of the seal.

9. A member and any person appointed to act in the place of a member shall as soon as possible after his appointment submit to the Authority a notice in writing of all his assets and pecuniary interests and shall inform the Authority in writing of any change in his assets or pecuniary interests.

10.

(1) A member who has (or whose spouse or child has) a pecuniary interest whether direct or indirect in any matter to be considered by the Authority shall declare the nature of his interest (or that of his spouse or child) at every meeting at which the matter is considered.

(2) A declaration made under sub-paragraph (1) shall be recorded in the minutes of the meeting and the member making such a declaration shall withdraw from the meeting while the relevant matter is being considered.

(3) A member who makes a declaration under sub-paragraph (1) shall not act as an agent for the Authority in any connection with the relevant matter.

## **SCHEDULE 3**

[Section 5(4)]

### **TRANSITIONAL PROVISIONS**

1. All persons holding office as Chairman and other members of the Copra Board under the *Copra Board Act*, immediately before the commencement of this Act shall, upon such commencement, but subject to the provisions of paragraph 2, be deemed to have been appointed as the Chairman and the

other members of the Authority, for the period they would have held their respective offices as the Chairman and the other members of the Copra Board if this Act had not commenced:

Provided that upon the expiry of such period of their respective offices as members of the Authority, the Minister shall make appointments of the Chairman, the Deputy Chairman and other members of the Authority in accordance with Schedule 2.

2. The first appointment of the Chairman and other members of the Authority in accordance with paragraph 1 shall be on the same terms and conditions of service on which they held their respective offices in the Copra Board:

Provided that nothing contained in paragraph 1 or in this paragraph shall prevent earlier termination of their respective offices by removal or otherwise in accordance with the provisions of this Act.

3.

(1) The General Manager and all persons employed by the Copra Board immediately before the commencement of this Act shall continue in employment on the same salaries and conditions of service and shall be deemed to have been employed, by the Authority under section 8 of this Act.

(2) For the purposes of Parts II and III of the *Employment Act* (which deal with redundancy payments and long service benefits) employment under the Copra Board shall count as employment under the Authority and there shall be deemed to be no breach in the continuity of the period of employment by reason of the changes effected by this Act.

4. Subject to the other provisions of this Act, all property, rights, liabilities and obligations of the Copra Board (established under the *Copra Board Act*) existing before the date of commencement of this Act (hereafter in this Schedule called “the appointed day”) shall, on such date and without further assurance, vest in or otherwise stand transferred to the Authority.

5.

(1) Every agreement to which the Copra Board was a party on the appointed day shall have effect as if of:

(a) the Authority had been a party to the agreement; and

- (b) for any reference to the Copra Board in respect of anything having effect after the appointed day, there were substituted a reference to the Authority.

(2) Sub-paragraph (1) shall apply to an agreement whether or not the Copra Board could have assigned rights, liabilities or obligations under it.

6.—(1) Where any right, liability or obligation vests in the Authority by virtue of this Schedule, the Authority and all other persons shall from the appointed day have the same rights, powers and remedies for ascertaining, perfecting or enforcing that right, liability or obligation as they would have had if the right, liability or obligation had at all times been vested in the Authority.

(2) Legal proceedings, and applications:

- (a) pending immediately before the appointed day; and
- (b) relating to any property, right, liability or obligation vested by virtue of this Schedule, or to any document or agreement which has effect in accordance with paragraph 5 of this Schedule,

shall be continued by or against the Authority to the exclusion of the Copra Board.

7. The Registrar of Titles shall on application by the Authority make such alterations in the land register maintained under the *Land and Titles Act* as may be necessary in consequence of this Schedule.

## ENDNOTES

### 1

#### KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

#### NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 36 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act from that date to 1 October 2009.

### 2

#### LIST OF LEGISLATION

***Commodities Export Marketing Authority Act (Cap. 36)***

*Constituent legislation:* 5 of 1984 (Commenced 1 July 1985)  
LN 144 of 1992  
8 of 1995

***Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)***

Assent date 29 July 2009  
Gazetted 1 October 2009  
Commenced 1 October 2009

### 3

#### LIST OF AMENDMENTS

s 19 amd by Act No. 14 of 2009  
s 34 amd by Act No. 14 of 2009