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Cotton Act, 1967

Act 26 of 1967

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Cotton Act, 1967

Act 26 of 1967

Assented to on 20 February 1968

Commenced on 19 April 1968

[This is the version of this document at 1 December 1998.]

An Act to provide for the constitution and functions of the Cotton Board and for incidental or connected matters.

Part I – Preliminary

1. Short title

This Act may be cited as the Cotton Act, 1967.

2. Interpretation

In this Act, unless the context otherwise requires

“**authorized officer**” means the Principal Secretary or a public officer authorized by him to issue permits in terms of [section 9](#);

“**board**” means the Cotton Board established by [section 3](#);

“**chairman**” means the chairman of the board; or in his absence, the vice-chairman;

“**Clarkes Cotton (Swaziland) Limited**” means the company incorporated and registered, with that name, under the law relating to companies;

“**committee**” means a committee appointed under [section 8](#);

“**cotton lint**” means fibres of seed-cotton after removal of the cotton seed;

“**cotton plant**” means the species and varieties of the plant *gossypium* grown commercially;

“**cotton residues**” means cotton plants remaining in the field after harvesting of the seed cotton;

“**cotton seed**” means seed from which cotton is grown after separation from the cotton lint;

“**disqualified**” means disqualified by [section 5](#);

“**duly qualified auditor**” means an auditor whose qualifications are recognized by the law of any country as entitling him to practise as an auditor in that country;

“**executive officer**” means an officer appointed under [section 6\(1\)](#);

“**financial year**” means a period of twelve months ending on the first day of December in each year;

“**fund**” means the Cotton Improvement Fund or the Special Levy Fund, as the case may be, established under [section 13](#) and [section 13A](#) respectively;

[Amended A.5/1992]

“**grower**” means a grower of seed cotton who, in the opinion of the board, markets or intends to market seed cotton grown in Swaziland;

“**meeting**” means a meeting of the board or of a committee;

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

“**owner**”, when used in relation to land, means the registered owner thereof when he is in actual occupation of the land, and when he is not in occupation of the land, means the person who, for the time being, whether as lessee, licensee or otherwise is entitled for his own account to have charge, control, and management of the land;

“**Minister**” means the Minister for Agriculture;

“**Principal Secretary**” means the Principal Secretary of the Ministry of Agriculture;

“**season**” means a period of twelve months commencing with the first day of September of any year;

“**seed-cotton**” means unginned cotton or cotton as reaped from the cotton plant and consisting of cotton lint and seed before separation by ginning;

“**Swaziland Cotona Ginning Company Limited**” means the company incorporated and registered, with that name, under the law relating to companies;

“**Swaziland Agricultural Union**” means the union of agricultural associations formed by farmers to further the interests of organized agriculture in Swaziland and known in terms of its constitution by this name;

“**vice-chairman**” means the vice-chairman of the board.

Part II – Establishment, membership and administration of the Board

3. Establishment of the Board

A Cotton Board is hereby established as a body corporate with perpetual succession and shall, in its corporate name, be capable of suing and being sued, and of purchasing or otherwise acquiring, holding or alienating movable or immovable property.

4. Membership of the Board

- (1) The Board shall be composed of ten members of whom—
 - (a) five of the members shall be appointed by the Minister as follows:
 - (i) One ginner representative;
 - (ii) One spinner representative;
 - (iii) The Chief Executive Officer of the Cotton Board;
 - (iv) One Government Official from the Ministry of Agriculture and Co-operatives;
 - (v) Any grower possessing any special attributes which the Minister deems appropriate;
[Amended A.5/1992]
 - (b) one grower representing the growers in each Region appointed by the growers in that Region.
[Amended A.5/1992]
 - (c) one shall be appointed by each of the following companies: Swaziland Cotona Cotton Ginning Company Limited and Clarkes Cotton (Swaziland) Limited.
- (2) In the event of a failure to appoint a member under sub-section (1)(b) or (c), within fourteen days of vacancy in the membership of the board occurring and after a further fourteen days' notice in writing has been given by the Minister to the body responsible in terms of the said paragraphs for making the appointment, the Minister may appoint any person he deems fit to represent the body on the board.

- (3) With the concurrence of the board, the Minister may, by notice published in the *Gazette*, increase the number of members on the board to take into account any changes which may occur in the pattern of the cotton industry.
- (4) The person or body appointing a member may appoint an alternate member to act during the absence of such member from a meeting.
- (5) The term of office of a member and an alternate member shall be determined by the person or body appointing him and shall be expressed in his letter of appointment (a copy of which shall be sent to the Minister and the executive officer) but shall not be less than one year nor greater than three years.
- (6) On the expiry of his period of office, a member or an alternate member shall, if otherwise qualified, be eligible for re-appointment.

5. Disqualifications of members and alternates

- (1) No person may be appointed a member or an alternate member or continue to be a member or alternate member if—
 - (a) his estate has been sequestrated; or
 - (b) he has been adjudged to be of unsound mind; or
 - (c) he has been convicted of a criminal offence and has been sentenced to a period of imprisonment without the option of a fine, whether or not such a period of imprisonment was suspended, and a period of five years has not elapsed since the termination of—
 - (i) the sentence of imprisonment; or
 - (ii) in the case of a suspended sentence which has not been enforced, the period of suspension.
- (2) A member or alternate member shall cease to hold office as such—
 - (a) when the executive officer receives his written resignation;
 - (b) when the person or body who appointed him cancels the appointment; or
 - (c) if he is absent from four consecutive ordinary meetings of the board without the leave of the board;but shall be qualified for re-appointment.

6. Executive officer and staff of the board

- (1) The board shall appoint an executive officer, and may appoint other officers and servants as it deems necessary for the efficient discharge of its functions, and may remunerate those persons out of its funds.
- (2) The executive officer shall, in addition to his functions under this Act, perform such duties as the board may assign to him.

7. Procedure of the board

- (1) Members shall elect from amongst themselves a chairman and a vice-chairman.
- (2) The chairman and the vice-chairman shall each hold office for a period of three years or until he ceases to be a member in accordance with sections 4 or 5, but if he is re-appointed he shall be eligible for re-election as chairman or vice-chairman.
- (3) Five members shall constitute a quorum for a meeting of the board.

- (4) All questions in issue before the board shall be decided by a majority of the votes of the members present and voting thereon.
- (5) A meeting shall be held at such time and place as the board shall determine but the chairman may at any time, and shall, at the request of at least three members, call a special meeting of the board.
- (6) The chairman shall be entitled to a deliberative and a casting vote.
- (7) It shall be the responsibility of the board to ensure that minutes of the proceedings of meetings of the board, and every committee, are properly entered and kept.
- (8) The minutes of the proceedings of a meeting referred to in sub-section (7) shall—
 - (a) be read and submitted at the next ensuing meeting of the board, or, as the case may be, of the committee; and
 - (b) if passed as correct, be confirmed by the signature of the chairman or other person presiding at the meeting.
- (9) Except as otherwise provided by this Act, the procedure at a meeting shall be determined by the board.

Part III – Functions of the board

8. General functions of the board

The board may—

- (a) open and operate a banking account;
- (b) purchase seed-cotton to meet the cotton seed requirements of the Swaziland cotton industry and distribute and sell cotton seed, seed-cotton and derivatives from seed-cotton;
- (c) advise the Minister in the exercise of the powers conferred on him by this Act concerning—
 - (i) the control of the importation and use of cotton plants or seeds in terms of [section 9](#);
 - (ii) the dates before which, the areas in which and the methods by which, cotton residues are to be destroyed in terms of [section 10](#); and
 - (iii) the dates before which no cotton shall be planted in terms of [section 10](#);
- (d) administer the Fund, in consultation with the Minister as required by sections [13](#) and [13A](#);
[Amended A.5/1992]
- (e) advise on research programmes and enter into agreements with the Government regarding research and advisory programmes;
- (f) sell cotton lint derived from seed-cotton purchased by the board;
- (g) sell seed-cotton from crops grown by the board for experimental purposes;
- (h) appoint and remunerate one or more agents for the handling, processing and selling of such seed-cotton and its derivatives as are purchased by the board;
- (i) accept money from the Government and other sources for the promotion of the interests of the cotton industry and the purposes of the board;
- (j) accept the services of such public officers as the Government may properly require to be rendered to the board for the better carrying out of its functions;

- (k) for carrying out its functions—
 - (i) raise loans of such amounts and upon such conditions as the Minister may approve; and
 - (ii) secure loans so raised on its movable and immovable property, whether corporeal or incorporeal and whether in expectancy, contingency or remainder;
 - (iii) with the approval of the Minister, give guarantees to any person;
- (l) invest its funds;
- (m) grow cotton;
- (n) enter into agreements—
 - (i) to buy and sell seed-cotton and its derivatives in the most profitable manner; and
 - (ii) to pack, transport, process or treat, or to partially pack, process or treat the board's seed-cotton;
- (o) purchase or otherwise acquire, on behalf of growers, and supply to them, agricultural equipment, fertilizers, insecticides, fungicides and other things necessary or desirable for the production, packing and marketing of seed-cotton and its derivatives;
- (p) provide storage for growers' cotton by construction, erection, purchase, hire or otherwise;
- (q) engage competent persons to give growers instruction and advice on cotton-farming operations;
- (r) acquire, and distribute to growers, information as to the best method of carrying on cotton-farming operations;
- (s) hire, purchase or otherwise acquire, and make or erect, such structures, machinery, plant, implements and material of any description as it considers necessary for the purposes of picking, transporting, treating, grading, packing, handling and storing seed-cotton and its derivatives;
- (t) maintain and repair, and wholly or partially replace things referred to in paragraphs (o) and (s);
- (u) advance money to a grower on the security of—
 - (i) the seed-cotton delivered or to be delivered by him to it; or
 - (ii) such other security as it may require;
- (v) employ advisory and research staff and carry out research programmes;
- (w) appoint committees of members or non-members;
- (x) appoint an agent or agents to exercise on its behalf specific functions in terms of this Act; and
- (y) take any other action which is incidental to, or connected with, the exercise of any of its functions.

9. Control of the importation and use of cotton seed in specified areas

- (1) No cotton seed shall be imported except under a permit in writing from an authorized officer.
- (2) The Minister may, after consultation with the board—
 - (a) specify the type of cotton seed to be planted in a cotton growing area specified by him;
 - (b) order the destruction of any cotton planted in contravention of paragraph (a).
- (3) A person who in breach of sub-section (1) imports cotton seed into Swaziland or who plants cotton seed in contravention of sub-section (2)(a) shall be guilty of an offence. and liable on conviction to a fine not exceeding five hundred emalengeni or, in default of payment thereof, imprisonment for

a period not exceeding eighteen months, in addition he shall not be entitled to compensation for cotton plants destroyed in terms of sub-section (2)(b).

[Amended A.18/1970]

10. Dates for planting and destruction and mode of destruction of cotton

- (1) Each year the Minister may, after consulting the board, prescribe—
 - (a) the date for the whole of Swaziland, or different dates for particular areas thereof, before which all cotton plants shall be destroyed;
 - (b) the method or methods to be followed by growers for the destruction of cotton plants in terms of paragraph (a);
 - (c) the date for the whole of Swaziland or different dates for particular areas thereof, before which no cotton shall be planted.
- (2) Notwithstanding sub-section (1)—
 - (a) the date or dates prescribed each year in terms of paragraphs (a) and (b) thereof shall be notified by the Minister in the *Gazette* at least twenty-one days before the prescribed date;
 - (b) a permit for an extension of not more than fourteen days for the eradication of cotton plants in terms of sub-section (1)(a) may be granted by an authorized officer on receipt of written application from a grower at least fourteen days before the prescribed date; and
 - (c) a permit for earlier planting than that prescribed under sub-section (1)(c) may be granted by an authorized officer on receipt of written application from a grower at least fourteen days before the date on which he intends to plant.

11. Cotton research

- (1) The board shall meet at least once annually to review and prepare advice for the Principal Secretary on programmes of cotton research.
- (2) The board shall enter into an agreement with the Principal Secretary for the planning and conduct of cotton research programmes by Government or the board and for any subvention of funds by the board to the Government to be used for research work under the control of the Principal Secretary.

12. Power to require information

- (1) The board may, in writing, require a person who is directly or indirectly concerned with the production, processing or distribution of cotton in Swaziland to supply such information concerning the production, processing or distribution of seed-cotton, cotton seed or cotton lint as it may reasonably need.
- (2) Where the person so requests, the board and every one of its members and employees shall treat the information supplied by such person under sub-section (1) as confidential if it discloses the affairs of a particular person engaged in the cotton industry.
- (3) A person who, without lawful excuse, reveals any information furnished in confidence under sub-section (2) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalengeni or, in default of payment thereof, to imprisonment for a period not exceeding one month.
- (4) A person who, without reasonable excuse, fails within the period specified in writing by the board to supply it with such information as it requires under sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalengeni or, in default of payment thereof, to imprisonment for a period not exceeding one month.

Part IV – Finance and annual report

13. Cotton Improvement Fund

- (1) A Cotton Improvement Fund is hereby established for the improvement of the Swaziland cotton crop and, for that purpose, the proceeds of the fund may be expended on the improvement of cotton seed, the investigation of the types of cotton seed suitable for use on land under irrigation or land depending on rainfall, and such other activities for improving the cotton varieties of Swaziland as the board may determine.
 - (2) All money received by the fund shall be paid to the executive officer or, if the board so requires, and the Principal Secretary agrees, to the Principal Secretary who shall keep the accounts of the fund.
 - (3) The expenditure of the money of the fund shall be under the control of the board or, if the board so requires and the Principal Secretary agrees, of the Principal Secretary.
 - (4) The board shall accept for the fund any money donated thereto by cotton ginner, cotton growers or any other person interested in the cotton industry, and all money allocated by the Government as well as all amounts received by way of a levy in terms of sub-section (5) on cotton produced in Swaziland.
 - (5) Subject to sub-section (8), the Minister shall, with the concurrence of the board, and by a notice published in the *Gazette*, impose a levy on cotton growers in respect of cotton produced by them in Swaziland each season, prescribing the amount of the levy and a date before which the payment of the levy shall be made.
 - (6) A person who fails to pay a levy imposed in terms of sub-section (5) before the prescribed date shall, in addition to the unpaid levy, be liable to a surcharge of fifty *per centum* of the unpaid levy.
 - (7) Every cotton grower shall pay the levy imposed and any surcharge to the executive officer:

Provided that if a ginner of seed cotton grown in Swaziland, has agreed with the board to deduct the amount of the levy from the purchase price of seed-cotton purchased, and to pay the amount to the executive officer or the Principal Secretary, a grower may at his option pay such levy to such ginner.
- [The original subsection (8) repealed A.13/1981]*
- (8) All the assets and liabilities of the fund established under regulation 4 of Government Notice number 58 of 1962 shall vest in the board.

[Subsection (9) renumbered as subsection (8) A.13/1981]

13A. Special Levy Fund

- (1) There is hereby established a Special Levy Fund to stabilise the price of cotton.
- (2) The Board shall accept on behalf of the Fund—
 - (a) any money donated to the Fund by cotton ginner, cotton growers and any other person having interest in the cotton industry;
 - (b) any money allocated to the Fund by the Government;
 - (c) any amount received by way of a levy imposed in terms of subsection (6) on cotton produced in Swaziland.
- (3) For the purposes of subsection (1), the Board may, where it considers necessary to do so, expand the proceeds of the Fund to subsidise the prices of seed cotton and any other marketing deficiency.
- (4) All moneys received by the Fund shall be paid to the Chief Executive Officer, who shall keep the accounts of the Fund.

- (5) The expenditure of money of the Fund shall be under the control of the Board.
- (6) The Minister may, after consultation with the Board by notice in the *Gazette*, impose a levy on cotton growers in respect of cotton produced by them in Swaziland each season, prescribing the amount of levy and a date before which the levy shall be paid.
- (7) Any person who fails to pay the levy imposed under subsection (6) before the prescribed date shall, in addition to the unpaid levy, be liable to a surcharge of fifty *per centum* of the unpaid levy.
- (8) The levy imposed and any surcharge shall be paid by the cotton growers to buyers of seed cotton licensed under the Seed Cotton Buyers Regulations, 1982 by deduction of the levy from the purchase price of the seed cotton purchased.
- (9) A buyer of seed cotton shall transmit to the Executive Officer such levy or surcharge so deducted by him.

[Added A.5/1992]

14. Administrative costs of the board

The board shall not meet its administrative costs from the Fund, but from other sources available to it in terms of this Act.

15. Accounts and annual report

- (1) The board shall keep proper accounts and other records in the English language in relation to its activities and shall prepare, by the thirty-first of March following the end of each financial year, statements of account in such form as it may with the approval of the Minister, direct and shall submit the statements to an auditor appointed under sub-section (2).
- (2) The board shall appoint and may remunerate a duly qualified auditor, approved by the Minister, to audit the accounts of the board annually.
- (3) Such auditor shall report to the board on the accounts examined and in particular shall state whether—
 - (a) he has obtained all the information and explanations required by him; and,
 - (b) in his opinion, the balance sheet contained in the statements of account is properly drawn up so as to exhibit a true and correct view of the state of the board's affairs according to the best of the information and explanations given to him, and as shown in its books.
- (4) Every auditor of the board's accounts shall have access, at all reasonable times, to its books, accounts and vouchers and may require from it, the executive officer and its members, officers and servants, such information and explanations as may be necessary or expedient for the performance of his duties.
- (5) In addition to making his reports to the board, the auditor may furnish the Minister with any statement or explanation either of them desire with respect to the accounts of the board.
- (6) As soon as possible after audit in accordance with this section, the board shall—
 - (a) furnish the Minister with a report on its operations during the preceding financial year; and
 - (b) deliver a copy of the duly audited statements of account for the year and the auditor's report thereon to the Minister.
- (7) Each year the Minister shall lay a copy of the duly audited statements of account of the board, and the auditor's report thereon; and the report furnished under sub-section (6)(a) on the table of the House of Assembly.

Part V – Miscellaneous

16. Liability of board members and staff

The chairman, any other member of the board and any person acting by their directions shall not be personally liable to any action, liability, claim or demand whatsoever in respect of any act performed *bona fide* for the purpose of carrying out any provision of this Act and without reckless disregard for the rights of others.

17. Regulations

- (1) The Minister may, after consultation with the board, make regulations for all or any of the following purposes—
 - (a) regulating or prohibiting the importation of cotton plants or seed;
 - (b) the destruction of cotton plants in terms of [section 10](#) by the grower, for making the owner responsible to ensure that the grower complies with [section 10](#), and, in default of such compliance, for providing further for destruction of the cotton plants by the Principal Secretary or the board at the expense of the owner;
 - (c) controlling and preventing the spread of diseases affecting cotton;
 - (d) regulating the planting, cultivation and harvesting of cotton;
 - (e) the inspection of seed-cotton, cotton lint or cotton seed, the place and manner of inspection and the ginning, packing, pressing, baling and export thereof, the size of the receptacles to be used, the weight of the contents, and the marking of the weight on the receptacle;
 - (f) the storage of seed-cotton at ginneries;
 - (g) the appointment of graders for and regulating the grading and branding of, any seed-cotton or cotton lint and the manner in which different grades shall be branded or indicated whether on the receptacles or on a grader's certificate;
 - (h) regulating the fees which shall be paid by the owner or consignor of seed-cotton or cotton lint for inspection and grading;
 - (i) the registration with the board of the names, addresses and distinctive marks of all ginners of cotton;
 - (j) for regulating the levy imposed by [section 13](#); and,
 - (k) generally, for the better carrying out of the objects and purposes of this Act.
- (2) Regulations made under subsection (1) may provide for the imposition of penalties for the breach of a regulation but such penalty shall not exceed a fine of one thousand emalangeni or, in default of payment thereof, imprisonment for a period of six months.

[Amended A.5/1992]