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DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

ADDENDUM REPORT ON THE CONSIDERATION OF THE PROPOSED  
AMENDMENTS TO THE TEA BILL (SENATE BILL NO 36 OF 2018)

DIRECTORATE OF DEPARTMENTAL COMMITTEES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

NOVEMBER, 2020

## TABLE OF CONTENTS

APPENDIX.....	2
CHAIRPERSON’S FOREWORD.....	3
<b>1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE.....</b>	<b>5</b>
<b>1.1 COMMITTEE MEMBERSHIP .....</b>	<b>6</b>
<b>1.2 COMMITTEE SECRETARIAT .....</b>	<b>7</b>
<b>3 COMMITTEE RECOMMENDATIONS ON THE WINNOWING OF PROPOSED AMENDMENTS TO THE TEA BILL (SENATE BILL NO. 36 OF 2018) .....</b>	<b>63</b>
<b>4 SUBMISSIONS FROM THE MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES.....</b>	<b>85</b>
<b>5 SUBMISSIONS FROM KENYA TEA DEVELOPMENT AGENCY HOLDING LIMITED 114</b>	
<b>6 MEETING WITH THE NATIONAL TREASURY ON THE TEA BILL AND CHALLENGES FACING TEA SECTOR .....</b>	<b>116</b>
<b>7 COMMITTEE OBSERVATIONS.....</b>	<b>121</b>
<b>8 COMMITTEE RECOMMENDATIONS / AMENDMENTS .....</b>	<b>122</b>

## **APPENDIX**

1. ADOPTION LIST
2. MINUTES
3. WINNOWING MEMO
4. SUBMISSIONS BY MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES & COOPERATIVES
5. SUBMISSIONS BY THE EAST AFRICAN TEA TRADE ASSOCIATION
6. SUBMISSIONS BY THE NATIONAL TREASURY

## **CHAIRPERSON'S FOREWORD**

This addendum report contains the Committee's proceedings on the consideration and winnowing of amendments from individual Members and consideration of submission from the Ministry of Agriculture, Livestock, Fisheries & Cooperatives to the Tea Bill (Senate Bill No. 36 of 2018). The Bill was read a First Time on Wednesday, June 26, 2019 and subsequently committed to the Departmental Committee on Agriculture and Livestock for facilitation of public participation pursuant to Article 118 of the Constitution of Kenya and Standing order 127. The report on consideration of the Bill was laid on the Table of the House on 26<sup>th</sup> November, 2019.

The Tea Bill (Senate Bill No. 36 of 2018) sponsored by Senator Aaron Cheruiyot, Chairperson of Ad-hoc Committee on Tea, is a Senate Bill that was committed to the Committee on June 26, 2019. The Second Reading of the Bill was concluded and the Bill is scheduled for a Committee of the whole House. The outcome of winnowing would inform the Speaker on how best to guide the House before the Bill is considered at the Committee of whole House.

In conducting its review the Committee invited all Members with proposed amendments, Ministry of Agriculture, Livestock, Fisheries & Cooperatives and Kenya Tea Development Agency Holding Limited for deliberations. In spite of the challenging times of Covid-19 and shortage of meeting rooms, the Committee held 21 Sittings on the winnowing process. The Committee undertook the following engagements:

- i. Meetings with Members proposing amendments to the Bill
- ii. Meetings with the Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives
- iii. Meetings with the National Treasury
- iv. Meetings with Kenya Tea Development Agency Holding Limited (KTDA)
- v. Meetings with the East African Tea Trade Association, East African Tea Growers Association and visit to the Tea Auction in Mombasa

The Committee also received and considered the following submissions;

- Proposals by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives vide letter Ref. No. MOALF/CS/ ADM/13 dated 15<sup>th</sup> September, 2020
- Proposals by the Kenya Tea Development Agency dated 18<sup>th</sup>, 22<sup>nd</sup> and 30<sup>th</sup> September, 2020
- Proposals from Prof. Paul Kiprono Chepkwony, Governor of the County Government of Kericho vide letter Ref. No. KCO/GOV/NAT.ASS/20(1)

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings.

Finally, I wish to commend the Honourable Members of the Committee who dedicated their time and made useful contributions towards the preparation and production of this addendum report, with a special mention for the Hon. Justus Murunga, MP who passed on Saturday 14<sup>th</sup> November, 2020.

On behalf of the Departmental Committee on Agriculture and Livestock and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Tea Bill Senate Bill No. 36 of 2018.

**The Hon. Silas Kipkoech Tiren, MP**  
**Chairperson of the Departmental Committee on Agriculture and Livestock**

## **1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE**

The Departmental Committee on Agriculture and Livestock is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* and mandated to :-

1. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
2. study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
3. **study and review all the legislation referred to it;**
4. study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
5. investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
6. vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
7. examine treaties, agreements and conventions;
8. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
9. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
10. examine any questions raised by Members on a matter within its mandate.

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters of; Agriculture, Livestock, Irrigation, Fisheries development, production and Marketing.

In executing its mandate, the Committee oversees the following government Departments;

1. The State Department for Crop Development & Agricultural Research
2. The State Department for Livestock
3. The State Department for Fisheries, Aquaculture and the Blue Economy

## 1.1 COMMITTEE MEMBERSHIP

**Hon. Silas Kipkoech Tiren, MP- Chairperson**

Moiben Constituency

**Jubilee Party**

**Hon. Catherine Waruguru M.P – Vice - Chairperson**

Laikipia County

**Jubilee Party**

Hon. Maison Leshomo, M.P

Samburu County

**KANU**

Hon. Ferdinand Wanyonyi, M.P

Kwanza Constituency

**FORD Kenya Party**

Hon. Dr. Chrisantus Wamalwa, CBS, M.P

Kiminini Constituency

**FORD Kenya Party**

Hon. Francis Munyua Waititu, M.P

Juja Constituency

**Jubilee Party**

Hon. Simba Arati, M.P

Dagoreti North Constituency

**Orange Democratic Movement Party**

Hon. Cecily Mbarire, MGH, M.P

Nominated Member

**Jubilee Party**

Hon. Jude Njomo, M.P

Kiambu Constituency

**Jubilee Party**

Hon. Adan Haji Yusuf, M.P

Mandera West Constituency

**EFP Party**

Hon. Janet Jepkemboi Sitienei, M.P

Turbo Constituency

**Independent**

Hon. Julius Kibiwott Melly, M.P

Tinderet Constituency

**Jubilee Party**

Hon. (Dr.) John Mutunga, M.P

Tigania West Constituency

**Jubilee Party**

Hon. Geoffrey Odanga, M.P

Matayos Constituency

**Orange Democratic Movement Party**

Hon. Martin Peters Owino, M.P

Ndhiwa Constituency

**Orange Democratic Movement Party**

Hon. Joyce Kamene, M.P

Machakos County

**WDM-Kenya Party**

Hon. Yegon Brighton Leonard, M.P

Konoin Constituency

**Jubilee Party**

Hon. Gabriel Kago Mukuha, M.P

Githunguri Constituency

**Jubilee Party**

Hon. Justus Makokha Murunga, M.P

Matungu Constituency

**ANC Party**

## 1.2 COMMITTEE SECRETARIAT

Mr. Ahmad Kadhi  
Senior Clerk Assistant – Head of Secretariat

Mr. Nicodemus Maluki  
Second Clerk Assistant

Mr. Salem Lorot  
Legal Counsel II

Mr. Alex Mutuku  
Sergeant At Arms I

Mr. Moses Musembi  
Office Assistant

Mr. Eugene Luteshi  
Audio Officer III

Mr. Robert Ngetich  
Fiscal Analyst III

Mr. David Ngeno  
Research Officer II

Ms. Deborah Ghati  
Media Relations Officer



## 2.0 CONSIDERATION AND WINNOWING OF PROPOSED AMENDMENTS TO THE TEA BILL (SENATE BILL NO. 36 OF 2018)

### 2.1.1 Referral of Proposed Amendments to the Tea Bill (Senate Bill No. 36 of 2018 to Committee

1. Pursuant to the provisions of Standing Order 131, the Speaker directed that the amendments received for the Tea Bill (Senate Bill No. 36 of 2018 be subjected to the winnowing process by the Departmental Committee on Agriculture and Livestock.
2. In addition to the amendments by the Committee and the Ministry of Agriculture, Livestock, Fisheries and Cooperatives, the following Members proposed amendments to the Bill:
  - 1) Hon. Eve Obara, MP
  - 2) Hon. Ronald Tonui, MP;
  - 3) Hon. Ezekiel Machogu, MP;
  - 4) Hon. Cecily Mbarire, MGH, MP;
  - 5) Hon. Gichimu Githinji, MP;
  - 6) Hon. Brighton Yegon, MP; and
  - 7) Hon Ben Momanyi, MP.
  - 8) Hon. Millie Odhiambo, MP
3. The Committee had tabled its report in the House on 26th November 2019. The Second Reading on the Bill was done on 19th, 20th, 25th and 26th of February 2020. The Bill was scheduled for the Committee of the whole House. However, the Speaker had directed that winnowing of the various amendments by Members be accomplished first.

### 2.1.2 Proposed Amendments

4. Below is a matrix of the proposed amendments by the Committee and individual Members which had been subjected to the winnowing process pursuant to Standing Order 131:

CLAUSE	SPONSOR	PROPOSED AMENDMENT
Clause 2	Committee	Deletes clause 2 and substitutes with the following—  “auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya; “auction” means a process of buying and selling tea by offering bids and selling it to the highest bidder through a physical or electronic system; “Authority” means the Agriculture and Food Authority established under section 3 of the Agriculture and Food Authority Act, 2013; “blending” means the process of mixing of teas of different grades to affect the flavour and characteristics of the tea for the purposes of packing and sale; “Board” means the Tea Board of Kenya established under section 3; “broker” means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between tea growers or tea factories and buyers; “buyer” means a person, company or a firm engaged in acquiring made tea for re-sale in the local or export market, including export of imported tea; “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to Agriculture;

		<p>“commercial green leaf transporter” means a person, a firm or a corporate body contracted by a tea factory to provide green leaf transport services from the farm or leaf collection centre to the tea factory at a fee;</p> <p>“County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to agriculture in the respective tea producing county;</p> <p>“County Government” shall have the meaning assigned to it under Article 176 of the Constitution;</p> <p>“crops inspector” means a person appointed as an inspector in accordance with section 38 of the Act;</p> <p>“Directorate” means the Directorate established under the Agriculture and Food Authority Act, 2013 for the time being responsible for matters related to tea;</p> <p>“export” means to take tea or cause tea to be taken out of the Kenya customs territory or to an Export Processing Zone;</p> <p>“exporter” means a person, a firm, or a corporate body engaged in the business of blending, packaging and exporting of tea in bulk or in value added form;</p> <p>“grower” means any person who is cultivating tea in an area;</p> <p>“import” means to bring tea into or cause to be brought into the Kenya customs territory or to an Export Processing Zone;</p> <p>“importer” means a person, a firm, or a corporate body engaged in the business of importing tea into Kenya;</p> <p>“licensee” means a person who holds a manufacturing licence issued under the Act;</p> <p>“made tea” means the derivative from tea leaf through a manufacturing process;</p> <p>“management agent” means any person that is appointed by a tea factory through a specific management contract or agreement to perform or offer professional services other than company secretary services;</p> <p>“manufacture” means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products and includes the packaging, labelling, distribution of tea and tea products for sale;</p> <p>“manufacturing licence” means a licence issued under section 23;</p> <p>“person” includes a firm, a company, an association, cooperative society or a corporate body;</p> <p>“plantation tea grower” means a person cultivating tea in a parcel of land and who has own tea processing facility;</p> <p>“small scale tea grower” means a grower cultivating tea in a parcel or parcels of land without owning a tea processing facility;</p> <p>“tea dealer” includes a warehouse operator, buyer, exporter, importer, broker, packer, manufacturer, management agent, and auction organizer;</p> <p>“tea factory” means a factory that processes and manufactures tea leaf into made tea;</p> <p>“tea packer” any person who blends, brands and packs tea into packets or containers holding not more than ten kilograms of tea intended for sale locally or for export;</p> <p>“tea” means the plant botanically known as <i>camellia sinensis</i> and includes its seed, tea plants and the leaf, whether on the plant or detached therefrom, and in the latter case, whether green tea or manufactured tea;</p> <p>“warehouse” means a premises used for the storage of made tea by a warehouseman; and</p> <p>“warehouseman” means a company registered in Kenya which is in the business of storing tea</p>
	<p>Hon. Cecily Mbarire</p>	<p>THAT, clause 2 of the Bill be amended by—</p> <p>(a) deleting the definition of “managing factory”;</p> <p>(b) inserting the following new definitions in proper alphabetical sequence—</p> <p>“auction” means a physical or electronic system where potential buyers place competitive bids for tea;</p>

		<p>“auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya and licensed by the Board;</p> <p>“broker” means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between producers and buyers;</p> <p>“blending” means the process of mixing of teas of different grades to affect the flavour and characteristics of the tea for the purposes of packing and for sale;</p> <p>“commercial tea nursery” means a person or firm who maintains not less than five hundred tea seedlings or planting material for sale;</p> <p>“commercial green leaf transporter” means a person, a firm or a corporate body contracted by a tea factory to provide green leaf transport services from the farm or leaf collection center to the tea factory at a fee;</p> <p>“cottage tea factory” means a tea factory that manufactures less than three hundred thousand kilograms of high value specialty or value added teas;</p> <p>“Foundation” means the Tea Research Foundation established under section 25C;”</p> <p>“Fund” means the Tea Development Fund;</p> <p>“levy” means a per centum of the value of all made tea imposed by the Cabinet Secretary at the point of export or import in accordance with section 25A;</p> <p>“made tea” means the derivative from green tea leaf through a manufacturing process;</p> <p>“management agent” means any person that is registered and licensed to enter into a contract with a tea factory to perform or offer professional services in production, processing, and related financial services a tea factory on behalf of the tea factory at a fee;</p> <p>“marketing agent” means any person that is registered and licensed to enter into a contract with a tea factory to perform or offer professional services in sales, value addition, product development and related marketing services on behalf of the tea factory at a fee;</p> <p>“value addition” means improvements on made tea through packaging, blending, flavoring, tea extracts, tea aroma and branding;</p> <p>“green leaf agreement” means an agreement between a tea grower and a tea factory relating to the delivery of green leaf;</p> <p>“tea factory” means a factory registered and licensed to process green tea leaf into made tea;</p> <p>“tea zone” means a zone set out in the First Schedule within which tea is grown;</p>
	Hon. Gichimu Githinji	<p>THAT, the Bill be amended by deleting the definition of the term “tea grower” and substituting therefor the following new definition-</p> <p>“tea grower” means a person who grows tea or cultivates tea in Kenya;</p>
	Hon. Ben Momanyi	<p>THAT, clause 2 of the Bill be amended by—</p> <p>(a) deleting the definition “broker” and substituting therefore the following new definition—</p> <p>“broker” means a person, or a company or firm established for purposes of negotiating the purchase or sale of tea between tea producers and buyers;</p> <p>(b) deleting the definition “managing factory”;</p> <p>(c) deleting the definition “tea grower” and substituting therefor the following new definition—</p> <p>“tea grower” means a person who grows tea or cultivates tea in Kenya;</p> <p>(d) inserting the following definitions in their proper alphabetical sequence—</p>

		<p>“auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya;</p> <p>“buyer” means a person, company or firm engaged in buying made tea for resale in the local or export market;</p> <p>“packer” means a person who packs tea into packets or containers holding no more than ten kilograms of tea intended for sale;</p> <p>“producer” means a producer of tea and includes a smallholder, or plantation or independent manufacturer of tea or his representative;</p> <p>“plantation grower” means a large area of land on which tea is grown and cultivated and on which there is a processing factory;</p> <p>“smallholder” means a grower cultivating tea and where collectively, have come together to own a processing factory;</p> <p>“independent tea producer” means a licensed tea producer with own land on tea and is not a smallholder and plantation grower;</p> <p>“auction organizer” means a body corporate established for purpose of organizing tea auctions in Kenya.</p> <p>“County Government” has the meaning assigned to it under Article 176 of the Constitution of Kenya.</p> <p>“management agent” means any person, co-operative society, or company established under written law, that is appointed through a specific management contract or agreement by another person or company to perform or offer professional services;</p> <p>“co-operative society” means a co-operative society registered under the Co-operative Societies Act;</p> <p>“scheduled crop” includes tea as listed under the First Schedule of the Crops Act;</p> <p>“licensing authority” means the Tea Board of Kenya and the County Government as the case may be;</p> <p>“auction” means the process of buying and selling tea by offering bids and selling it to the highest bidder through a physical or electronic system;</p> <p>“blending” means the process of mixing of teas of different grades to affect the flavour and characteristics of the tea for purposes of packing and sale;</p> <p>“commercial tea nursery operator” means a person or firm who propagates not less than five thousand tea seedlings or planting material for sale;</p> <p>“County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to agriculture in the respective tea producing county;</p>
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		<p>“export of tea” means to take made tea or cause made tea out of Kenya customs territory or to an Export Processing Zone;</p> <p>“exporter” - means a person, a firm, or a corporate body engaged in the business of blending, packing and exporting of tea in bulk or in value added form;</p> <p>“made tea” means the derivative from tea leaf through a manufacturing process;</p> <p>“manufacture” means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products and includes the packaging, labeling, distribution of tea and tea products for sale;</p>
	Hon. Brighton Yegon	<p>THAT, clause 2 of the Bill be amended by deleting the definition “processor” and substituting therefor the following new definition—</p> <p>“processor” means a factory which processes green tea leaf into made tea;</p>
	Hon. Millie Odhiambo	<p>CLAUSE 2</p> <p>THAT, clause 2 of the Bill be amended by—</p> <p>(a) deleting the definition “tea grower” and substituting therefor the following new definition—</p> <p>“tea grower” means a person who grows or cultivates tea in Kenya, or a person who manages, controls or cultivates land in Kenya for the purpose of growing tea;</p> <p>(b) deleting the definition “processor” and substituting therefor the following new definition—</p> <p>“processor” means a person who processes green leaves into dried leaves for brewing tea;</p> <p>(c) deleting the definition “broker” and substituting therefor the following new definition—</p> <p>“broker” means an intermediary between the tea producers and buyers;</p> <p>(d) inserting the following definitions in their proper alphabetical sequence—</p> <p>“green leaf” means unprocessed tea leaf in its natural state;</p> <p>“processing” means the method through which the green leaves are transformed into dried leaves for brewing tea;</p> <p>“tea nursery” means a place where tea plants are propagated and grown to a desired age;</p> <p>“tea zone” means a zone set out in the First Schedule within which tea is grown;</p>
Clause 5	Committee	<p>Functions of the Board.</p> <p>5. The functions of the Board shall be to—</p> <p>(a) regulate and promote the development of the tea industry;</p> <p>(b) co-ordinate the activities of individuals and organizations within the tea industry;</p> <p>(c) facilitate equitable access to the resources, facilities and benefits of the tea industry by all interested parties;</p>

		<p>(d) make recommendations to the Cabinet Secretary for the formulation of policies, plans and strategies for the regulation of the tea sector;</p> <p>(e) register tea factories, plantation tea growers, warehousemen, tea packers, tea buyers, exporters, importers, tea brokers, management agents, tea auction organizers, commercial tea nurseries, green leaf transporters;</p> <p>(f) license manufacturers;</p> <p>(g) carry out market research and analysis and disseminating information on its findings to all stakeholders;</p> <p>(h) promote Kenyan tea and facilitate access to new markets;</p> <p>(i) advise the national government on levies, fees and import or export duties on tea;</p> <p>(j) advise the county governments on agricultural cess and fees;</p> <p>(k) oversee the efficient utilization of available Board's funds; and</p> <p>(l) carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments."</p>
	Hon. Cecily Mbarire	<p>THAT, clause 5(2) of the Bill be amended—</p> <p>(a) in paragraph (b) by—</p> <p>(i) by deleting subparagraph (iv) and substituting therefor the following new subparagraph—</p> <p>“(iv) licence managing agents and marketing agents”;</p> <p>(ii) by inserting the following new sub paragraphs immediately after subparagraph (iv)—</p> <p>“(iva) license and regulate physical and electronic tea auctions”;</p> <p>(b) by inserting the following new paragraphs immediately after paragraph (b)—</p> <p>(ba) prescribe rules for the eligibility of persons to vie for election or be appointed as board members of persons licensed under this Act;</p> <p>(bb) recommend to the national and county governments appropriate measures for the grant of extension services and farm input subsidies to tea growers;</p> <p>(bc) promote value addition in the tea industry and the establishment of cottage tea factories and the blending of tea;</p>
	Hon. Gichimu Githinji	<p>THAT, the Bill be amended in clause 5 (1) by inserting the following paragraph immediately after paragraph (c)-</p> <p>(d) coordinate, facilitate and promote marketing of Kenyan tea.</p>
	Hon. Ronald Tonui	<p>THAT, Clause 5 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (c)—</p> <p>“(d) facilitate access to international markets;</p> <p>(e) promote and monitor tea trade in Kenya;</p> <p>(f) facilitate the development of skills and adoption of appropriate value addition technologies for tea and tea products before domestic use and export from Kenya;”</p>
	Hon. Ben Momanyi	<p>THAT, Clause 5 of the Bill be amended—</p> <p>(a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (c)—</p> <p>“(d) recommend the establishment of subsidiary bodies to discharge and oversee specific aspects of value addition and promotion of Kenyan tea in international markets;</p> <p>(b) in sub-clause 2—</p> <p>(i) in paragraph (b) by deleting sub-paragraph (iv) and substituting therefor the following new sub-paragraph—</p> <p>“(iv) “licence tea factories;”</p>

		<p>(ii) in paragraph (b) by inserting the following sub-paragraphs immediately after sub-paragraph (v)—</p> <p>“(vi) register auction organizers;</p> <p>(vii) register management agents;</p> <p>(viii) register tea buyers operating in Kenya;</p> <p>(ix) register tea packers.”</p>
Clause 7	Committee	<p>THAT, Clause 7 of the Bill be amended in sub-clause (1)—</p> <p>(a) by deleting paragraph (c) and substituting therefor the following new paragraph—</p> <p>“(c) the Principal Secretary responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”</p> <p>(b) by deleting paragraph (d) and substituting therefor the following new paragraph—</p> <p>“(d) two persons of either gender with knowledge and experience in the tea sector nominated by the Council of County Governors;”</p>
	Hon. Cecily Mbarire	<p>THAT, clause 7 of the Bill be amended—</p> <p>(a) in subclause (1) by deleting paragraph (e) and substituting therefor the following new paragraphs—</p> <p>“(e) two persons, one man and one woman, appointed from either of the counties in the east tea zone to represent tea growers from the zone;</p> <p>(ea) two persons, one man and one woman, appointed from either of the counties in the west tea zone to represent tea growers from the zone;”;</p> <p>(b) in subclause (2) by inserting the expression “(ea)” immediately after the expression “(e)”.</p>
	Hon. Gichimu Githinji	<p>THAT, the Bill be amended in clause 7(1) –</p> <p>(a) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs—</p> <p>“(d) two persons of either gender, who shall have knowledge and experience in the tea sector and be from the East and West of tea growing areas, nominated by the Council of Governors;</p> <p>(e) four persons, two of either gender, representing and elected by small-holder tea growers from the east and west of the tea growing areas;</p> <p>Provided that the four persons shall be from different tea zones;</p> <p>(f) one person representing and elected by plantation tea growers;</p> <p>(g) one person representing and elected by tea traders;”</p> <p>(b) by inserting the following paragraph immediately after paragraph (g)—</p> <p>(ga) two persons nominated by the Kenya Tea Development Agency;</p>
	Hon. Ronald Tonui	<p>THAT, Clause 7 of the Bill be amended in sub-clause (1) (d) by inserting the words “from the East and West of tea growing areas” immediately after the words “either gender”.</p>
	Hon. Ben Momanyi	<p>THAT, clause 7 of the Bill be amended—</p> <p>(a) in sub-clause (1)—</p> <p>(i) by deleting paragraph (e) and substituting therefor the following new paragraph—</p>

		<p>“(e) four persons, of either gender, from amongst registered small-holder tea growers and appointed through an electoral process of their factories;”</p> <p>(ii) by deleting paragraph (g) and substituting therefor the following new paragraph—</p> <p>“(g) one person representing the auction organizers;”</p> <p>(iii) by inserting the following new sub-paragraph immediately after sub-paragraph (g) –</p> <p>“(ga) one person representing the independent tea factories;”</p>
	Hon. Mille Odhiambo	<p>THAT, clause 7 of the Bill be amended in subclause (1) by deleting paragraph (e) and substituting therefor the following new paragraph—</p> <p>“(e) four persons, two of either gender, representing small-holder tea growers from the East and West tea zones;”</p>
Clause 9	Hon. Millie Odhiambo	<p>THAT, clause 9(a) of the Bill be amended by deleting the words “the permission of the chairperson” appearing immediately after the words “the Board without” and substituting therefor the words “notifying the chairperson”.</p>
Clause 10	Hon. Millie Odhiambo	<p>THAT, clause 10 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause—</p> <p>“(2) The Board may hire consultants whose knowledge and skills are necessary for the performance of the functions of the Board.”</p>
Clause 15	Hon. Millie Odhiambo	<p>THAT, clause 15 of the Bill be amended in subclause 3(d) by deleting the word “seven” appearing immediately after the words “at least” and substituting therefor the word “five”.</p>
Clause 16	Hon. Millie Odhiambo	<p>THAT, clause 16 of the Bill be amended by—</p> <p>(a) renumbering the existing provision as subclause (1);</p> <p>(b) inserting the following new subclause immediately after subclause (1)—</p> <p>“(2) In employing staff, the Board shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities.”</p>
Clause 19	Hon. Cecily Mbarire	<p>THAT, clause 19 of the Bill be amended by inserting the word “First” immediately after the words “with the”;</p>
New Part	Hon. Ben Momanyi	<p><b>NEW PART</b></p> <p>THAT, the Bill be amended by inserting the following new Part immediately after Part II—</p> <p style="text-align: center;"><b>PART IIA- COUNTY TEA COMMITTEE</b></p> <p>Establishment of a county tea committee.      <b>19A.</b> A county executive committee member shall establish a county tea committee.</p> <p>Membership of a county tea committee.      <b>19B.</b> (1) The committee shall consist of —</p>



		<p>(a) a chairperson, appointed by the Governor;</p> <p>(b) one person representing licensed tea producers in the county;</p> <p>(c) four independent persons being registered tea farmers, knowledgeable in tea husbandry and management;</p> <p>(d) one person representing registered management agents operating within the county; and</p> <p>(e) a chief officer for the time being responsible for matters relating to tea who shall be an <i>ex officio</i> member of the committee and the secretary to the committee.</p> <p>(2) A person is eligible for appointment as a member of the committee if that person —</p> <p>(a) is a resident of the county;</p> <p>(b) is literate and can read and write in at least one of the national languages or the local language;</p> <p>(c) is not disqualified under any written law in Kenya from being appointed into a public office; and</p> <p>(d) meets such other requirements the county executive committee member may by county legislation prescribe.</p> <p>(4) The county executive committee member shall appoint the persons elected and nominated</p>
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		<p>under subsection (1) (b) to (d) by notice in the <i>Gazette</i>.</p> <p>(5) In appointing the members of the committee, the county executive committee member shall ensure that not more than two thirds of the persons appointed represent one gender.</p> <p>(6) Each county government may enact county specific legislation setting out —</p> <ul style="list-style-type: none"> <li>(a) the procedure for the nomination and election of members of the committee;</li> <li>(b) the term of appointment of the members of a committee;</li> <li>(c) such other criteria for nomination or election;</li> <li>(d) the remuneration and terms and conditions for appointment of the members of the committee;</li> <li>(e) grounds and procedure for the removal and replacement of a member of the committee;</li> <li>(f) the procedure for the conduct of the business and affairs of the committee and for the convening of public forums by the committee; and</li> <li>(g) such other information as the county executive committee member may consider necessary for the effective functioning of the committee.</li> </ul> <p>Functions of a county tea committee.</p> <p><b>19C.</b> A county tea committee shall be responsible for—</p> <ul style="list-style-type: none"> <li>(a) making recommendations to the county government in respect to the matters of tea husbandry, tea quality, farm</li> </ul>
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		<p>inputs, tea extension services and promotion of local consumption of tea;</p> <p>(b) facilitating discussion on matters relating to tea husbandry, leaf quality and tea extension services and related services affecting tea farmers within the county;</p> <p>(c) coordinating periodic discussions relating to its mandate in the form of tea users' forums amongst registered tea growers and dealers in the county including field days, village meetings, symposiums, ridge meetings, trainings and other forms of communication to tea growers;</p> <p>(d) organizing and conducting meetings at least twice a year with auction organizers, county government and the ministry responsible for external trade;</p> <p>(e) receiving reports on the functioning of the tea auction services; and</p> <p>(f) undertaking any other function necessary for the performance of any of its functions under this Act.</p>
New Part IIIA-Regulatory Provisions	Committee	<p><b>NEW PART</b></p> <p><b>THAT</b> the Bill be amended by deleting Part III and substituting therefor the following new Part—</p> <p style="text-align: center;"><b>PART III- REGULATORY PROVISIONS</b></p> <p>Role of national and county governments in the development of tea.      20. (1) Pursuant to the Fourth Schedule of the Constitution –</p>

		<p>(a) the Board, on behalf of the national government, shall be responsible for licensing and charging of levies;</p> <p>(b) each county government shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—</p> <p>(i) the development of tea grown within the county;</p> <p>(ii) tea disease control;</p> <p>(iii) markets within the county;</p> <p>(iv) cooperative societies within the county;</p> <p>(v) soil and water conservation.</p> <p>(2) In order to achieve the objects and purposes of this Act, the national and county governments shall provide an enabling environment for the development of the tea sector.</p> <p>Registration of small scale tea growers.</p> <p>21. (1) A small scale tea grower shall register with the tea factory to which tea growers deliver green leaf or purple leaf in a prescribed form and shall pay the prescribed fee.</p> <p>(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of small scale tea growers and the appeal process in case of refusal or denial of registration.</p> <p>(3) Every tea factory shall keep or cause to be kept for statistical purposes, a register of all small scale tea growers registered under subsection (1) specifying—</p> <p>(a) the name of the small scale tea grower;</p> <p>(b) the location, size and parcel number of the land on which the tea is grown;</p>
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		<p>(c) the variety of tea grown; and</p> <p>(d) such other information as the Board may prescribe.</p> <p>(6) Where the tea factory has reasonable cause to believe that a person whose particulars are so recorded has ceased to be a small scale tea grower, it may, after giving that person written notification by registered post of its intention to do so, remove their name from the register.</p> <p>(7) The register referred to in subsection (6) shall be prima facie proof of the fact that a person is a registered small scale tea grower.</p> <p>(8) The tea factory shall furnish the Board with particulars of all registered small scale tea growers in such manner as the Board may prescribe.</p> <p>(8) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or to both.</p> <p>Registration of a plantation tea grower</p> <p>22. (1) A plantation tea grower shall register with the Board in a prescribed form and shall pay the prescribed fee.</p> <p>(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of plantation tea growers and the appeal process in case of refusal or denial of registration.</p> <p>(3) A person who grows tea in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or to both.</p> <p>Tea grower certificate.</p> <p>23. The manager of a tea factory shall issue a certificate of registration to a small scale tea grower</p>
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		<p>or a plantation tea grower in the form prescribed in regulations.</p> <p><b>Licensing of manufacture rs.</b></p> <p>24. (1) A person shall not manufacture tea for sale except under and in accordance with a licence issued under this Act.</p> <p>(2) An application for a licence under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee.</p> <p>(3) The Board may, after consultation with the Cabinet Secretary —</p> <ul style="list-style-type: none"> <li>(a) issue a manufacturing licence, in accordance with this Act;</li> <li>(b) refuse to issue the licence on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof;</li> <li>(c) cancel, vary or suspend any licence if in the findings of the Board, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing or processing entities.</li> </ul> <p>(4) A manufacturing licence issued under this section shall in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending tea.</p> <p><b>Illegal manufacture , possession, etc.</b></p> <p>24. (1) A person commits an offence if the person—</p> <ul style="list-style-type: none"> <li>(a) manufactures tea for sale in contravention of this Act;</li> <li>(b) buys, sells, offers for sale, transports or has possession of</li> </ul>
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		<p>tea which to the person's knowledge or belief—</p> <p>(i) has been grown, manufactured or processed otherwise than in accordance with this Act;</p> <p>(ii) is from a non-registered grower or dealer of such crop.</p> <p>(2) A person who commits an offence under subsection (1) shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years, or both.</p> <p>(3) If a person is in possession or has control of tea for which the person is unable to account to the satisfaction of a crop inspector under this Act, such tea shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.</p> <p>(4) If a person is convicted of an offence under this section, the court shall order that any tea and any vehicle, vessel or other conveyance in relation to which an offence has been committed shall be forfeited to the Government unless, in the case of a vehicle, vessel or other conveyance, the court sees good reason, to be recorded by it in writing, not to do so.</p> <p><b>Registration of warehouseman.</b></p> <p><b>24A.</b> (1) Every warehouseman shall register with the Board.</p> <p>(2) A person shall not store tea unless the person is registered in accordance with this Act.</p> <p>(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of warehouseman and the appeal process</p>
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		<p>in case of refusal or denial of registration.</p> <p>(4) A person who contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.</p> <p><b>Registration of tea packers.</b>                    <b>24B.</b> (1) Every tea packer shall register with the Board.</p> <p>(2) A person shall not pack tea unless the person is registered in accordance with this Act.</p> <p>(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea packers and the appeal process in case of refusal or denial of registration.</p> <p>(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.</p> <p><b>Registration of a tea buyer, exporter or importer.</b>                    <b>24C.</b> (1) A person who intends to carry on the business of tea buying, tea exporting or tea importing shall register with the Board.</p> <p>(2) A person shall not carry on the business of packing tea, exporting or importing tea unless the person is registered in accordance with this Act.</p> <p>(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea buyers, tea exporters and tea importers and the appeal process in case of refusal or denial of registration.</p> <p>(4) A person who contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.</p> <p><b>Registration of a tea broker.</b>                    <b>24D.</b> (1) Every tea broker shall register with the Board.</p>
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(2) A person shall not negotiate the purchase or sale of tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for—

(a) the procedure for registration of a tea broker and the appeal process in case of refusal or denial of registration;

(b) the maximum number of factories a tea broker shall represent.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

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**24E.** (1) Every management agent shall register with the Board.

(2) A person shall not perform or offer professional services to a tea factory unless the person is registered in accordance with this Act.

(3) Every management agent shall submit annual returns to the Board and a copy to the respective county government in the form prescribed.

(4) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a management agent and the appeal process in case of refusal or denial of registration.

(5) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

		<p><b>Registration of a tea auction organizer.</b></p> <p><b>24F.</b> (1) Every tea auction organizer shall register with the Board.</p> <p>(2) A person shall not deal in tea as a tea auction organizer unless the person is registered in accordance with this Act.</p> <p>(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a tea auction organizer and the appeal process in case of refusal or denial of registration.</p> <p>(4) A person who contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.</p> <p><b>Registration of a green leaf transporter.</b></p> <p><b>24G.</b> (1) A person who intends to carry on the business of green leaf transporter shall register with the Board.</p> <p>(2) A person shall not carry on the business of green leaf transporter unless the person is registered in accordance with this Act.</p> <p>(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a green leaf transporter and the appeal process in case of refusal or denial of registration.</p> <p>(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.</p> <p><b>Registration of a commercial tea nursery.</b></p> <p><b>24H.</b> (1) A person who intends to establish a commercial tea nursery shall register with the county government where they intend to establish a tea nursery.</p> <p>(2) A person shall not establish a commercial tea nursery unless the person is registered in accordance with this Act.</p>
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(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial tea nursery and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Considerations before registration and licensing and renewal.

**24I.** (1) The Board shall, before registering, licensing or renewing a registration or licence under this Act, satisfy itself that—

- (a) the applicant has complied with the provisions of this Act and any other relevant law; and
- (b) the applicant or the directors of the company are fit and proper for the function for which they seek a licence or registration.

(2) In determining whether a person is fit and proper, regard shall be had to—

- (a) whether they have taken part in any business practice in the tea value chain that in the opinion of the Board was fraudulent, prejudicial or otherwise improper; or which otherwise discredited their method of doing business; and
- (b) whether they have been directors of a company or entity whose licence or registration certificate has previously been revoked or suspended by the Board for any cause.

		<p>No. 4 of 2015. No. 17 of 2015. Conditions of a licence.</p> <p>(3) In determining whether a person or director is fit and proper, the Board shall have due regard to the provisions of the Fair Administrative Action Act, 2015, the Companies Act, 2015 and any other relevant law.</p> <p>24J. (1) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the licence and to any conditions which may be prescribed.</p> <p>(2) The Board may at any time during the validity of a licence—</p> <p>(a) vary the conditions of the licence; or (b) impose conditions or further conditions on the licence.</p> <p>Application for renewal of a licence.</p> <p>24K. (1) An application for the renewal of a licence under this Act shall be made to the Board in a form prescribed not later than the first day of the month of June in which the current licence is due to expire.</p> <p>(2) Despite subsection (1), a late application may be made upon payment of a late application fee as may be prescribed by the Board.</p> <p>Revocation or alteration of a licence.</p> <p>24L. The Board may revoke, alter or suspend a licence issued under this Act if in its opinion—</p> <p>(a) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the licence holder or any employee of the licence holder; or (b) a condition of the licence has been contravened or not complied with.</p> <p>Surrender of licence.</p> <p>24M. (1) The holder of a licence which is revoked shall immediately surrender it to the Board.</p> <p>(2) A licence holder may at any time surrender the licence to the</p>
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		<p>Board and the licence shall cease to have effect immediately.</p> <p>Appeals to the High Court.</p> <p>24N. (1) An applicant for or holder of a licence who is aggrieved by a decision of the Board may appeal to the High Court on or in respect of—</p> <ul style="list-style-type: none"> <li>(a) the grant, refusal, renewal, variation or revocation; or</li> <li>(b) the conditions imposed on the grant, renewal or variation, of a licence.</li> </ul> <p>(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.</p>
Clause 20	Hon. Ronald Tonui	<p>THAT, Clause 20 of the Bill be amended—</p> <ul style="list-style-type: none"> <li>(a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (d)— “(da) construction of tea buying centers within the county;”</li> <li>(b) in sub-clause (2) by inserting the words “including construction of processors within counties” at the end of the subclause.</li> </ul>
	Hon. Millie Odhiambo	<p>THAT, the Bill be amended by deleting clause 20 and substituting therefor the following new clause—</p> <p>Role of national and county governments.</p> <p>20. (1) The national government shall—</p> <ul style="list-style-type: none"> <li>(a) develop policies and regulations under this Act;</li> <li>(b) develop policy for marketing Kenyan tea internationally;</li> <li>(c) ensure the protection of intellectual property rights over its owners;</li> <li>(d) develop policy on labour standards in the tea sector;</li> <li>(e) develop policies on consumer protection;</li> <li>(f) develop policy on land planning as relates to tea-growing;</li> <li>(g) build capacity and provide technical assistance to county governments on new developments and</li> </ul>

		<p>technologies in the tea sector.</p> <p>(2) Each county government shall implement the national government policies and in particular shall be responsible for—</p> <ul style="list-style-type: none"> <li>(a) the development of tea grown within the county;</li> <li>(b) disease control;</li> <li>(c) development and maintenance of markets;</li> <li>(d) cooperative societies within the county;</li> <li>(e) soil and water conservation.</li> </ul>
Clause 21	Hon. Ezekiel Machogu	THAT, clause 21 of the Bill be amended in sub-clause (1) by inserting the words “with at least five acres of tea under cultivation” immediately after the words “tea grower”.
	Hon. Brighton Yegon	<p>THAT, clause 21 of the Bill be amended in sub-clause (2) by—</p> <ul style="list-style-type: none"> <li>(a) inserting the following new paragraph immediately after paragraph (b)—</li> </ul> <p>“(c) the net weight in kilogrammes of green leaf delivered and amount paid;”</p> <ul style="list-style-type: none"> <li>(b) renumbering the existing paragraphs (c) and (d) as (d) and (e).</li> </ul>
Clause 22	Hon. Cecily Mbarire	<p>THAT, clause 22 be amended by deleting subclause (1) and substituting therefor the following new subclauses—</p> <p>“(1) A person intending to—</p> <ul style="list-style-type: none"> <li>(a) export, import, market or process tea;</li> <li>(b) transact as a managing or a marketing agent; or</li> <li>(c) establish a tea factory,</li> </ul> <p>shall apply, in writing, for a license to the Board.</p> <p>(1A) The Board shall consider the professional and moral suitability of a person applying for a license and satisfy itself that such a person is a fit and proper person for the grant of the license.</p> <p>(1B) For the purposes of this section, the criteria for assessing the professional or moral suitability of a person applying for a license shall be as prescribed in the Third Schedule.</p> <p>(1C) In considering an application for a license, the Board may require to be satisfied as to—</p> <ul style="list-style-type: none"> <li>(a) the financial condition and history of the applicant;</li> <li>(b) the integrity of its management;</li> <li>(c) the professional and moral suitability of the persons proposed to manage or control applicant;</li> <li>(d) the adequacy of the capital structure of the applicant; and</li> <li>(e) the public interest which will be served by the granting of the licence.</li> </ul>
New Clause 22A	Hon. Cecily Mbarire	<p><b>NEW CLAUSE</b></p> <p><b>THAT,</b> the Bill be amended by inserting the following new clause immediately after clause 22—</p> <p><b>Restrictions and 22A.</b> (1) A person licensed as a management agent or marketing agent shall not—</p>

		<p>conditions on licences.</p> <p>(a) during the period of such licence participate in the control, management or oversight of a tea factory either—</p> <p>(i) as a director; or</p> <p>(ii) by seconding or attaching its officers as officers of the factory; or</p> <p>(b) be eligible for the grant of a license as an auction organizer or a broker.</p> <p>(2) A person licensed as a tea factory shall not, during the period of such licence retain in its board of directors or management—</p> <p>(a) a person licensed as a management agent or a marketing agent; or</p> <p>(b) a person employed by a management agent or a marketing agent.</p> <p>(3) In granting a licence under this Act, the Board shall ensure that persons elected to direct the affairs of a licensee—</p> <p>(a) represent a cross-section of the licensee's shareholders or members;</p> <p>(b) are democratically elected by the licensee's shareholders or members with each shareholder or member being entitled to a single vote; and</p> <p>(c) meet the prescribed suitability requirements under the Act.</p>
New Clause 23A	Hon. Brighton Yegon	<p>THAT, the Bill be amended by inserting the following new clauses immediately after clause 23—</p> <p>Register of processors.</p> <p>23A. The Board shall maintain a register, in such form as prescribed in regulations, of all processors licensed under section 22 and shall enter therein, in respect of each processor —</p> <p>(a) the full names of the processor;</p> <p>(b) the date of issue of the licence;</p> <p>(c) particulars of any cancellation, suspension or variation of the licence;</p> <p>(d) any other particulars the Board may deem necessary.</p>
New Clause 23B.	Hon. Brighton Yegon	Accounts and audit.

		<p>23B. (1) Every processor shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the processor.</p> <p>(2) Within the period of three months after the end of each financial year, the processor shall submit to the Auditor-General, the accounts of the Board in respect of that year together with a statement of income and expenditure.</p> <p>(3) The accounts of the processor shall be audited and reported upon in accordance with the provisions of the Public Audit Act.</p>
New Clause 24A	Hon. Ezekiel Machogu	<p>Payment of tea growers.</p> <p>24A. (1) A processor shall pay a tea grower—</p> <p>(a) fifty per cent of the tea grower's selling price within fifteen days of the auction sale and direct sale;</p> <p>(b) the balance within thirty days of sale.</p> <p>(2) Despite subsection (1), a tea grower may agree with the processor to be paid—</p> <p>(a) in instalments every four months until the full payment is made;</p> <p>(b) at the end of the year but this payment shall be paid together with accrued interest.</p>
New Part IIIA-Appointment of Crop Inspectors	Committee	<p><b>THAT</b> the Bill be amended by inserting the following new part immediately after Part III—</p> <p style="text-align: center;"><b>PART IIIA – APPOINTMENT OF CROP INSPECTORS</b></p> <p>Appointment of crop inspectors.      <b>24O.</b> (1) The Board may appoint qualified persons, to be crop inspectors for the purposes of this Act.</p> <p>(2) For purposes of subsection (1), the Board may, by regulations, prescribe the qualifications for the crop inspector.</p> <p>Entry and inspection.      <b>24P.</b> (1) A person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—</p> <p>(a) enter any land or buildings occupied by the holder of a manufacturing licence issued under this Act, or a person registered under this Act;</p> <p>(b) make such inspection and enquiries as the person may deem necessary for ascertaining whether</p>



		<p>the provisions of this Act or the terms and conditions of the respective licence or registration are being complied with; and</p> <p>(c) may require any person found thereon to give such information as the person may require.</p> <p><b>Powers of entry.</b>      <b>24Q.</b> (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—</p> <ul style="list-style-type: none"> <li>(a) perform the functions or exercise the powers conferred by this Act or any other written law;</li> <li>(b) make enquiries or carry out a search to ascertain if this Act is being complied with;</li> <li>(c) demand the production by a licence holder of the licence for examination;</li> <li>(d) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or</li> <li>(e) do any other thing authorized under this Act.</li> </ul> <p>(2) The owner or occupier of or any person on land or in premises or a vehicle which is entered under subsection (1)</p>
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		<p>shall render such reasonable assistance as may be required by the inspector.</p> <p>(3) A person who refuses, unreasonably delays or fails to comply with a requirement under subsection (2) commits an offence.</p> <p><b>Obstruction of inspectors.</b>      <b>24R.</b> (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.</p> <p>(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three years, or both.</p>
<p>New Part IIIA on the establishment of the Tea Appeals Tribunal</p>	<p>Hon. Ben Momanyi</p>	<p><b>NEW PART</b>  <b>THAT,</b> the Bill be amended by inserting the following new Part immediately after Part III—</p> <p style="text-align: center;"><b>PART IIIA— THE TEA APPEALS TRIBUNAL</b></p> <p>Establishment of the Tea Appeals Tribunal.      <b>24A.</b> There is hereby established a Tea Appeals Tribunal whose function shall be resolution of disputes between parties.</p> <p>Composition of the Tribunal.      <b>24B.</b> (1) The Tribunal shall consist of—</p> <ul style="list-style-type: none"> <li>(a) a chairperson nominated by the Judicial Service Commission and appointed by the Cabinet Secretary;</li> <li>(b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya and appointed by the Cabinet Secretary; and</li> <li>(c) three persons with demonstrated</li> </ul>

		<p>knowledge and experience in agriculture appointed by the Cabinet Secretary.</p> <p>(2) All appointments to the Tribunal shall be by name and by <i>Gazette Notice</i> issued by the Cabinet Secretary.</p> <p>(3) The appointment of the chairperson or members of the Tribunal shall take into account the gender, regional and other diversities of the people of Kenya.</p> <p>Qualification. <b>24C.</b> (1) A person shall be qualified to be appointed as chairperson of the Tribunal if the person —</p> <ul style="list-style-type: none"> <li>(a) has at least seven years experience as an advocate;</li> <li>(b) meets the provisions of subsection (2)(a) to (e).</li> </ul> <p>(2) A person shall qualify as a member of the Tribunal if the person—</p> <ul style="list-style-type: none"> <li>(a) possesses a university degree in a relevant field from a recognized university in Kenya;</li> <li>(b) meets the requirements of chapter six of the Constitution;</li> <li>(c) is not an undischarged bankrupt;</li> <li>(d) has never been convicted of any offence under any law;</li> <li>(e) has not previously been removed from a public office on account of misconduct.</li> </ul> <p>(3) A member or employee of the Board shall not be appointed as a member of the Tribunal.</p>
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		<p><b>Tenure of office.</b>                    <b>24D.</b> (1) The chairperson and members of the Tribunal shall serve for a term of five years.</p> <p>(2) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.</p> <p><b>Termination of membership.</b>                    <b>24E.</b> (1) The office of the chairperson or a member of the Tribunal shall become vacant where the holder—</p> <ul style="list-style-type: none"> <li>(a) dies;</li> <li>(b) resigns from office by notice in writing to the appointing authority;</li> <li>(c) is convicted of an offence and is sentenced to imprisonment for a term exceeding six months without the option of a fine; or</li> <li>(d) is removed in accordance with subsection (2).</li> </ul> <p>(2) The Judicial Service Commission may remove a chairperson or a member from office for—</p> <ul style="list-style-type: none"> <li>(a) a violation of the Constitution or any other law;</li> <li>(b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;</li> <li>(c) physical or mental incapacity to perform the functions of office;</li> <li>(d) incompetence; or</li> </ul>
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		<p>(e) bankruptcy.</p> <p>Appeals to the Tribunal. <b>24F.</b> (1) Any person aggrieved by a decision of the Board made under this Act may, within twenty one days from the date of making of the decision, appeal to the Tribunal.</p> <p>(2) An appeal to the Tribunal shall operate as a stay of the decision of the Board until the appeal is heard and determined.</p> <p>Proceedings of the Tribunal. <b>24G.</b> (1) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Board on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon.</p> <p>(2) Every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned or the Board, as the case may be.</p> <p>(3) The Tribunal shall sit at such times and in such places as it may appoint.</p> <p>(4) The proceedings of the Tribunal shall be open to the public except where the Tribunal, for good cause, otherwise directs.</p> <p>(5) Except as expressly provided in this Act or any regulations made under it, the Tribunal shall regulate its proceedings as it deems fit.</p> <p>(6) Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an advocate.</p> <p>Awards of the Tribunal. <b>24H.</b> (1) The Tribunal may—</p> <p>(a) make such orders for the purposes of</p>
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		<p>securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;</p> <p>(b) take evidence on oath and may for that purpose administer oaths; or</p> <p>(c) on its own motion summon and hear any person as witness.</p> <p>Quorum for the Tribunal. <b>24I.</b> Subject to section 24B, the quorum for hearing or determining any cause or matter before the Tribunal under this Act shall be three members.</p> <p>Conduct of the Tribunal. <b>24J.</b> Upon an appeal under this Act, the Tribunal may confirm, set aside or vary the decision or an act in question and may make such other order as the Tribunal considers appropriate, including an order with respect to the payment of costs.</p> <p>Remuneration and allowance. <b>24K.</b> The chairperson and members of the Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission may, on the advice of the Salaries and Remuneration Commission, determine.</p> <p>Power to seek the directions of the Tribunal in complex matters, etc. <b>24L.</b> (1) When any matter to be determined by the Board under this Act appears to it to involve a point of law or to be of unusual importance or complexity, it may, after giving notice to the concerned</p>
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		<p>parties, refer the matter to the Tribunal for direction.</p> <p>(2) The Board and the parties thereto shall be entitled to be heard by the Tribunal before any decision is made in respect of such matter and may appear personally or be represented by an advocate.</p> <p>(3) Any person who is a party to proceedings before the Tribunal may appear in person or be represented by an advocate before the Tribunal.</p> <p>Contempt of court. No. 46 of 2016. <b>24M.</b> The provisions of section 6 of the Contempt of Court Act shall apply to proceedings of the Tribunal.</p> <p>Appointmen t of expert advisors. <b>24N.</b> (1) The chairperson of the Tribunal may appoint an advisor from a panel of persons with expert knowledge in specified areas to assist in the determination of a matter before the Tribunal.</p> <p>(2) A member of the Board or an employee of the Board shall not be appointed as an advisor.</p> <p>Practice and procedure of the Tribunal. <b>24O.</b> (1) The Chief Justice may make rules for regulating the practice and procedure of the Tribunal.</p> <p>(2) Subject to the rules made under subsection (1), the Tribunal may regulate its own procedure.</p> <p>Secretary to the Tribunal <b>24P.</b> (1) The Judicial Service Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Secretary to the Tribunal.</p> <p>(2) A person shall be qualified for appointment as a</p>
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		<p>Secretary to the Tribunal if the person—</p> <ul style="list-style-type: none"> <li>(a) holds a degree from a university recognized in Kenya;</li> <li>(b) has proven knowledge and experience in any of the following fields— <ul style="list-style-type: none"> <li>(i) finance;</li> <li>(ii) law;</li> <li>(iii) public administration; or</li> <li>(iv) public management;</li> </ul> </li> <li>(c) has at least five years post qualification experience in relevant areas of expertise; and</li> <li>(d) satisfies the requirements of chapter six of the Constitution.</li> </ul> <p>Staff of the Tribunal. <b>24Q.</b> The Judicial Service Commission shall appoint such staff of the Tribunal necessary for the proper functioning of the Tribunal.</p> <p>Funds of the Tribunal. <b>24R.</b> (1) The expenses of the Tribunal and the remuneration of the staff shall be paid out of monies allocated by the National Assembly to the Judiciary Fund.</p> <p>(2) The National Assembly shall allocate funds to the Judiciary Fund for the administration of the Tribunal.</p> <p>Appeals to the High Court on <b>24S.</b> (1) A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within</p>
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		<p>decisions of such further period as the High Court the Tribunal. may allow, appeal to the High Court.</p> <p>(2) The appellant shall serve a copy of the notice of appeal on the other party.</p> <p>(3) The High Court shall hear appeals made under this section in accordance with rules set out by the Chief Justice.</p>
Clause 25	Committee	<p>THAT, Clause 25 of the Bill be amended by—</p> <p>(a) inserting the following paragraph immediately after the introductory statement— “(a) such monies as may be appropriated by the National Assembly;”</p> <p>(b) renumbering the existing paragraphs (a), (b), (c), (d) as (b), (c), (d), (e).</p>
	Hon. Ronald Tonui	<p>THAT, Clause 25 of the Bill be amended by—</p> <p>(a) inserting the following paragraph immediately after the introductory statement— “(a) such monies as may be appropriated by the National Assembly;”</p> <p>(b) renumbering the existing paragraphs (a), (b), (c), (d) as (b), (c), (d), (e).</p>
New Clauses 25A, 25B, 25C, 25D	Hon. Cecily Mbarire	<p><b>NEW CLAUSES</b></p> <p><b>THAT</b>, the Bill be amended by inserting the following new clauses immediately after clause 25—</p> <p>Tea Development Levy.</p> <p><b>25A.</b> (1) The Cabinet Secretary may, with the approval of Parliament, by an Order in the <i>Gazette</i>, impose a levy on the import and export of tea to be known as the Tea Development Levy.</p> <p>(2) The levy shall be payable at such rate as may be specified in the Order.</p> <p>(3) An Order under this section may contain provisions as to the time at which any amount payable by way of the levy shall become due.</p> <p>(4) All moneys received in respect of the levy shall be paid to the Board and if not paid on or before the date prescribed by the order, the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Board.</p>

(5) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed by the order, a sum equal to five per centum of the amount shall be added to the amount due for each month or part thereof during which the amount due remains unpaid.

Tea Development Fund.

**25B.** (1) There is established a Fund to be known as the Tea Development Fund which shall be administered by the Board.

(2) The Fund shall consist of—

- (a) the Tea Development Levy;
- (b) any funds provided by bilateral or multilateral donors for the purposes of the Fund;
- (c) any moneys provided by the National Assembly for the purposes of the Fund;
- (d) any moneys provided by a county assembly for the purposes of the Fund; and
- (e) moneys from any other source approved by the Board.

(3) The Board shall use the Fund for—

- (a) advertising the good quality of Kenya tea and increasing its sale to expand

		<p>existing markets and entering new markets and matters incidental thereto;</p> <p>(b) promotion of exhibitions and trade fairs for the display of the Kenya tea in the domestic and international markets;</p> <p>(c) collection and dissemination of statistics and other information relating to tea and its production, distribution and consumption;</p> <p>(d) regulation and compliance activities;</p> <p>(e) promotion and funding of tea research by the Foundation after identification of research priorities and programs;</p> <p>(f) promotion of product diversification and value addition;</p> <p>(g) expenses and other charges incurred by the Board or for which the Board may become liable in the course of its operations;</p>
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		<p>(h) maintenance of the buildings and grounds of the Board;</p> <p>(i) assisting and supporting the tea Industry in such manner as the Board may deem fit;</p> <p>(j) sensitizing and incentivizing the youth and women to engage in the tea growing; and</p> <p>(k) any other use as may be approved by the Board from time to time, including investment of funds which may from time to time be standing to its credit and which are not required immediately for any of the specified purposes.</p> <p>Establishment of the Tea Research Foundation.</p> <p><b>25C.</b> (1) There is hereby established a body to be known as the Tea Research Foundation.</p> <p>(2) The Foundation is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—</p> <p>(a) suing and being sued;</p> <p>(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and</p>
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		<p>immovable property;</p> <p>(c) borrowing and lending money;</p> <p>(d) entering into contracts; and</p> <p>(e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.</p> <p>Functions of the Foundation.      25D. (1) The Foundation shall—</p> <p>(a) promote, co-ordinate and regulate research in tea and tea diseases; and</p> <p>(b) expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the growing of tea.</p> <p>(2) For the purpose of carrying out its functions the Foundation shall—</p> <p>(a) formulate policy and make policy recommendations to the Cabinet Secretary on tea research;</p>
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		<ul style="list-style-type: none"> <li>(b) prioritise areas for, and co-ordinate, tea research in Kenya in line with the national policy on tea;</li> <li>(c) determine and advise the Government on the resource requirements for tea research in Kenya both at the national and county level;</li> <li>(d) regulate, monitor and ensure that all tea research undertaken by other institutions or persons undertaking tea research is consistent with the national priorities specified in the relevant policy documents;</li> <li>(e) formulate or approve medium and long term research plans, strategies and budgets of the Foundation;</li> <li>(f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and</li> </ul>
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		<p>plans of the Foundation;</p> <p>(g) support and promote the training and capacity building in relation to agricultural research;</p> <p>(h) promote the dissemination and application of research findings;</p> <p>(i) liaise with and ensure the co-ordination of institutions, agencies and persons involved in tea research;</p> <p>(j) establish platforms for the purposes sharing of research information, advancing research and transfer of technology and dissemination of information relating to advancements made in tea research;</p> <p>(k) conduct training in industry best practice and value-addition;</p> <p>(l) ensure continuance of performance improvement in the field of tea research; and</p>
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			(m)perform such other functions as may be conferred on it by this Act or any other written law.
New Part IVA	Hon. Cecily Mbarire	<b>NEW PART</b>	<p><b>THAT</b>, the Bill be amended by inserting the following new Part immediately after clause 29—</p> <p style="text-align: center;"><b>PART IVA— COMPLAINTS AND INVESTIGATION PROCEDURE</b></p> <p>Complaint and investigation against a licensee.</p> <p><b>29A.</b> (1) A person who is aggrieved by or is likely to be aggrieved by the contravention of any provision of this Act by a licensee may file a complaint requesting the Board to enforce the provisions of this Act against that licensee.</p> <p>(2) The complainant shall, in the complaint,—</p> <p>(a) cite the specific provisions of this Act that the licensee has contravened or is likely to contravene;</p> <p>(b) state the facts relating to the alleged contravention or likely contravention; and</p> <p>(c) attach any documents relevant to the complaint.</p> <p>(3) The Board shall provide a written response to the complainant within fifteen days of receipt of a complaint.</p> <p>(4) The Board may by written notification to the</p>



complainant, extend the review of the complaint by up to thirty days where it determines that a complaint raises—

- (a) a novel issue whose disposition requires the Board to consider an issue that it has not previously addressed; or
- (b) a complex issue whose disposition requires the Board to obtain significant factual information to resolve a difficult legal, factual or policy issue.

(5) The Board may dismiss a complaint if—

- (a) the complainant fails to show that it has been injured, or is likely to be injured as a direct result of the alleged contravention of the provisions of this Act as cited in the complaint;
- (b) the factual allegations in the complaint are unsupported or are without merit;
- (c) the factual allegations in the complaint, even if proven to be true, do not constitute a contravention of this Act or the regulations made thereunder; or

		<p>(d) it concludes that the exercise of its enforcement discretion would not be appropriate.</p> <p>(6) Where the Board dismisses a complaint, it shall notify the complainant and provide a written explanation.</p> <p>(7) Where the Board admits a complaint, it shall issue a written notification to the licensee complained of and the complainant indicating—</p> <ul style="list-style-type: none"><li>(a) the specific provisions of this Act that the licensee has been alleged to contravene; and</li><li>(b) reasonable details of the alleged facts constituting the contravention.</li></ul> <p>(8) A licensee that is the subject of a complaint shall, within fifteen days of receipt of the notification from the Board, submit a response providing the basis on which it disputes the allegations of contravention.</p> <p>(9) The Board shall, subject to section 25G on confidentiality, provide copies of all documents filed by each party to the other party.</p> <p>(10) The Board may—</p> <ul style="list-style-type: none"><li>(a) allow the filing of additional responses by the parties;</li><li>(b) upon application and for good reasons, extend time for the filing of any documents or replies by the</li></ul>
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		<p>parties to the complaint;</p> <p>(c) request the complainant or the licensee complained of to submit additional information at any time during the course of the enforcement proceedings; or</p> <p>(d) direct an independent audit or appropriate investigation of the operations and books of account of a licensee to obtain information relevant to the complaint.</p> <p><b>Withdrawal of complaint.</b>                    <b>29B.</b> (1) A complainant may, at any time and with reasons, withdraw its complaint in writing addressed to the Board and the licensee complained of.</p> <p>(2) The withdrawal of a complaint shall not preclude the Board from taking enforcement action on its own motion in the public interest.</p> <p><b>Decision on a complaint.</b>                    <b>29C.</b> (1) The Board shall issue its decision on a complaint within sixty days of receiving all necessary information.</p> <p>(2) Where necessary, the Board may, by written notice to the parties and before the expiry of the sixty day review period, extend the time and specify the date by which it shall issue its decision.</p> <p><b>Enforcement action.</b>                    <b>29D.</b> (1) Where the Board intends to commence an enforcement action against a licensee on its own motion, the Board shall—</p> <p>(a) notify the licensee and clearly indicate the</p>
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		<p>specific provisions of this Act the licensee is alleged to have contravened;</p> <p>(b) allow the licensee at least fifteen days to respond in writing with a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the licensee disputes the allegation; and</p> <p>(c) issue its decision within sixty days of receiving all necessary information.</p> <p>(2) Where necessary, the Board may, by written notice to the licensee and before the expiry of the sixty day review period, extend the time and specify the date by which it shall issue its decision.</p> <p><b>Interim directive.</b></p> <p><b>29E.</b> (1) At any time during an enforcement proceeding, the Board may issue an interim directive to a licensee to cease and desist from any specified conduct.</p> <p>(2) In determining whether to issue an interim directive the Board shall consider whether—</p> <p>(a) there is prima facie evidence that the licensee has contravened the provision of this Act;</p> <p>(b) continuation of the licensee's conduct is likely to cause serious harm to other licensees,</p>
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		<p>consumers or the general public;</p> <p>(c) the potential harm of allowing the licensee to continue its conduct outweighs the burden on the licensee of ceasing the conduct; and</p> <p>(d) issuance of the interim directive is in the public interest.</p> <p><b>29F. (1)</b> Where the Board determines that a licensee has contravened any provision of this Act, the Board may take such enforcement measures as it considers appropriate, including—</p> <p>(a) issuing a written warning to the licensee;</p> <p>(b) directing the licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Act;</p> <p>(c) directing the licensee to take specific remedial action;</p> <p>(d) declaring any agreement or contract void;</p> <p>(e) imposing a financial penalty relative to the period that the breach persists; or</p> <p>(f) suspension or cancellation of the</p>
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Enforcement  
measures.

		<p style="text-align: center;">licence issued under this Act.</p> <p>(2) A person aggrieved by the decision of the Board under this section may appeal to the High Court.</p> <p><b>Confidentiality.</b></p> <p><b>29G.</b> (1) A party submitting information to the Board may request that the information submitted be treated as confidential.</p> <p>(2) The Board shall grant a request for confidential treatment if the requesting party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment contains commercially sensitive information or that the disclosure of the information would have a material adverse impact.</p> <p>(3) For the purposes of this section, “commercially sensitive information” includes information—</p> <ul style="list-style-type: none"> <li>(a) that is not otherwise available to the public; or</li> <li>(b) whose disclosure would cause commercial harm to the party or otherwise provide a commercial benefit to the party’s competitors, including business procedures, practices, plans or its assessment of market conditions.</li> </ul>
New Clauses 29A & 29B.	Hon. Ronald Tonui	<p><b>THAT</b>, Clause 29 of the Bill be amended by inserting the following new clauses immediately after clause 29—</p> <p><b>Accounts and audit of a tea factory.</b></p> <p><b>29A.</b> (1) A county government may cause to be prepared an internal audit report of a tea factory situated within its jurisdiction.</p>

		<p>(2) The internal audit report shall be tabled in the county assembly within which a tea factory is situated.</p> <p><b>Investment of funds.</b>                      <b>29B.</b> The Board shall monitor the investment of any funds of tea growers and tea factories.</p>
Clause 30	Committee	<p>THAT, Clause 30 of the Bill be amended by—</p> <p>(a) deleting sub-clause (1);</p> <p>(b) deleting the expression “(2)” appearing immediately before sub-clause (2);</p>
	Hon. Ben Momanyi	<p>THAT, clause 30 of the Bill be deleted.</p>
Clause 32	Committee	<p><b>THAT</b>, the Bill be amended by deleting clause 32 and substituting the following new clause—</p> <p><b>General penalty.</b></p> <p><b>32.</b> A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or a fine not exceeding twice the value of the tea or tea products or, to imprisonment for a term not exceeding one year, or to both.</p>
Clause 32	Hon. Eve Obara	<p>THAT, Clause 32 of the Bill be amended in sub-clause (1) by deleting the words “not less than twenty thousand shillings” appearing immediately after the words “on conviction, to a fine of” and substituting therefor the words “not exceeding five hundred thousand shillings”.</p>
New Clause 32A	Committee	<p><b>THAT</b>, the Bill be amended by inserting the following new clause immediately after clause 32—</p> <p><b>Offences relating to body corporate.</b></p> <p><b>32A.</b> If an offence under this Act is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—</p> <p>(a) the act or omission constituting the offence took place without the person’s knowledge; or</p> <p>(b) the person took reasonable steps to prevent the commission of the offence.</p>
New Clauses 32A and 32B	Hon. Ben Momanyi	<p><b>THAT</b>, the Bill be amended by inserting the following new clauses immediately after clause 32—</p>

		<p>Conflict of laws.</p> <p>32A. If any conflict arises between the provisions of this Act and any other Act with respect to the development of the tea crop, the provisions of this Act shall prevail.</p> <p>Restraint of breaches of this Act.</p> <p>32B. Any person who has who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for –</p> <ul style="list-style-type: none"> <li>(a) declaration that the provisions of this Act are being, have been, or are about to be contravened;</li> <li>(b) an injunction, restraining any specified person from carrying out the contravention;</li> <li>(c) a writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act; or</li> <li>(d) any other lawful remedy.</li> </ul>
Clause 33	Committee	<p><b>THAT</b>, the Bill be amended by deleting clause 33 and substituting therefor the following new clause—</p> <p>Regulation s.</p> <p>33. (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.</p> <p>(2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for—</p> <ul style="list-style-type: none"> <li>(a) the regulation of the processing, importation and exportation of tea;</li> <li>(b) the procedure of registration of tea brokers, small scale tea growers, plantation tea</li> </ul>



		<p>growers, green leaf transporters, tea packers, tea buyers, tea importers, tea exporters, management agents, auction organizers, warehousemen, commercial tea nurseries;</p> <p>(c) the procedure of licensing of tea manufacturers;</p> <p>(d) the forms to be used in the application for registration, licensing, contracts and related activities;</p> <p>(e) any fee charged under this Act;</p> <p>(f) the regulation of contracts between growers, tea factories and other players in the tea industry;</p> <p>(g) tea safety including transportation, processing and market standards of tea;</p> <p>(h) submission of returns and reports by the holders of licences and registrations under this Act;</p> <p>(i) regulation and controlling the method of blending, packaging and labelling of tea for purposes of traceability;</p> <p>(j) standards, and the manner of grading and classification of made tea products under this Act; and</p> <p>(k) anything required to be prescribed under this Act;</p> <p>(3) For the purposes of Article 94(6) of the Constitution—</p> <p>(a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of</p>
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		<p>this Act and for the fulfillment of the objectives of this Act;</p> <p>(b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.</p> <p>Cap. 2</p> <p>No. 23 of 2013</p>
	Hon. Cecily Mbarire	<p>THAT, clause 33(2) of the Bill be amended by deleting paragraph (e) and substituting therefor the following new paragraphs—</p> <p>“(e) standard minimum provisions to be included in green leaf agreements and other contracts entered into between licensees; and</p> <p>(f) the maximum number of tea factories that may enter into a contract with one management agent.</p>
	Hon. Ben Momanyi	<p>Regulations. <b>33.</b> (1) The Cabinet Secretary may, upon consultation with the Board, make regulations for the protection and promotion of the tea industry in Kenya, and generally for the better carrying out of the provisions of this Act.</p> <p>(2) Notwithstanding the generality of subsection (1), the regulations made under this Act may provide for—</p> <p>(a) prohibited areas for planting tea;</p> <p>(b) regulation and control of the variety, cultural conditions, method of production and manufacture of tea and the grading of manufactured tea;</p> <p>(c) control of pests and diseases;</p>

		<ul style="list-style-type: none"> <li>(d) regulation and control of blending and packing methods of manufactured tea for sale;</li> <li>(e) method of plantation and cultivation of tea including harvesting, collection, movement, processing and storage of tea leaf;</li> <li>(f) submission of returns, reports and estimates by the holders of licences and registrations under this Act;</li> <li>(g) issuance periods for registrations and licences;</li> <li>(h) any fee charged under this Act;</li> <li>(i) forms which may be used under this Act;</li> <li>(j) registration or deregistration of growers, tea buyers, brokers, packers, management agents, auction organizers, warehousemen and other persons dealing in tea;</li> <li>(k) unauthorized purchase of green leaf; and</li> <li>(l) anything required to be prescribed under this Act.</li> </ul> <p>(3) For the purposes of Article 94(6) of the Constitution—</p> <ul style="list-style-type: none"> <li>(c) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;</li> <li>(d) the principles and standards applicable to the regulations made</li> </ul>
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		Cap. 2 No. 23 of 2013	under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.
	Hon. Ronald Tonui		THAT, Clause 33 of the Bill be amended by deleting sub-clause 2(d).
Clause 34	Committee		<p><b>THAT</b>, clause 34 of the Bill be amended—</p> <p>(a) by renumbering the existing provision as subclause (1);</p> <p>(b) by inserting the following new subclause immediately after subclause (1)—</p> <p>“(2) The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the expression “Tea.....<i>Camellia</i> spp.””</p>
	Hon. Cecily Mbarire		<p><b>THAT</b>, clause 34 of the Bill be amended—</p> <p>(a) by renumbering the existing provision as subclause (1);</p> <p>(b) inserting the following new subclause immediately after subclause (1)—</p> <p>“(2) The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the expression “Tea.....<i>Camellia</i> spp.””</p>
	Hon. Ben Momanyi		THAT, the Bill be amended by deleting Clause 34 (b).
Clause 35	Hon. Cecily Mbarire		<p><b>THAT</b>, the Bill be amended by deleting Clause 35 and substituting therefor the following new clause—</p> <p>Transfer of assets and liabilities. <b>35.</b> All property, except such property as the Cabinet Secretary may specify in writing, which immediately before the commencement of this Act, was vested in the Government for the use of the Tea Directorate of the Agriculture and Food Authority and the Tea Research Institute of the Kenya Agricultural and Livestock Research Organization, shall, on the date of commencement of this Act, vest in the Board and the Foundation, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property.</p>
Clause 36	Hon. Cecily Mbarire		<p><b>THAT</b>, the Bill be amended by deleting Clause 36 and substituting therefor the following new clause—</p> <p>Pending proceedings and claims. <b>36.</b> All legal proceedings and claims pending in respect of actions and activities to which this Act apply shall be continued or enforced by or against the Board and the Foundation</p>

		in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority and the Kenya Agricultural and Livestock Research Organization had this Act not been enacted.
Clause 38	Committee	<b>THAT</b> , the Bill be amended by deleting clause 38 and substituting therefor the following new clause –  Existing licences and registrations. <b>38.</b> All licences and registrations existing before the appointed day shall remain valid until their expiry, and subsequent licences and registrations shall be issued under this Act.
	Hon. Cecily Mbarire	<b>THAT</b> , the Bill be amended by deleting Clause 38 and substituting therefor the following new clause—  Transition. <b>38.</b> The holder of an authorization given, or license or permits issued, or registration made by the Tea Directorate of the Agriculture and Food Authority or the Tea Research Institute of the Kenya Agricultural and Livestock Research Organization shall, within six months of the commencement of this Act, apply to the Board for the grant of an authorization, license, permit or registration under this Act.
Clause 39	Hon. Cecily Mbarire	<b>THAT</b> , the Bill be amended by deleting Clause 39 and substituting therefor the following new clause—  Transfer of Staff. <b>39.</b> (1) The staff of the Tea Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board.  (2) The staff of the Tea Research Institute employed by the Kenya Agricultural and Livestock Research Organization prior to the commencement of this Act, shall be the staff of the Foundation.
Clause 40	Hon. Cecily Mbarire	<b>THAT</b> , the Bill be amended by deleting Clause 40.
SCHEDULE	Hon. Millie Odhiambo	<b>THAT</b> , the Schedule of the Bill be amended by deleting the title and substituting therefore the following new title—  “FIRST SCHEDULE [s. 19]”

	Hon. Cecily Mbarire	<p>THAT, the Schedule of the Bill be amended by deleting the title and substituting therefore the following new title—</p> <p style="text-align: center;"><b>“FIRST SCHEDULE”</b></p>
NEW SCHEDULE	Hon. Millie Odhiambo	<p>NEW SCHEDULE</p> <p>THAT, the Bill be amended by inserting the following new Schedule immediately after the First Schedule—</p> <p style="text-align: center;"><b>SECOND SCHEDULE [s. 2]</b></p> <p style="text-align: center;"><b>TEA ZONES</b></p> <p><b>ZONE COUNTIES</b></p> <p><b>EAST</b> Nyeri, Kirinyaga, Kiambu, Murang’a, Meru, Embu, Tharaka-Nithi, and Narok.</p> <p><b>WEST</b> Nakuru, Kisii, Kericho, Bomet, Nyamira, Nandi, Kakamega, Trans-Nzoia and Vihiga.</p>
	Hon. Cecily Mbarire	<p>THAT, the Bill be amended by inserting the following new Schedules immediately after the First Schedule—</p> <p style="text-align: center;"><b>SECOND SCHEDULE [s. 2]</b></p> <p style="text-align: center;"><b>TEA ZONES</b></p> <p><b>ZONE COUNTIES</b></p> <p><b>EAST</b> Kiambu, Murang’a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.</p> <p><b>WEST</b> Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga and Trans-Nzoia.</p>
		<p style="text-align: center;"><b>THIRD SCHEDULE</b></p> <p style="text-align: center;"><b>CRITERIA FOR ASSESSING PROFESSIONAL OR MORAL SUITABILITY</b></p> <p>(1) In order to determine, for the purposes of this Act, the professional and moral suitability of persons, proposed to be Directors and senior officers of a licensee, the Board shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—</p> <ul style="list-style-type: none"> <li>(a) possession of adequate professional credentials or experience or both for the position for which the person is proposed;</li> <li>(b) ability to recommend sound practices gleaned from other situations;</li> <li>(c) ability to provide dispassionate advise;</li> <li>(d) ability to avoid conflicts of interest in his or her activities and commitments with other organizations;</li> <li>(e) ability to absent oneself from decisions when the person is incapable of providing objective advice.</li> </ul> <p>(2) For the purpose of and without prejudice to the generality of the provisions of paragraph (1), the Board, may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—</p>

		<ul style="list-style-type: none"><li>(a) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;</li><li>(b) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence or other malpractices;</li><li>(c) has taken part in any business practices that, in the opinion of the Board, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited the person's methods of conducting business; or</li><li>(d) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on the person's competence and soundness of judgment.</li></ul> <p>(3) The Board may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person as stipulated under the Act.</p>
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**3 COMMITTEE RECOMMENDATIONS ON THE WINNOWING OF PROPOSED AMENDMENTS TO THE TEA BILL (SENATE BILL NO. 36 OF 2018)**

5. After lengthy deliberations, the Committee agreed upon the following harmonized version of its amendments and those of individual Members.

**Hon. Cecily Mbarire**

CLAUSE	PROPOSED AMENDMENT	COMMITTEE'S RECOMMENDATION
<p><b>Clause 2</b></p>	<p><b>THAT</b>, clause 2 of the Bill be amended by—</p> <p>(a) deleting the definition of “managing factory”;</p> <p>(b) inserting the following new definitions in proper alphabetical sequence—</p> <p>“auction” means a physical or electronic system where potential buyers place competitive bids for tea;</p> <p>“auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya and licensed by the Board;</p> <p>“broker” means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between producers and buyers;</p> <p>“blending” means the process of mixing of teas of different grades to affect the flavour and characteristics of the tea for the purposes of packing and for sale;</p> <p>“commercial tea nursery” means a person or firm who maintains not less than five hundred tea seedlings or planting material for sale;</p> <p>“commercial green leaf transporter” means a person, a firm or a corporate body contracted by a tea factory to provide green leaf transport services from the farm or leaf collection center to the tea factory at a fee;</p> <p>“cottage tea factory” means a tea factory that manufactures less than three hundred thousand kilograms of high value specialty or value added teas;</p> <p>“Foundation” means the Tea Research Foundation established under section 25C;”</p> <p>“Fund” means the Tea Development Fund;</p> <p>“levy” means a per centum of the value of all made tea imposed by the Cabinet Secretary at</p>	<p>The Committee, after deliberations with other Members with proposed amendments to clause 2, agreed to delete clause 2 in its entirety and provide for an exhaustive list of definitions except for “marketing agent” and “tea block”.</p> <p>Also, since the Committee agreed to incorporate Hon. Cecily Mbarire’s amendments on the tea levy, Tea Fund and the Tea Research Foundation, the Committee has incorporated the definitions in its proposed amendments to clause 2.</p>



	<p>the point of export or import in accordance with section 25A;</p> <p>“made tea” means the derivative from green tea leaf through a manufacturing process;</p> <p>“management agent” means any person that is registered and licensed to enter into a contract with a tea factory to perform or offer professional services in production, processing, and related financial services a tea factory on behalf of the tea factory at a fee;</p> <p>“marketing agent” means any person that is registered and licensed to enter into a contract with a tea factory to perform or offer professional services in sales, value addition, product development and related marketing services on behalf of the tea factory at a fee;</p> <p>“value addition” means improvements on made tea through packaging, blending, flavoring, tea extracts, tea aroma and branding;</p> <p>“green leaf agreement” means an agreement between a tea grower and a tea factory relating to the delivery of green leaf;</p> <p>“tea factory” means a factory registered and licensed to process green tea leaf into made tea;</p> <p>“tea zone” means a zone set out in the First Schedule within which tea is grown;</p>	
<p><b>Clause 5</b></p>	<p><b>THAT</b>, clause 5(2) of the Bill be amended—</p> <p>(a) in paragraph (b) by—</p> <p>(i) by deleting subparagraph (iv) and substituting therefor the following new subparagraph—</p> <p>“(iv) licence managing agents and marketing agents”;</p> <p>(ii) by inserting the following new sub paragraphs immediately after subparagraph (iv)—</p> <p>“(iva) license and regulate physical and electronic tea auctions”;</p> <p>(b) by inserting the following new paragraphs immediately after paragraph (b)—</p> <p>(ba) prescribe rules for the eligibility of persons to vie for election or be appointed as board members of persons licensed under this Act;</p> <p>(bb) recommend to the national and county governments appropriate measures for the grant of extension services and farm input subsidies to tea growers;</p> <p>(bc) promote value addition in the tea industry and the establishment of cottage tea factories and the blending of tea;</p>	<p>The Committee recommended that since its amendments provide registration and licensing of various tea value chain players, then this should be provided in the Committee’s amendments.</p> <p>The Committee agreed to the other proposed amendments being retained.</p>

<p><b>Clause 7</b></p>	<p><b>THAT</b>, clause 7 of the Bill be amended—</p> <p>(a) in subclause (1) by deleting paragraph (e) and substituting therefor the following new paragraphs—</p> <p>“(e) two persons, one man and one woman, appointed from either of the counties in the east tea zone to represent tea growers from the zone;</p> <p>(ea) two persons, one man and one woman, appointed from either of the counties in the west tea zone to represent tea growers from the zone;”;</p> <p>(b) in subclause (2) by inserting the expression “(ea)” immediately after the expression “(e)”.</p>	<p>The Committee, after deliberations with Members with similar amendments, agreed to Hon. Gichimu Githinji’s amendments to clause 7 with modifications as follows:</p> <p><b>THAT</b>, the Bill be amended in clause 7(1) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs—</p> <p>“(d) one person of either gender, who shall have knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternately by the Council of Governors;</p> <p>(e) four persons, two of either gender, representing and elected by small scale and medium scale tea growers from the East and West of the tea blocks:</p> <p>Provided that two persons shall be from each of the tea blocks;</p> <p>(f) one person elected and representing large scale tea growers;</p> <p>(g) one person elected and representing tea traders;”</p> <p>Hon. Cécily Mbarire agreed to drop her amendment.</p>
<p><b>Clause 19</b></p>	<p><b>THAT</b>, clause 19 of the Bill be amended by inserting the word “First” immediately after the words “with the”;</p>	<p>The Committee agreed to this proposed amendment.</p>
<p><b>Clause 22</b></p>	<p><b>THAT</b>, clause 22 be amended by deleting subclause (1) and substituting therefor the following new subclauses—</p> <p>“(1) A person intending to—</p> <p>(a) export, import, market or process tea;</p> <p>(b) transact as a managing or a marketing agent; or</p> <p>(c) establish a tea factory,</p>	<p>The Committee agreed to incorporate the amendment in its amendments. The Committee recommended that the provision be provided for under conditions of</p>

	<p>shall apply, in writing, for a license to the Board.</p> <p>(1A) The Board shall consider the professional and moral suitability of a person applying for a license and satisfy itself that such a person is a fit and proper person for the grant of the license.</p> <p>(1B) For the purposes of this section, the criteria for assessing the professional or moral suitability of a person applying for a license shall be as prescribed in the Third Schedule.</p> <p>(1C) In considering an application for a license, the Board may require to be satisfied as to—</p> <ul style="list-style-type: none"> <li>(a) the financial condition and history of the applicant;</li> <li>(b) the integrity of its management;</li> <li>(c) the professional and moral suitability of the persons proposed to manage or control applicant;</li> <li>(d) the adequacy of the capital structure of the applicant; and</li> <li>(e) the public interest which will be served by the granting of the licence.</li> </ul>	<p>licence in clause 24P in the Committee's amendments.</p>
<p><b>New Clause 22A</b></p>	<p><b>THAT</b>, the Bill be amended by inserting the following new clause immediately after clause 22—</p> <p style="padding-left: 40px;">Restrictions and conditions on licences.</p> <p style="padding-left: 80px;"><b>22A.</b> (1) A person licensed as a management agent or marketing agent shall not—</p> <ul style="list-style-type: none"> <li>(c) during the period of such licence participate in the control, management or oversight of a tea factory either— <ul style="list-style-type: none"> <li>(iii) as a director; or</li> <li>(iv) by seconding or attaching its officers as officers of the factory; or</li> </ul> </li> <li>(d) be eligible for the grant of a license as an auction organizer or a broker.</li> </ul> <p style="padding-left: 80px;">(2) A person licensed as a tea factory shall not, during the period of such licence retain in its board of directors or management—</p> <ul style="list-style-type: none"> <li>(c) a person licensed as a management agent or a marketing agent; or</li> <li>(d) a person employed by a management agent or a marketing agent.</li> </ul>	<p>The Committee agreed in principle to the proposed amendment under the proposed Clause 22A(1) and (2) but recommended that the Committee's amendments address the intentions of the amendment. The Committee's amendments on management agent agreement under the proposed clause 24J achieve similar aims. Some of its provisions provide that the staff costs for personnel seconded to the tea factory limited company by a management agent shall be borne by the management agent, Company Secretarial services shall be excluded from services to be offered by a management agent to a tea factory limited company, and that a tea factory shall recruit its own in-house Company Secretary or outsource the service.</p>

	<p>(3) In granting a licence under this Act, the Board shall ensure that persons elected to direct the affairs of a licensee—</p> <p>(d) represent a cross-section of the licensee's shareholders or members;</p> <p>(e) are democratically elected by the licensee's shareholders or members with each shareholder or member being entitled to a single vote; and</p> <p>(f) meet the prescribed suitability requirements under the Act.</p>	<p>On the proposed Clause 22A(3), the Committee recommended that it provides for the one grower, one vote principle in its amendments.</p>
<b>New Clause 25A</b>	Proposed amendment to provide for the establishment of a Tea Development Levy	The Committee recommended that it incorporate the amendment in its amendments subject to modifications.
<b>New Clause 25B</b>	Proposed amendment to provide for the establishment of a Tea Development Fund	The Committee recommended that it incorporate the amendment in its amendments subject to modifications.
<b>New Clauses 25C and 25D</b>	Proposed amendment to provide for the establishment of the Tea Research Foundation and its functions.	The Committee recommended that it incorporate the amendment in its amendments subject to modifications.
<b>New Part IVA on Complaints and Investigation Procedure</b>	Proposed amendment to provide for a new Part IVA on Complaints and Investigation.	The Committee agreed that the Member moves her amendment.
<b>Clause 33</b>	<p>THAT, clause 33(2) of the Bill be amended by deleting paragraph (e) and substituting therefor the following new paragraphs—</p> <p>“(e) standard minimum provisions to be included in green leaf agreements and other contracts entered into between licensees; and</p> <p>(f) the maximum number of tea factories that may enter into a contract with one management agent.</p>	The Committee recommended that it incorporates the amendment in its amendments and the Member doesn't move it.
<b>Clause 34</b>	<p>THAT, clause 34 of the Bill be amended—</p> <p>by renumbering the existing provision as subclause (1);</p> <p>inserting the following new subclause immediately after subclause (1)—</p>	The Committee recommended that since it had a similar amendment, then the Member drops her amendment.

	“(2) The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the expression “Tea.....Camellia spp.””	
<b>Clause 35</b>	<p>THAT, the Bill be amended by deleting Clause 35 and substituting therefor the following new clause—</p> <p>Transfer of assets and liabilities. 35. All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Tea Directorate of the Agriculture and Food Authority and the Tea Research Institute of the Kenya Agricultural and Livestock Research Organization, shall, on the date of commencement of this Act, vest in the Board and the Foundation, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property.</p>	Since the Committee had incorporated Hon. Cecily Mbarire’s amendments on the establishment of the Tea Research Foundation, it recommended that it also incorporates the transitional provisions amendments since both are tied up.
<b>Clause 36</b>	<p>THAT, the Bill be amended by deleting Clause 36 and substituting therefor the following new clause—</p> <p>Pending proceedings and claims. 36. All legal proceedings and claims pending in respect of actions and activities to which this Act apply shall be continued or enforced by or against the Board and the Foundation in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority and the Kenya Agricultural and Livestock Research Organization had this Act not been enacted.</p>	Since the Committee had incorporated Hon. Cecily Mbarire’s amendments on the establishment of the Tea Research Foundation, it recommended that it also incorporates the transitional provisions amendments since both are tied up.
<b>Clause 38</b>	<p>THAT, the Bill be amended by deleting Clause 38 and substituting therefor the following new clause—</p> <p>Transition. 38. The holder of an authorization given, or license or permits issued, or registration made by the Tea Directorate of the Agriculture and Food Authority or the Tea Research Institute of the Kenya Agricultural and Livestock Research Organization shall, within six months of the commencement of this Act, apply to the Board for the grant of an authorization, license, permit or registration under this Act.</p>	The Committee also had an amendment to clause 38 and recommended that the Committee proceeds with its amendment and that the Member doesn’t move her amendment.
<b>Clause 39</b>	THAT, the Bill be amended by deleting Clause 39 and substituting therefor the following new clause—	Since the Committee had incorporated Hon. Cecily Mbarire’s amendments on the

	<p>Transfer of Staff.</p> <p>39. (1) The staff of the Tea Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board.</p> <p>(2) The staff of the Tea Research Institute employed by the Kenya Agricultural and Livestock Research Organization prior to the commencement of this Act, shall be the staff of the Foundation.</p>	<p>establishment of the Tea Research Foundation, it recommended that it also incorporates the transitional provisions amendments since both are tied up.</p>						
<b>Clause 40</b>	<p>THAT, the Bill be amended by deleting Clause 40.</p>	<p>The Committee recommended that since its amendment to clause 38 uses the term "appointed day", then the Member should not move her amendment.</p>						
<b>SCHEDULE</b>	<p>THAT, the Schedule of the Bill be amended by deleting the title and substituting therefore the following new title—</p> <p style="text-align: center;"><b>"FIRST SCHEDULE"</b></p>	<p>The Committee agreed to the proposed amendment.</p>						
<b>NEW SCHEDULES</b>	<p>THAT, the Bill be amended by inserting the following new Schedules immediately after the First Schedule—</p> <p style="text-align: center;"><b>SECOND SCHEDULE [s. 2]</b></p> <p style="text-align: center;"><b>TEA ZONES</b></p> <table border="0" style="width: 100%;"> <tr> <td style="text-align: right; vertical-align: top;"><b>ZONE</b></td> <td style="text-align: left; vertical-align: top;"><b>COUNTIES</b></td> </tr> <tr> <td style="vertical-align: top;">EAST</td> <td style="vertical-align: top;">Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.</td> </tr> <tr> <td style="vertical-align: top;">WEST</td> <td style="vertical-align: top;">Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga and Trans-Nzoia.</td> </tr> </table>	<b>ZONE</b>	<b>COUNTIES</b>	EAST	Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.	WEST	Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga and Trans-Nzoia.	<p>The Committee agreed to the proposed amendment subject to modifications to replace "Tea Zones" with "Tea Blocks" since Tea Zones is currently in use in the industry with a meaning that is different from the purposes of the Bill.</p> <p>Also, after deliberations with the East African Tea Trade Association (EATTA), Baringo, Bungoma, Elgeyo Marakwet and Uasin Gishu counties were recommended to be inserted since they are also tea growing counties.</p>
<b>ZONE</b>	<b>COUNTIES</b>							
EAST	Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.							
WEST	Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga and Trans-Nzoia.							
<b>THIRD SCHEDULE</b>	<p style="text-align: center;"><b>THIRD SCHEDULE</b></p> <p style="text-align: center;"><b>CRITERIA FOR ASSESSING PROFESSIONAL OR MORAL SUITABILITY</b></p> <p>(1) In order to determine, for the purposes of this Act, the professional and moral suitability of persons, proposed to be Directors and senior officers of a licensee, the Board shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—</p> <p>(f) possession of adequate professional credentials or experience or both for the position for which the person is proposed;</p> <p>(g) ability to recommend sound practices gleaned from other situations;</p>	<p>The Committee agreed to incorporate the amendment to its amendments.</p>						

	<p>(h) ability to provide dispassionate advise;</p> <p>(i) ability to avoid conflicts of interest in his or her activities and commitments with other organizations;</p> <p>(j) ability to absent oneself from decisions when the person is incapable of providing objective advice.</p> <p>(2) For the purpose of and without prejudice to the generality of the provisions of paragraph (1), the Board, may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—</p> <p>(e) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;</p> <p>(f) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence or other malpractices;</p> <p>(g) has taken part in any business practices that, in the opinion of the Board, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited the person’s methods of conducting business; or</p> <p>(h) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on the person’s competence and soundness of judgment.</p> <p>(3) The Board may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person as stipulated under the Act.</p>	
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**Hon. Ben Momanyi**

CLAUSE	PROPOSED AMENDMENT	COMMITTEE’S RECOMMENDATION
<b>Clause 2</b>	<p>THAT, clause 2 of the Bill be amended by—</p> <p>(a) deleting the definition “broker” and substituting therefor the following new definition—</p> <p>“broker” means a person, a company or firm established for purposes of negotiating the purchase or sale of tea between tea producers and buyers;</p> <p>(b) deleting the definition “managing factory”;</p> <p>(c) deleting the definition “tea grower” and substituting therefor the following new definition—</p> <p>“tea grower” means a person who grows tea or cultivates tea in Kenya;</p>	<p>The Committee recommended that since it has an amendment to clause 2 which incorporates the definitions proposed, the proposed amendment to clause 2 by the Member should not be moved.</p>

(d) inserting the following definitions in their proper alphabetical sequence—

“auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya;

“auction” means the process of buying and selling tea by offering bids and selling it to the highest bidder through a physical or electronic system;

“blending” means the process of mixing of teas of different grades to affect the flavour and characteristics of the tea for purposes of packing and sale;

“buyer” means a person, company or firm engaged in buying made tea for resale in the local or export market;

“commercial tea nursery operator” means a person or firm who propagates not less than five thousand tea seedlings or planting material for sale;

“co-operative society” means a co-operative society registered under the Co-operative Societies Act;

“County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to agriculture in the respective tea producing county;

“county government” has the meaning assigned to it under Article 176 of the Constitution of Kenya;

“export of tea” means to take made tea or cause made tea out of Kenya customs territory or to an Export Processing Zone;

“exporter” means a person, a firm, or a corporate body engaged in the business of blending, packing and exporting of tea in bulk or in value added form;

“independent tea producer” means a licensed tea producer with own land on tea and is not a smallholder and plantation grower;

“licensing authority” means the Tea Board of Kenya and the County Government as the case may be;

“made tea” means the derivative from tea leaf through a manufacturing process;

“management agent” means any person, co-operative society, or company established under written law, that is appointed through a specific management contract or agreement by another person or company to perform or offer professional services;



	<p>“manufacture” means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products and includes the packaging, labeling, distribution of tea and tea products for sale;</p> <p>“packer” means a person who packs tea into packets or containers holding no more than ten kilograms of tea intended for sale;</p> <p>“plantation grower” means a large area of land on which tea is grown and cultivated and on which there is a processing factory;</p> <p>“producer” means a producer of tea and includes a smallholder, or plantation or independent manufacturer of tea or his or her representative;</p> <p>“scheduled crop” includes tea as listed under the First Schedule of the Crops Act;</p> <p>“smallholder grower” means a grower cultivating tea and where collectively, have come together to own a processing factory;</p> <p>“Tribunal” means the Tea Appeals Tribunal established in section 24A;</p>	
<p><b>Clause 5</b></p>	<p>THAT, clause 5 of the Bill be amended—</p> <p>(a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (c)—</p> <p style="padding-left: 40px;">“(d) recommend the establishment of subsidiary bodies to discharge and oversee specific aspects of value addition and promotion of Kenyan tea in international markets;”</p> <p>(b) in sub-clause 2 in paragraph (b)—</p> <p style="padding-left: 40px;">(i) by deleting sub-paragraph (iv) and substituting therefor the following new sub-paragraph—</p> <p style="padding-left: 80px;">“(iv) licence tea factories;”</p> <p style="padding-left: 40px;">(ii) by inserting the following sub-paragraphs immediately after sub-paragraph (v)—</p> <p style="padding-left: 80px;">“(vi) register auction organizers;</p> <p style="padding-left: 80px;">(vii) register management agents;</p> <p style="padding-left: 80px;">(viii) register tea buyers operating in Kenya;</p> <p style="padding-left: 80px;">(ix) register tea packers.”</p>	<p>The Committee recommended that since the Committee’s amendments have similar amendments, the Committee should move the amendments.</p>
<p>New Part IIA on the establishment of a County</p>	<p>Proposed new Part IIA on the establishment of a County Tea Committee</p>	<p>The Committee, after much deliberations, recommended that the Mover doesn’t move</p>

Tea Committee		<p>the amendment for the following reasons:</p> <ul style="list-style-type: none"> <li>(i) There is representation from the Council of County Governors in the proposed Tea Board of Kenya who will be able to articulate issues affecting counties;</li> <li>(ii) The Bill provides for the role of county governments which partly addresses the concerns of the amendment;</li> <li>(iii) There will be financial implications on the establishment of the Committee which would be a burden considering that there are amendments to establish a tea levy, a Tea Fund, and a Tea Research Foundation;</li> <li>(iv) The county governments can still administratively organize the forums at the county level to discuss tea matters without necessarily providing for it in the law.</li> </ul>
Clause 7	<p>THAT, clause 7 of the Bill be amended in sub-clause (1) by—</p> <ul style="list-style-type: none"> <li>(a) deleting paragraph (e) and substituting therefor the following new paragraph— “(e) four persons of either gender nominated by registered small-holder tea growers through an election conducted by tea factories;”</li> <li>(b) deleting paragraph (g) and substituting therefor the following new paragraph— “(g) one person representing auction organizers;”</li> <li>(c) inserting the following new sub-paragraph immediately after paragraph (g) – “(ga) one person representing independent tea factories;”</li> </ul>	<p>The Committee agreed to adopt Hon. Gichimu Githinji’s amendment to clause 7 with modifications in the manner provided as follows:</p> <p>CLAUSE 7</p> <p>THAT, the Bill be amended in clause 7(1) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs— “(d) one person of either gender, who shall have</p>

		<p>knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternately by the Council of Governors;</p> <p>(e) four persons, two of either gender, representing and elected by small scale and medium scale tea growers from the East and West of the tea blocks:</p> <p>Provided that two persons shall be from each of the tea blocks;</p> <p>(f) one person elected and representing large scale tea growers;</p> <p>(g) one person elected and representing tea traders;”</p>
<b>New Part IIIA on establishment of the Tea Appeals Tribunal</b>	Proposed New Part IIIA on establishment of the Tea Appeals Tribunal	After deliberations with the Member, the Committee recommended that the amendment be dropped because of its cost implications and amendments which the Committee will be moving on the establishment of the tea levy, Tea Fund, and Tea Research Foundation.
<b>Clause 30</b>	THAT, clause 30 of the Bill be deleted.	The Committee recommended that since it had recommended that the proposed amendment on the establishment of the Tea Appeals Tribunal should not be moved, then it recommended that the proposed amendment to clause 30 should not be moved.
<b>New Clauses 32A and 32B</b>	<p>THAT, the Bill be amended by inserting the following new clauses immediately after clause 32—</p> <p>Conflict of laws.                      <b>32A.</b> If any conflict arises between the provisions of this Act and any other Act with respect to the development of the tea crop, the provisions of this Act shall prevail.</p> <p>Restraint of breaches of this Act.                      <b>32B.</b> Any person who has who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for –</p>	The Committee agreed to the proposed amendments.

	<p>(e) declaration that the provisions of this Act are being, have been, or are about to be contravened;</p> <p>(f) an injunction, restraining any specified person from carrying out the contravention;</p> <p>(g) a writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act; or</p> <p>(h) any other lawful remedy.</p>	
<p><b>Clause 33</b></p>	<p><b>THAT</b>, the Bill be amended by deleting Clause 33 and substituting therefor the following new clause—</p> <p>Regulations.                    <b>33.</b> (1) The Cabinet Secretary may, upon consultation with the Board, make regulations for the protection and promotion of the tea industry in Kenya, and generally for the better carrying out of the provisions of this Act.</p> <p>(2) Notwithstanding the generality of subsection (1), the regulations made under this Act may provide for—</p> <p>(m) prohibited areas for planting tea;</p> <p>(n) regulation and control of the variety, cultural conditions, method of production and manufacture of tea and the grading of manufactured tea;</p> <p>(o) control of pests and diseases;</p> <p>(p) regulation and control of blending and packing methods of manufactured tea for sale;</p> <p>(q) method of plantation and cultivation of tea including harvesting,</p>	<p>Since the Committee has an amendment to clause 33 which is more comprehensive, it is recommended that the Committee's proposed amendment to clause 33 proceeds subject to insertion of the following amendments for Hon. Ben Momanyi with minor modification: prohibited areas for planting tea, control of pests and diseases.</p>

	<p>collection, movement, processing and storage of tea leaf;</p> <p>(r) submission of returns, reports and estimates by the holders of licences and registrations under this Act;</p> <p>(s) issuance periods for registrations and licences;</p> <p>(t) any fee charged under this Act;</p> <p>(u) forms which may be used under this Act;</p> <p>(v) registration or deregistration of growers, tea buyers, brokers, packers, management agents, auction organizers, warehousemen and other persons dealing in tea;</p> <p>(w) unauthorized purchase of green leaf; and</p> <p>(x) anything required to be prescribed under this Act.</p> <p>(3) For the purposes of Article 94(6) of the Constitution—</p> <p>(e) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;</p> <p>(f) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.</p>	
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	Cap. 2 No. 23 of 2013	
<b>Clause 34</b>	THAT, the Bill be amended by deleting Clause 34 (b).	The Committee recommended that the proposed amendment should not be moved since the Committee has an amendment to clause 34 and that the purpose of the Bill is to remove tea within the ambit of the Crops Act, No. 16 of 2013.

**Hon. Millie Odhiambo**

<b>CLAUSE</b>	<b>PROPOSED AMENDMENT</b>	<b>COMMITTEE RECOMMENDATION</b>
Clause 2	<p>THAT, clause 2 of the Bill be amended by—</p> <p>(a) deleting the definition “tea grower” and substituting therefor the following new definition—</p> <p>“tea grower” means a person who grows or cultivates tea in Kenya, or a person who manages, controls or cultivates land in Kenya for the purpose of growing tea;</p> <p>(b) deleting the definition “processor” and substituting therefor the following new definition—</p> <p>“processor” means a person who processes green leaves into dried leaves for brewing tea;</p> <p>(c) deleting the definition “broker” and substituting therefor the following new definition—</p> <p>“broker” means an intermediary between the tea producers and buyers;</p> <p>(d) inserting the following definitions in their proper alphabetical sequence—</p>	The Committee recommended that since it has proposed a comprehensive amendment to clause 2, then the Committee’s amendment should take precedence.

	<p>“green leaf” means unprocessed tea leaf in its natural state;</p> <p>“processing” means the method through which the green leaves are transformed into dried leaves for brewing tea;</p> <p>“tea nursery” means a place where tea plants are propagated and grown to a desired age;</p> <p>“tea zone” means a zone set out in the First Schedule within which tea is grown;</p>	
<b>Clause 7</b>	<p>THAT, clause 7 of the Bill be amended in subclause (1) by deleting paragraph (e) and substituting therefor the following new paragraph—</p> <p>“(e) four persons, two of either gender, representing small-holder tea growers from the East and West tea zones;”</p>	The Committee agreed to adopt Hon. Gichimu Githinji’s amendments, subject to modifications. However, it allowed the amendment to proceed.
<b>Clause 9</b>	<p>THAT, clause 9(a) of the Bill be amended by deleting the words “the permission of the chairperson” appearing immediately after the words “the Board without” and substituting therefor the words “notifying the chairperson”.</p>	The Committee agreed to the proposed amendment.
<b>Clause 10</b>	<p>THAT, clause 10 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause—</p> <p>“(2) The Board may hire consultants whose knowledge and skills are necessary for the performance of the functions of the Board.”</p>	The Committee recommended that the proposed amendment should not be proceeded with because of its financial implications.
<b>Clause 15</b>	<p>THAT, clause 15 of the Bill be amended in subclause 3(d) by deleting the word “seven” appearing immediately after the words “at least” and substituting therefor the word “five”.</p>	The Committee agreed to the proposed amendment.
<b>Clause 16</b>	<p>THAT, clause 16 of the Bill be amended by—</p> <p>(a) renumbering the existing provision as subclause (1);</p> <p>(b) inserting the following new subclause immediately after subclause (1)—</p> <p>“(2) In employing staff, the Board shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities.”</p>	The Committee agreed to the proposed amendment.
<b>Clause 20</b>	<p>THAT, the Bill be amended by deleting clause 20 and substituting therefor the following new clause—</p> <p>Role of national and county governments. <b>20.</b> (1) The national government shall—</p>	The Committee recommended that although it has an amendment to clause 20, the Member’s proposed amendment can proceed.

	<p>(h) develop policies and regulations under this Act;</p> <p>(i) develop policy for marketing Kenyan tea internationally;</p> <p>(j) ensure the protection of intellectual property rights over its owners;</p> <p>(k) develop policy on labour standards in the tea sector;</p> <p>(l) develop policies on consumer protection;</p> <p>(m) develop policy on land planning as relates to tea-growing;</p> <p>(n) build capacity and provide technical assistance to county governments on new developments and technologies in the tea sector.</p> <p>(2) Each county government shall implement the national government policies and in particular shall be responsible for—</p> <p>(f) the development of tea grown within the county;</p> <p>(g) disease control;</p> <p>(h) development and maintenance of markets;</p> <p>(i) cooperative societies within the county;</p>	
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	(j) soil and water conservation.	
<b>SCHEDULE</b>	THAT, the Schedule of the Bill be amended by deleting the title and substituting therefore the following new title—  “FIRST SCHEDULE [s. 19]”	The Committee recommended that the proposed amendment proceeds.
<b>NEW SCHEDULE</b>	NEW SCHEDULE THAT, the Bill be amended by inserting the following new Schedule immediately after the First Schedule— SECOND SCHEDULE [s. 2]  TEA ZONES ZONE COUNTIES EAST Nyeri, Kirinyaga, Kiambu, Murang’a, Meru, Embu, Tharaka-Nithi, and Narok. WEST Nakuru, Kisii, Kericho, Bomet, Nyamira, Nandi, Kakamega, Trans-Nzoia and Vihiga.	The Committee agreed to the proposed amendment subject to modifications to replace “Tea Zones” with “Tea Blocks” since Tea Zones is currently in use in the industry with a meaning that is different from the purposes of the Bill.  Also, after deliberations with the East African Tea Trade Association (EATTA), Baringo, Bungoma, Elgeyo Marakwet and Uasin Gishu counties were recommended to be inserted since they are also tea growing counties.

**Hon. Gichimu Githinji**

<b>CLAUSE</b>	<b>PROPOSED AMENDMENT</b>	<b>COMMITTEE RECOMMENDATION</b>
<b>Clause 2</b>	THAT, the Bill be amended by deleting the definition of the term “tea grower” and substituting therefor the following new definition- “tea grower” means a person who grows tea or cultivates tea in Kenya;	Since the Committee’s proposed amendment to clause 2 is more comprehensive, the Committee recommended that its amendment includes the definition “tea grower”.  Further, since Hon. Gichimu’s proposed amendment uses the term “blocks”, the Committee recommended that the definition should be provided for.
<b>Clause 5</b>	THAT, the Bill be amended in clause 5 (1) by inserting the following paragraph immediately after paragraph (c)-(d) coordinate, facilitate and promote marketing of Kenyan tea.	Since the Committee’s proposed amendment to clause 5 is more comprehensive after much deliberation, it was recommended that the Committee incorporates the amendment.

<p><b>Clause 7</b></p>	<p><b>THAT</b>, the Bill be amended in clause 7(1) –</p> <p>(a) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs–</p> <p>“(d) two persons of either gender, who shall have knowledge and experience in the tea sector and be from the East and West of tea growing areas, nominated by the Council of Governors;</p> <p>(e) four persons, two of either gender, representing and elected by small-holder tea growers from the east and west of the tea growing areas: Provided that the four persons shall be from different tea zones;</p> <p>(f) one person representing and elected by plantation tea growers;</p> <p>(g) one person representing and elected by tea traders;”</p> <p>(b) by inserting the following paragraph immediately after paragraph (g)–</p> <p>(ga) two persons nominated by the Kenya Tea Development Agency;</p>	<p>The Committee recommended that Hon. Gichimu’s amendment proceeds subject to modifications. The amendment will therefore provide as follows:</p> <p><b>CLAUSE 7</b></p> <p><b>THAT</b>, the Bill be amended in clause 7(1) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs–</p> <p>“(d) one person of either gender, who shall have knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternately by the Council of Governors;</p> <p>(e) four persons, two of either gender, representing and elected by small scale and medium scale tea growers from the East and West of the tea blocks:</p> <p>Provided that two persons shall be from each of the tea blocks;</p> <p>(f) one person elected and representing large scale tea growers;</p> <p>(g) one person elected and representing tea traders;”</p>
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**Hon. Ronald Tonui**

CLAUSE	PROPOSED AMENDMENT	COMMITTEE RECOMMENDATION
<p><b>Clause 2</b></p>	<p><b>THAT</b>, clause 2 of the Bill be amended by—</p> <p>(a) deleting the definition of “managing factory”;</p> <p>(b) inserting the following new definition in proper alphabetical sequence—</p> <p>“tea factory” means a factory registered and licensed to process green tea leaf into made tea;</p>	<p>The Committee recommended that since it has a comprehensive amendment to clause 2, the Committee’s amendment should be the one to proceed.</p>

<p><b>Clause 5</b></p>	<p>THAT, Clause 5 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (c)—</p> <p>“(d) facilitate access to international markets; (e) promote and monitor tea trade in Kenya; (f) facilitate the development of skills and adoption of appropriate value addition technologies for tea and tea products before domestic use and export from Kenya;”</p>	<p>The Committee has proposed a comprehensive amendment to clause 5 that caters for the concerns of the Member. The Committee allowed the Member to proceed with the amendment.</p>
<p><b>Clause 7</b></p>	<p>THAT, Clause 7 of the Bill be amended in sub-clause (1) (d) by inserting the words “from the East and West of tea growing areas” immediately after the words “either gender”.</p>	<p>The Committee, after much deliberation, recommended that Hon. Gichimu Githinji’s proposed amendment to clause 7 be proceeded with in a modified form.</p>
<p><b>Clause 20</b></p>	<p>THAT, Clause 20 of the Bill be amended—</p> <p>(a) in sub-clause (1) by inserting the following new paragraph immediately after paragraph (d)— “(da) construction of tea buying centers within the county;”</p> <p>(b) in sub-clause (2) by inserting the words “including construction of tea factories within counties” at the end of the subclause.</p>	<p>The Committee recommended that the proposed amendment should not be proceeded with because of the financial implications of the amendments.</p>
<p><b>Clause 25</b></p>	<p>THAT, Clause 25 of the Bill be amended by—</p> <p>(a) inserting the following paragraph immediately after the introductory statement— “(a) such monies as may be appropriated by the National Assembly;”</p> <p>(b) renumbering the existing paragraphs (a), (b), (c), (d) as (b), (c), (d), (e).</p>	<p>Since the Committee had a similar amendment, the Committee recommended that the Committee’s amendment proceeds.</p>
<p><b>New Clauses 29A and 29B</b></p>	<p>THAT, Clause 29 of the Bill be amended by inserting the following new clauses immediately after clause 29—</p> <p style="text-align: center;">Accounts and audit of a tea factory.</p> <p style="text-align: center;"><b>29A.</b> (1) A county government may cause to be prepared an internal audit report of a tea factory situated within its jurisdiction.</p> <p style="text-align: center;">(2) The internal audit report shall be tabled in the county assembly within which a tea factory is situated.</p> <p style="text-align: center;">Investment of funds.</p> <p style="text-align: center;"><b>29B.</b> The Board shall monitor the investment of any funds of</p>	<p>The Committee recommended that the proposed amendments should not be proceeded with.</p> <p>The import of the provisions is that the proposed New Clauses 29A and 29B are in conflict with the Public Audit Act. Most importantly, the tea factories are not public entities within the meaning of Article 229(4) of the Constitution hence their audits cannot be submitted to a county assembly. This is further buttressed in Article 229(5), (6) and (7) which provide as follows—</p> <p style="text-align: center;"><i>229. (5) The Auditor-General may audit and report on the accounts of any</i></p>

	tea growers and tea factories.	<p><i>entity that is funded from public funds.</i></p> <p><i>(6) An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.</i></p> <p><i>(7) Audit reports shall be submitted to Parliament or the relevant county assembly.</i></p> <p>Since the processors (or tea factories) will not be funded from public funds, the amendment will violate Article 229((4), (5), (6), and (7) of the Constitution and the Public Audit Act.</p>
<b>Clause 33</b>	<b>THAT</b> , Clause 33 of the Bill be amended by deleting sub-clause 2(d).	The Committee, after deliberations, recommended that fees to be charged should be provided for in regulations. Therefore, the Committee recommended that the Member's amendment should not be moved. Further, the Committee's amendment to clause 33 provides for the fees to be charged.

**Hon. Brighton Yegon**

<b>CLAUSE</b>	<b>PROPOSED AMENDMENT</b>	<b>COMMITTEE RECOMMENDATION</b>
<b>Clause 2</b>	<p><b>THAT</b>, clause 2 of the Bill be amended by deleting the definition "processor" and substituting therefor the following new definition—</p> <p>"processor" means a factory which processes green tea leaf into made tea;</p>	Since the Committee had proposed an amendment to clause 2 which is more comprehensive and caters for the Member's concerns, the Committee recommended that the Committee's amendment takes precedence.
<b>Clause 21</b>	<p><b>THAT</b>, clause 21 of the Bill be amended in sub-clause (2) by—</p> <p>(a) inserting the following new paragraph immediately after paragraph (b)—</p> <p>"(c) the net weight in kilogrammes of green leaf delivered and amount paid;"</p>	The Committee incorporated the proposed amendment in its amendments.

	(b) renumbering the existing paragraphs (c) and (d) as (d) and (e).	
New Clauses 23A and 23B	<p>THAT, the Bill be amended by inserting the following new clauses immediately after clause 23—</p> <p>Register of processors. 23A. The Board shall maintain a register, in such form as prescribed in regulations, of all processors licensed under section 22 and shall enter therein, in respect of each processor —</p> <p>(a) the full names of the processor; (b) the date of issue of the licence; (c) particulars of any cancellation, suspension or variation of the licence; (d) any other particulars the Board may deem necessary.</p> <p>Accounts and audit. 23B. (1) Every processor shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the processor. (2) Within the period of three months after the end of each financial year, the processor shall submit to the Auditor-General, the accounts of the Board in respect of that year together with a statement of income and expenditure. (3) The accounts of the processor shall be audited and reported upon in accordance with the provisions of the Public Audit Act.</p>	<p>The Committee recommended that the proposed new clause 23A be proceeded with by the Member. However, on the proposed new clause 23B, the Committee noted that the provision is unconstitutional.</p> <p>The processors (or tea factories) are not public entities within the meaning of Article 229(4) of the Constitution hence the Auditor-General does not have the power to audit them. Article 229(5), (6) and (7) of the Constitution provide as follows—</p> <p>229. (5) The Auditor-General may audit and report on the accounts of any entity that is funded from public funds. (6) An audit report shall confirm whether or not public money has been applied lawfully and in an effective way. (7) Audit reports shall be submitted to Parliament or the relevant county assembly.</p> <p>Since the processors (or tea factories) will not be funded from public funds, the Committee observed that amendment will violate Article 229((4), (5), (6), and (7) of the Constitution and the Public Audit Act and therefore recommended that it should not be proceeded with.</p>

**Hon. Ezekiel Machogu**

CLAUSE	PROPOSED AMENDMENT	COMMITTEE RECOMMENDATION
Clause 21	THAT, clause 21 of the Bill be amended in sub-clause (1) by inserting the words “with at least five acres of tea under cultivation” immediately after the words “tea grower”.	The Committee recommended that the amendment should not be proceeded with since persons with less than five acres of tea under cultivation ought also to be registered. Further, the

		Committee has sought to provide for deletion of Part III and substitution with a new Part III.
<b>New Clause 24A</b>	<p><b>NEW CLAUSE</b>  <b>THAT</b>, the Bill be amended by inserting the following new clause immediately after clause 24—</p> <p>Payment of tea growers. <b>24A.</b> (1) A processor shall pay a tea grower—</p> <p>(a) fifty per cent of the tea grower's selling price within fifteen days of the auction sale and direct sale;</p> <p>(b) the balance within thirty days of sale.</p> <p>(2) Despite subsection (1), a tea grower may agree with the processor to be paid—</p> <p>(a) in instalments every four months until the full payment is made;</p> <p>(b) at the end of the year but this payment shall be paid together with accrued interest.</p>	<p>The Committee, after deliberations and consultations, recommended that it provides for the proposed amendment in its amendments in the following manner:</p> <p>A tea factory shall within thirty days of receipt of the proceeds of the sale of tea, pay tea growers—</p> <p>(a) at least fifty per centum of payment due for green leaf delivered every month;</p> <p>(b) the balance due to the tea grower within three months from the end of financial year.</p>

**Hon. Eve Obara**

<b>CLAUSE</b>	<b>PROPOSED AMENDMENT</b>	<b>COMMITTEE RECOMMENDATION</b>
<b>Clause 32</b>	<b>THAT</b> , Clause 32 of the Bill be amended in sub-clause (1) by deleting the words "not less than twenty thousand shillings" appearing immediately after the words "on conviction, to a fine of" and substituting therefor the words "not exceeding five hundred thousand shillings".	Although the Committee also had an amendment to clause 32, it allowed the Member to proceed with her amendment.

**4 SUBMISSIONS FROM THE MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES**

6. The Cabinet Secretary Ministry Agriculture, Livestock, Fisheries and Cooperatives submitted proposed amendments to the Bill to the Committee and noted that the Bill had many gaps thus not sufficiently addressing challenges in the tea sub-sector. Some of the concerns raised by the Ministry include:

- Lack of a Tea Fund to address some of the challenges currently facing tea growers such as low earnings and delayed payments;
- The powers and functions of the Board require to be strengthened to effectively regulate all the value chain players and activities along the tea value chain;
- The licensing and registration provisions in the bill are weak and inadequate to effectively regulate the tea sub-sector;
- The bill lacks provisions to address poor governance practices, conflict of interest and management challenges along the tea value chain especially within the smallholder tea growers;
- Lack of provisions to regulate fees and commissions charged by value players for services rendered especially to tea growers such as management fees;
- Lack of provisions to deal with market abuse practices by dominant players in the value chain especially at the tea auction to ensure that the auction is transparent and has effective price discovery mechanisms;
- Promotion of value addition and branding to give our Kenyan tea identity in the international market.

7. Below is a matrix of the Ministry's proposed amendments, justifications, and Committee's recommendations

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION	COMMITTEE RECOMMENDATION
Clause 2	Amend clause 2 by inserting a new definition as follows—  “auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya;	Auction organizer is a key value chain player in the tea industry but has not been defined in the proposed bill. Regulation of tea auctions is also one of the functions that has been proposed to be included under clause 5(1)(c). It is therefore important to define the “auction organizer”.	The Committee has addressed the Ministry's proposals in its Committee Stage Amendments. It has a comprehensive list of definitions, most of them proposed by the Ministry.  The Committee agreed to the proposed new definition “auction organizer” .
	Delete the definition of broker under clause 2(b) of the Schedule and substitute it with the following:  “broker” means a person or company or firm who negotiates the purchase or sale of tea	Definition of tea broker is erroneous as it defines the tea brokers as “a person who negotiates the purchase or sale of tea between tea growers and buyers”. A tea broker usually negotiates sale or purchase of tea between processors and buyers.	The Committee agreed to the proposed amendment with slight modification as follows:  “broker” means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between

	between tea processors and buyers;		tea growers or tea factories and buyers for a fee;
	Delete the definition of dealer under clause 2 and substitute it with the following:  “Dealer” means a tea buyer, exporter, importer, packer, management agent, warehouseman and auction organizer;	Key players in the tea value chain such as packers, buyers, exporters, importers, warehousemen, auction organizer and managing agents have been omitted from the definition of dealer.	The Committee agreed to the proposed amendment with slight modification as follows:  “tea dealer” includes a warehouse operator, buyer, exporter, importer, broker, packer, manufacturer, management agent, and auction organizer;
	Amend the definition of managing factory to management agent as follows:  “management agent” means any person appointed by a tea factory through a specific management contract or agreement to perform or offer professional services in production, leaf transportation, processing, marketing, financial and related services;	The definition of managing factory should be management agent and not managing factory as there are no managing factories along the tea value chain.	The Committee agreed to the proposed amendment with slight modification as follows:  “management agent” means any person that is appointed by a tea factory through a specific management contract or agreement to perform or offer professional services other than company secretary services;
	Amend clause 2 by inserting sub-clause (2)—  “plantation tea grower” means a person cultivating tea in a parcel of land and who has own tea processing facility;  “smallholder tea grower” means a grower cultivating tea in a parcel or parcels of land without own individual tea processing facility;  “small holder tea processor” means a tea processor collectively owned through shares by smallholder tea growers;	A smallholder tea grower needs to be distinguished from a plantation tea grower and there is therefore need to define small holder tea grower and a plantation tea grower in the Bill.  The smallholder tea processors constitute the largest single segment of tea producers owned by smallholder tea growers. The smallholder tea growers are managed through a management agent and due to their vulnerability and uniqueness, the Board requires to exercise more oversight over the smallholder tea sub-sector to protect them from predatory behaviour of larger value chain players.	The Committee rejected the proposed definitions. Instead, it proposes three categories of tea growers as defined by acreage of land on which tea is cultivated.  The definitions are:  “small scale tea grower” means a grower cultivating tea in a parcel of land of less than ten acres;  “medium scale tea grower” means a person cultivating tea in a parcel of land of between ten and fifty acres;  “large scale tea grower” means a person cultivating tea in a parcel of land above fifty acres;



			<p>In place of “small holder tea processor” is “tea factory” defined as follows:</p> <p>“tea factory” means a factory that processes and manufactures tea leaf into made tea;</p>
Clause 5	<p>Amend clause 5(1) by substituting sub-clause 5(1) (a) as follows: 5(1) (a) develop, promote and regulate the tea industry;</p> <p>Amend clause 5(2) (b) by deleting it in its entirety and replacing it with the following:</p> <p>(b) regulate the establishment and operations of tea processors and dealers; (c) regulate tea auctions in Kenya; (d) regulate the sale, import and exports of tea; (e) licence tea processors and dealers;</p> <p>Amend clause 5 by adding the following new clauses after clause 5(2) (h): (i) Develop, implement and coordinate a national tea marketing strategy; (j) promote and advise on strategies for value addition and product diversification; (k) promote demand and consumption of tea locally and internationally; (l) identify market needs and trends and advise the Cabinet Secretary on issues related to national and international tea trade; (m) collaborate with national and international trade bodies on tea related matters; (n) establish standards on production, processing,</p>	<p>Functions of the Board</p> <p>-The amended Bill has omitted some critical functions which are critical for the development, promotion and regulation of the tea industry such as value addition, compliance and enforcement of tea standards, regulation of some critical market players at the export point, promotion and market access of tea;</p> <p>-These provisions are currently provided for under section 8 of the Crops Act, 2013 and were also functions of the Board under the repealed Tea Act 343.</p> <p>-According to the Fourth Schedule of the Constitution, primary production is a devolved function. Therefore, the function of registering growers and transporters shall be managed by the county governments.</p> <p>The tea value chain consists of smallholder tea growers, plantation tea growers, nursery propagators, green leaf transporters, manufacturers, management agents, warehousemen, buyers, exporters/importers, brokers, packers and auction organizers. In order to effectively regulate the tea industry, it is critical that all value chain players are brought within the ambit of the Tea Act through registering and licensing all persons dealing in tea. The activities of development and promotion should also be well</p>	<p>The Committee agreed to the proposed amendments with slight modifications. The Committee, in its Committee Stage Amendments, had proposed most of the amendments.</p>

	<p>transportation, packaging, blending, storage, preservation of tea and tea products;</p> <p>(o) monitor, conduct surveillance and enforce compliance with tea standards, Tea Act and any regulations made under the Act;</p> <p>(p) for planning, enhancing harmony and equity in the sector:</p> <p>(i) advise the national government on levies, fees and import or export duties on tea;</p> <p>(ii) advise the county governments on cess and fees;</p> <p>(q) undertake capacity building, technology transfer and technical assistance to the counties on matters related to tea;</p> <p>(r) carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments.</p>	<p>articulated in the functions of the Board to provide clarity.</p> <p>The Bill should therefore be amended to include all the players in the tea value chain and the functions that will enable the Board to regulate, develop and promote the entire tea industry effectively.</p>	
Clause 6	<p>Amend clause 6 by adding the following new clauses after clause 6(e) to read as:</p> <p>(f) collaborate with such bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the object and purpose for which the Board is established;</p> <p>(g) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;</p> <p>(h) ensure the proper and effective performance of the functions of the Board.</p>	<p>The amended bill has omitted some powers of the Board which are critical in enabling the Board to perform its functions effectively.</p>	<p>The Committee agreed to the proposed amendments.</p>
Clause 7	<p>Amend clause 7 by adding the following sub-clause after clause 7(1) (b):</p> <p>7(1) (c) The Principal Secretary responsible for the National</p>	<p>A representative from the National Treasury which is key in the funding and management of state corporations has been omitted in the composition of the Board of Directors.</p>	<p>The Committee retained its proposed amendment which amended clause 7(1) by deleting paragraph (c) and substituting therefor the following new paragraph—</p>

	<p>Treasury or a representative nominated by the Principal Secretary in writing.</p> <p>Renumbering sub-clause 7(1)(c) as 7(1)(d) and adding the word “and industry” after the word “trade”;</p>		<p>“(c) the Principal Secretary responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”</p> <p>The Committee rejected the amendment in the form proposed.</p> <p><b>Paragraph (c) provides for the Principal Secretary responsible for trade or a representative nominated by the Principal Secretary in writing. The use of the expression “responsible for” is meant to be used in a general manner and not to name a specific ministry or a state department.</b></p>
	<p>Renumbering sub-clause 7(1)(c) as 7(1)(d) and adding the word “and industry” after the words “trade”;</p>	<p>We propose to include industry in the Principal Secretary representing trade to read “trade and industry” owing to the importance of the state department of industrialization in the realization of the Big Four Agenda and Vision 2030.</p>	<p>The Committee rejected the proposed amendment.</p>
	<p>Deleting and substituting clause 7(1) (e) with “two persons of either gender with knowledge and experience in the tea sector, nominated by the Council of County Governors”;</p>	<p>In order to ensure that the Board has necessary mix of skills, the person nominated by the COG should also have experience and knowledge in the tea sector.</p>	<p>The Committee noted that the Ministry meant to refer to Clause 7(1) (d). The Committee rejected the proposed amendment and after deliberations taking into consideration amendments by other Members, it resolved to adopt Hon. Gichimu’s amendment with modifications as follows:</p> <p>“ (d) one person of either gender, who shall have knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternately by the Council of Governors;”</p>

	Amending clause 7(1)(f) by deleting the word “one person” and replacing it with the word “two persons”	The plantation sub-sector contributes over 40% of tea production. To ensure fair representation for the sub-sector in the board, we propose to increase their membership from one to two persons.	The Committee rejected the proposed amendment.
	Amending clause 7 by inserting a new sub clause 7(4) and 7(5) new sub-clauses as follows—  7(4) The Cabinet Secretary shall make rules for nomination of the members of the Board under sub-clause 7(f) (g), (h)  7(5) The rules made sub-clause 7(4) shall provide for mechanisms to ensure that no more than two thirds of the members so elected are of the same gender.	Provide guidelines for nomination of industry representatives	The Committee rejected the proposed amendment to the extent that it sought to provide for the Cabinet Secretary to make rules for nomination of members of the Board under sub-clause 7(f) (g), (h). However, it agreed to the gender parity provision.
Clause 8	Amend clause 8 by deleting it in its entirety and replacing it with the following:  8(1) The persons appointed under section 7(1) (a), (e), (f), (g) and (h) shall serve for a term of three years renewable for one further term.	Restate clause 8 to reflect the persons being appointed by the Cabinet Secretary.	The Committee agreed to the proposed amendment.
	Amend clause 8 by adding sub-clause 8(2) as follows:  8(1) The persons appointed under section 7(1) (a), (e), (f), (g) and (h) shall be appointed at different dates so that their respective expiry of terms of office shall fall at different times.	To ensure there is continuity in Board operations at all times, it is best practice to have different expiry periods for terms of office of members of the Board.	The Committee agreed to the proposed amendment with slight modification to provide that “not more than six months shall lapse between one appointment and another”.
Clause 9	Amend clause 9 of the Bill by adding the following: (h) otherwise fails to comply with the requirements of Chapter Six of the Constitution; (i) is convicted of an offence involving dishonesty or fraud.	The Bill omits the requirements of Chapter 6 of the Constitution.	The Committee rejected the proposed amendments for the following reasons:  (i) To provide for failure to comply with the requirements of Chapter Six of the Constitution is ambiguous when referring to grounds for

			<p>vacation of office and in light of specific provisions including conviction of a criminal offence</p> <p>(ii) in relation to the second proposed amendment on conviction of an offence involving dishonesty or fraud—</p> <ul style="list-style-type: none"> <li>• the Bill already provides under paragraph (d) for conviction of a criminal offence and sentence to a term of imprisonment of not less than six months</li> <li>• The ground provided in the Bill is broader but the Ministry's is restricted to only dishonesty or fraud which still constitutes a criminal offence under the Penal Code.</li> </ul>
Clause 13(1)	<p>Amend clause 13(1) by deleting it in its entirety and replacing it with the following:</p> <p>13(1) The Director-General who is the chief executive officer shall be competitively recruited and appointed by the Board on such terms and conditions as the Board may determine.</p>	<p>This is in order to adopt best practice like in other major tea producing countries such as Sri Lanka Tea Board and Tea Board of India where the title of the Chief Executive Officer is Director-General.</p>	<p>The Committee rejected the proposed amendment. Title to be used either for the chief executive officer or Director-General, is a matter of style. The Committee was not persuaded by the reasons given.</p>
Clause 13(3)	<p>Amend clause 13(3) by deleting it in its entirety and replacing it with the following:</p> <p>(a) holds a relevant advanced degree from a university recognized in Kenya;  (b) has at least ten years' knowledge and experience and experience in a relevant field;  (c) has at least five years' experience in a position of senior management</p>	<p>The Bill has omitted some of the qualifications prescribed under the Mwongozo Code of Governance for State Corporations, 2015 from the requirements to be met by the Chief Executive Officer.</p>	<p>The Committee agreed to the proposed amendment.</p>

	(d) meets the requirements of Chapter Six of the Constitution.		
Clause 15	<p>Delete and substitute clause 15(1) with “There shall be a Corporation Secretary who shall be the secretary to the Board”.</p> <p>Delete and substitute clause 15(2) with “The terms and conditions of service of the Corporation Secretary shall be determined by the Board.”</p> <p>Delete clauses 15(3) and (4).</p>	<p>According to the Mwongozo Code of Governancne, the terms and conditions of service for a Corporation Secretary are determined by the Board in accordance with terms applicable to the staff of that corporation. The terms and conditions of the Corporation Secretary should be determined by the Board in accordance to the organizational structure and human resource policy.</p> <p>The job description of the Corporation Secretary should also be specified in the human resource manual of the Board and not in the Act to provide for flexibility to the requirements of the Board.</p>	<p>The Committee rejected the proposed amendment. Clause 15(3) and (4) are important provisions since they provide clarity on the qualifications of a Corporation Secretary and his or her role.</p>
Clause 20	<p>Amend clause 20(1) (b) by adding the words “pests and” before the word “disease control”</p> <p>Amend clause 20(1) (c) by adding the words “within the county” after the word “markets”.</p>	<p>To provide clarity on the role of the counties as per the Fourth Schedule of the Constitution.</p>	<p>The Committee agreed to the proposed amendment. It had already provided for it in its Committee Stage Amendments.</p>
	<p>Add the following clauses after clause 20(2)(e): -</p> <ul style="list-style-type: none"> <li>- 20(2)(f) “Register commercial tea nursery operators”</li> <li>- 20(2)(g) “implement standards on production”</li> <li>- 20(2)(h) “maintenance of access roads in the tea growing areas”</li> <li>- 20(2)(i) “Surveying and mapping of tea growing areas within the county in collaboration with the Board”</li> </ul>	<p>To provide clarity on the role of the counties as per the 4th schedule of the constitution</p>	<p>The Committee rejected the proposed amendments except for the registration of commercial tea nursery operators. The provisions of the introductory statement to clause 20(1) (b)</p> <ul style="list-style-type: none"> <li>(i) the development of tea grown within the county;</li> <li>(ii) tea disease and pest control;</li> <li>(iii) markets within the county;</li> <li>(iv) cooperative societies within the county;</li> <li>(v) register commercial tea nursery operators</li> </ul>

			(vi) soil and water conservation.
Clause 21	<p>Amend clause 21(1) by deleting it in its entirety and replacing it with the following:</p> <p>21(1) Every smallholder tea grower shall register with a processor to which the person delivers green leaf by supplying such particulars as the Board may prescribe.</p> <p>(2) A person shall not sell or offer for sale green leaf unless the person is registered with a processor in accordance with this Act.</p> <p>(3) A tea grower shall not sell green leaf to any person other than the tea processor where they are registered.</p> <p>(4) A tea grower wishing to change the processor where they deliver their green leaf shall inform their respective processor by giving a minimum notice of thirty days.</p> <p>(5) Any tea grower who sells or offers for sale green leaf to any person other than the tea processor where they are registered commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding six months or to both.</p>	<p>The Bill should be amended to provide that a tea grower should register with the processor where they deliver green leaf. This will assist the processor to be certain of the growers who will supply green leaf and the amount of leaf expected per year for planning purposes.</p> <p>A tea grower may move from one factory to another but in a controlled way to avoid disrupting factory production and promote liberalization.</p>	<p>The Committee agreed to the proposed amendment with modifications.</p>
Clause 22	<p>Amend clause 22 by deleting it in its entirety and substituting it with the following:</p> <p>(1) A person shall not deal or process tea, or tea products except under and in accordance</p>	<p>Clause 22 has omitted important aspects of licensing of processors and dealers which are critical in regulation of the tea industry. The provisions on illegal processing/manufacture or illegal dealing in tea are critical to enable the Board deal and prosecute cases</p>	<p>The Committee noted that most of the proposed amendments had been already been provided for by the Committee under the new Part III (regulatory provisions) specifically under clause 24.</p>

<p>with a licence issued under this Act.</p> <p>(2) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.</p> <p>(3) An application for a licence under this section shall be in writing and in the prescribed form and shall be accompanied by the prescribed fee.</p> <p>(4) The Board may—</p> <p>(a) issue a licence, in accordance with this Act;</p> <p>(b) refuse to issue the licence on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof;</p> <p>(c) cancel, vary, suspend or revoke any licence if in the findings of the Board, the licensee is found to have contravened the regulations made under this Act for the operation of processing entities or dealing in tea.</p> <p>(5) Before cancelling, varying, suspending or revoking a license issued under this Act, the Board shall give the person to be affected by such action an opportunity to be heard in line with provisions of the Fair Administrative Action Act, 2015.</p> <p>(6) Before issuing a licence to a smallholder tea processor under this Act, the Board shall satisfy itself that the applicant's board</p>	<p>of illegal manufacture and possession of tea by persons who are not tea growers or dealers commonly referred to as "tea hawking".</p> <p>Incidences of illegal tea manufacture, transportation where standards are not being adhered to are contributing to the deteriorating quality of Kenya tea and affecting the price of Kenyan tea in the international market.</p> <p>The section has also omitted critical chain players like warehousemen, auction organizers, packers and tea brokers from being licensed by the Board.</p> <p>In order to provide for licensing of all value chain players, it is important to overhaul the whole section 22 of the proposed Tea Bill and incorporate all aspects of regulation.</p> <p>In addition, smallholder tea growers return on investments has been on a decline therefore the Act proposes measures to safeguard the interest and welfare of the smallholder tea growers.</p> <p>In order to address governance challenges within the smallholder sector which have over time affected tea earnings for smallholder tea growers, there is need to give oversight powers to the Tea Board with respect appointment of board members for smallholder tea processors. This will promote good corporate governance, mainstream gender parity in the sector and ensure efficient utilization of resources.</p>	<p>The Committee recommended that the Ministry's proposed amendment on the penalty under subclause (2) should be changed to a term of imprisonment not exceeding two years or to a fine not exceeding five million shillings.</p> <p>The Committee recommended that the proposed subclause (7) (a) (ii) should be amended by retaining the term of imprisonment not exceeding five years but the fine should be increased to a fine not exceeding ten million shillings.</p> <p>The Committee rejected the Ministry's proposed subclause (11) and retained its amendment to clause 38 of the Bill.</p> <p>While agreeing to the Ministry's proposed subclause (17), the Committee recommended that the provision be amended to place the responsibility on the Board to put in place mechanisms to ensure that not more than two thirds of the board members elected to the board of directors of a tea factory shall be of the same gender. Further, the Committee recommended that an amendment be made to insert the words "or appointed" immediately after the words "elected".</p> <p>The Committee agreed to the proposed subclause (18) subject to the amendment so that the provision will provide as follows:</p>
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<p>of directors is constituted in a manner prescribed by the Board.</p> <p>(7) A person who—</p> <p>(a) processes tea for sale in contravention of this Act;</p> <p>(b) buys, sells, offers for sale, transports or has possession tea which to the person's knowledge or belief—</p> <p>(i) has been grown or processed otherwise than in accordance with this Act;</p> <p>(ii) is from a non-registered grower or dealer of tea,</p> <p>commits an offence and shall be liable, on conviction, to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years, or both.</p> <p>(8) If a person is in possession or has control of tea for which the person is unable to account to the satisfaction of a person authorized under this Act, such tea shall be deemed to have been grown, processed or dried otherwise than in accordance with this Act until the contrary is proved.</p> <p>(9) The Board may seize and remove or order the removal of any processed tea or processing capacity where it has reasonable grounds to believe that the processed tea or processing capacity has been processed or installed contrary to the conditions of the licence issued under this Act.</p> <p>(10) If a person is convicted of an offence under this section, the court shall order that any tea, vehicle, equipment, vessel or</p>		<p>A management agreement between a management agent and a tea factory, shall be—</p> <p>(a) submitted to the Board for review and approval before execution by parties; and</p> <p>(b) for a period of five years, and may be renewed upon expiry at the discretion of the tea factory.</p>
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<p>other conveyance in relation to which an offence has been committed shall be forfeited to the Government unless, in the case of a vehicle, equipment, vessel or other conveyance, the court sees good reason, to be recorded by it in writing, not to do so.</p> <p>(11) Licenses issued under this Act shall remain in force until the thirtieth of June next following the date of issue, unless earlier cancelled.</p> <p>(12) There shall be payable for the issue of licences under this Act such fees as the Board may prescribe.</p> <p>(13) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the licence and to any conditions which may be prescribed.</p> <p>(14) The Board may cancel, revoke, vary or suspend a licence issued under this Act if in its opinion—</p> <p>(a) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the license holder or any employee of the license holder; or</p> <p>(b) a condition of the license has been contravened or not complied with.</p> <p>(15) The holder of a license which is revoked shall immediately surrender it to the Board.</p> <p>(16) All fees to be charged to a tea processor or tea grower by a broker, management agent and</p>		
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	<p>auction organizer shall be subject to prior approval by the Board.</p> <p>(17) Smallholder tea processors shall put in place mechanisms to ensure that not more than two thirds of the board members elected to the board are of the same gender.</p> <p>(18) All management agreements between a management agent and a smallholder tea processor, shall be submitted to the Board for approval.</p> <p>(19) An auction organizer shall develop trading rules to govern its operations and the trading rules shall be submitted to the Board for approval.</p>		
<p>New Clause 22A</p>	<p>Amend the bill by introducing a new Clause 22A as follows:</p> <p>(1) A tea grower shall not sell green leaf to any person other than to the tea factory where they are registered.</p> <p>(2) A factory shall only buy green leaf from its registered tea growers.</p> <p>(3) Any fee, commission or other dues charged by a tea broker, management agent or an auction organizer shall be subject to prior approval by the Board.</p> <p>(4) The board of directors for smallholder tea factory limited companies shall be elected through a democratic system of one grower, one vote.</p> <p>(5) The Board membership for smallholder tea factory limited companies shall be a maximum of three (3) members.</p>	<p>PART III: Regulatory Provisions</p> <p>- In order to address the various challenges facing the tea subsector, including leaf hawking, governance challenges in smallholder tea factories and improve operation efficiency at the tea auction, the regulatory provisions of the Tea Bill need to be strengthened. further</p> <p>- Smallholder tea growers return on investments has been on a decline therefore the Bill should incorporate measures to safeguard the interest and welfare of the smallholder tea growers.</p> <p>- In order to address governance challenges within the smallholder subsector which have overtime affected tea earnings for smallholder tea growers, there is need to give oversight powers to the proposed Board with respect to the appointment of board members for smallholder tea</p>	<p><b>The Committee recommended as follows:</b></p> <p>On the proposed clause 22A (1), the Committee noted that it had already provided for it in its amendments.</p> <p>On the proposed clause 22A (2), the Committee agreed to it.</p> <p>On the proposed clause 22A (3), the Committee noted that it had provided for it but recommended that it be amended to include the words "commissions or other dues".</p> <p>On the proposed clause 22A (4), the Committee agreed to it;</p> <p>On the proposed clause 22A (5), the Committee agreed to the proposed amendment save for the amendment of members to five.</p>

<p>(6) Where a Board member is temporarily unable to perform their duties, the Board may appoint another person from the respective zone to act in their place during the period of absence.</p> <p>(7) The cabinet Secretary may issue guidelines to guide such an appointment.</p> <p>(8) The tenure of the board members for smallholder tea factory limited companies shall be for a maximum of two terms of three years each.</p> <p>(9) Smallholder tea processors shall put in place mechanisms to ensure that not more than two thirds of the board members elected to the board are of the same gender.</p> <p>(10)The Cabinet Secretary may make rules to guide election of directors for smallholder tea factories limited companies.</p> <p>(11)A management agent agreement between a smallholder tea factory and the management agent shall be for a period not exceeding five (5) years.</p> <p>(12)The remuneration for services rendered by a management agent to a smallholder tea factory limited company shall not exceed one point five percent (1.5%) of the net sales value of the tea sold at the auction per year.</p> <p>(13) The staff costs for personnel seconded to the smallholder tea factory limited company by a management agent shall be borne by a management</p>	<p>processors. This will promote good corporate governance, mainstream gender parity in the sector and ensure efficient utilization of resources.</p> <p><b>Branding</b> In order to promote branding of Kenyan tea introduce a provision requiring persons to declare the percentage of Kenyan tea in their blends.</p> <p><b>Harmonization of Fees and Charges</b> To harmonize fees and charges across the tea sub-sector empower the Cabinet Secretary to work with counties to harmonize the fees and charges on tea.</p>	<p>On the proposed clause 22A (6), the Committee agreed to it.</p> <p>On the proposed clause 22A (7), the Committee rejected it as this should be provided in regulations.</p> <p>On the proposed clause 22A (8), the Committee agreed to it.</p> <p>On the proposed clause 22A (9), the Committee agreed to it except to amend it to place the responsibility on the Board and to insert the word “or appointed” immediately after the word “elected”.</p> <p>On the proposed clause 22A (10), the Committee rejected it since it should be provided in regulations. One of the issues that are provided in the regulations is the procedures for ensuring internal democracy in tea growers’ institutions and organizations.</p> <p>On the proposed clause 22A (11), the Committee rejected the proposed amendment since the duration of the management agreement has been capped at five years. The Committee therefore recommended the provision to provide as follows:</p> <p>(3) A management agreement between a management agent and a tea factory, shall be—</p> <p>(a) submitted to the Board for review and approval before execution by parties; and</p> <p>(b) for a period of five years, and may be renewed upon expiry at the discretion of the tea factory.</p>
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	<p>agent and not directly by a smallholder tea factory limited company.</p> <p>(14) All management agreements between a management agent and a smallholder tea factory limited company, shall be submitted to the Board for approval.</p> <p>(15) A smallholder tea factory limited company shall put in place a procurement policy to provide for competitive procurement of goods and services.</p> <p>(16) All tea buyers /exporters shall value add at least forty percent (40%) of their annual Kenya tea exports.</p> <p>(17) The Cabinet Secretary may by regulations make further provisions on value addition of tea exports and imports.</p> <p>(18) A smallholder tea factory shall recruit its own in-house Company Secretary or outsource the service.</p> <p>(19) Company Secretary Services shall be excluded from services offered by a management agent to a smallholder tea factory limited company.</p> <p>(20) A director of a smallholder tea factory shall not serve as a director in another company having a direct or indirect commercial relationship with the smallholder tea factory where the person is serving as a director.</p> <p>(21) A person who imports tea into Kenya shall prior to importation—</p> <p>(a) provide evidence that the teas they intend to</p>		<p>On the proposed clause 22A (12), the Committee agreed to it.</p> <p>On the proposed clause 22A (13), the Committee agreed to it.</p> <p>On the proposed clause 22A (14), the Committee agreed to it.</p> <p>On the proposed clause 22A (15), the Committee agreed to it.</p> <p>On the proposed clause 22A (16) and (17), the Committee agreed to it but in the following form:</p> <p>(1) All tea buyers or exporters shall value add at least forty per centum of their annual Kenya tea exports within eight years of the commencement of this Act.</p> <p>(2) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, facilitate the establishment of Common User Facility for tea value addition as may be prescribed.</p> <p>On the proposed clause 22A (18) and (19), the Committee agreed to it but recommended an additional provision to provide that a tea factory may enter into an arrangement with one or more tea factories to have a joint in-house Company Secretary.</p> <p>On the proposed clause 22A (20), the Committee agreed to it but recommended an additional provision to provide that where the provision recommended by</p>
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<p>import are not available in the local market or at the tea auction;</p> <p>(b) provide a sample of the teas to be imported and pre-import verification certificate from the country of origin; and</p> <p>(c) obtain pre-import approval from the Board.</p> <p>(22) All tea factory limited companies shall register with the Authority and the Auction organizer to participate in the tea auction directly and not through management agents or other service providers.</p> <p>(23) All tea auction organizers shall establish an electronic trading platform for the auction of tea.</p> <p>(24) All teas processed and manufactured in Kenya for the export market with the exception of orthodox and specialty teas shall be offered for sale exclusively at the tea auction floor.</p> <p>(25) A buyer shall pay in full (100%) the value of the tea bids they have won at the auction before collecting and/or taking custody of the tea.</p> <p>(26) Tea brokers, buyers and the auction organizers shall ensure that the proceeds from the sale of tea are remitted to the tea factories accounts within fourteen (14) days from the date of the auction.</p>		<p>the Ministry applies, a director of a tea factory shall forthwith relinquish his or her position.</p> <p>On the proposed clause 22A (21), the Committee agreed to it.</p> <p>On the proposed clause 22A (22), the Committee agreed to the proposed amendment.</p> <p>On the proposed clause 22A (23), the Committee agreed to it.</p> <p>On the proposed clause 22A (24), the Committee agreed to it.</p> <p>On the proposed clause 22A (25), (26), and (27), the Committee agreed to the proposed amendment. The Committee agreed to the proposed clause 22A (28) with modifications.</p> <p>On the proposed clause 22A (29), the Committee rejected it because the power may be abused.</p> <p>On the proposed clause 22A (30), the Committee agreed to it subject to the deletion of the words "Cabinet Secretary" and substitution with "the Board".</p> <p>On the proposed clause 22A (31), the Committee rejected it since the matters shall be provided for in regulations.</p> <p>On the proposed clause 22A (32), (33) and (34), the Committee agreed to them.</p>
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	<p>(27) A Smallholder tea factory shall within thirty (30) days of receipt of the proceeds of the sale of tea pay tea growers at least 50% of payment due for green leaf delivered every month; and the balance due to the tea grower shall be made within three months from the end of financial year.</p> <p>(28) The Cabinet Secretary may issue further guidelines and operation procedures on the organization, rules, regulations, management and governance structures for tea auctions in furtherance of competition, good governance, auction efficiency, transparency and price discovery.</p> <p>(29) The Cabinet Secretary may take further administrative action or other lawful sanctions against a tea broker, tea factory limited company, buyer/exporter, importer and any other player at the tea auction for any actions that undermine the proper, efficient, competitive and transparent operation of the auction process.</p> <p>(30) An auction organizer shall develop trading rules to govern its operations and the trading rules shall be submitted to the Cabinet Secretary for approval.</p> <p>(31) The trading rules and regulations developed by an auction organizer shall provide for: —</p> <p>(a) the carrying on of the tea auction generally and details of trading clearing and settlement systems</p>		
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	<p>proposed to be used by the auction organizer;</p> <p>(b) mechanisms put in place to prevent market abuse practices;</p> <p>(c) reasonable access to all registered members to participate at the auction;</p> <p>(d) mechanisms for effectively investigating breaches of the trading rules, enforcing the trading rules and providing for appeals;</p> <p>(e) reporting procedures to the Authority whenever it rejects any application for membership, where it suspends or expel a member or where it suspends trading;</p> <p>(f) procedures for expulsion, suspension or disciplinary action against members for conduct inconsistent with just and equitable principle relating to trading in tea or for contravention of the trading rules and regulations.</p> <p>(g) the clear demarcation of roles and responsibilities of the board, chief executive officer and the committees of the board;</p> <p>(h) the appointment of directors and a fair representation of persons in the selection of members of the board and administration of its affairs including professions relevant to the tea industry;</p> <p>(i) the powers of the chief executive officer including in emergency situations;</p> <p>(j) the governance of the conduct of activities of its members, including their responsibility to act with integrity.</p>		
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	<p>(k) mechanisms to ensure that there is no conflict of interest in dealings amongst its members.</p> <p>(l) mechanisms for engagement and consultations with all its members and other relevant stakeholders.</p> <p>(m) rules of membership and conditions for approval and admission of members.</p> <p>(32) A person who blends any or various grades of tea produced in Kenya with any other tea produced outside Kenya shall declare the percentage of Kenyan tea on the packaging and on the blend sheet.</p> <p>(33) A County Government shall not impose any fees on tea that in any way prejudices national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.</p> <p>The Cabinet Secretary shall using the structures established under the Intergovernmental Relations Act put in place mechanisms to harmonize fees and charges on tea across Counties.</p>		
<p>Clause 23</p>	<p>Clause 23 be amended by deleting the words “upon the expiry of three years” and substituting them with the word “annually”.</p>	<p>A licence is one of the key tools that is used for enforcing regulations and standards by the regulator as well as ensuring a level playing field and law and order. Before issuing any licences the Board usually conducts compliance monitoring to confirm compliance with the Act and other relevant licensing requirements.</p>	<p>The Committee noted that the new regulatory Part III deleted clause 23 and has recast the provision differently in the following manner:</p> <p>An application for the renewal of a licence under this Act shall be made to the Board in a form prescribed not later than the</p>

		The proposed period of 3 years for renewal of licences will make compliance and enforcement of regulations, local and international ineffective. The period of validity of licences should be one year.	first day of the month of June in which the current licence is due to expire.
Clause 24	<p>Amend clause 24 renumbering it as clause 24(1) and inserting clause 24(2) and (3) as follows:</p> <p>(2) The Board shall formulate and implement a National Tea Marketing Strategy at least once every five (5) years.</p> <p>(3) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, put in place programmes for the establishment of Common User Facilities (CUFs) and promotion of the Special Economic Zones (SEZs) for value addition in the tea sub-sector.</p>	<p>Kenya is among the top three global tea producers and the leading exporter in Black tea commanding 27% of global tea exports.</p> <p>Our tea is exported to over 60 market destinations with traditional markets accounting for 70%. To address the narrow market and product range, of the country's major export product there is need to continuously develop and implement a Marketing Strategy dedicated to identification and growth of new markets, market promotion, focused market research and intelligence to expand and develop value addition strategies.</p> <p>The tea industry has been doing low levels of value addition (packaging, labelling and branding) and also low levels of product diversification from black CTC teas. To address this challenge and provide an enabling business environment Special Economic Zones (SEZs) will support growth of competitiveness in value addition and product diversification.</p>	<p>The Committee recommended that the national tea marketing strategy should be one of the components to be provided for in the regulations.</p> <p>On the proposed amendment in relation to Special Economic Zones, the Committee noted that the Special Economic Zones Act (No. 16 of 2015) provides the legal framework on the declaration of Special Economic Zones. This is a responsibility placed on the Cabinet Secretary responsible for industrialization. Section 4(1) of the Act provides as follows:</p> <p><i>4. Declaration of special economic zones.</i></p> <p><i>(1) The Cabinet Secretary shall, on the recommendation of the Authority, and in consultation with the Cabinet Secretary responsible for matters relating to finance declare, by notice in the Gazette, any area as a Special Economic Zone as set out in the First Schedule.</i></p>
Clause 25	<p>Amend clause 25 by inserting a new paragraph € as follows:</p> <p>25(e) such monies as may be appropriated by Parliament for the purposes of the Board.</p>	The clause has omitted monies appropriated by Parliament for the purposes of the Board from funds of the Board.	

<p>New Clause</p>	<p>26(1) The Cabinet Secretary may by notice in the Gazette, impose a levy to be levied on tea exports, to be known as a tea levy.</p> <p>(2) The levy imposed through a notice under subsection (1) shall be collected by the Board at a rate not exceeding two percent (2%) of the auction value for teas sold through the auction and transaction value for tea sold outside the auction and at such times (being not earlier than one after the date of publication of the notice) in such a manner, as is specified in the notice.</p> <p>(3) The levy imposed under this section shall be levied and collected in such manner as the Cabinet Secretary may prescribe through regulations.</p> <p>(4) The tea levy collected under subsection (2) shall be apportioned as follows:  (a) 50% shall be applied by the Board for income/price stabilization for tea growers;  (b) 30% shall be applied by the Board in the furtherance or exercise of any function or power of the Board;  (c) 10% shall be remitted directly to the Tea Research Institute;  (d) 10% shall be applied for infrastructure development in the tea subsector;</p> <p>(5) Notwithstanding the provision of subsection 4(a) any reserve from the income (price stabilization levy under subsection 4(a), may be used by the Board for the benefit of tea growers for all or any of the following purposes:</p>	<p>Establishment of a Tea Levy</p> <p>The tea subsector has been unable to undertake sustainable regulation, marketing and promotion and research activities due to limited funding among other challenges. For development of the tea industry, there is need for a sustainable funding model. This can be achieved by introducing a levy not exceeding 2% of the auction value of the teas. The levy will be a consumer levy charged at the point of export so as not to overburden the tea farmer with levies and taxes. The tea levy will be ploughed back to the development of the tea industry. The Ministry further proposes that 50% of the proposed tea levy be earmarked for the establishment of a price/income stabilization fund to facilitate the setting up of a framework for sustainable minimum guaranteed returns for tea growers. In the event that there are reserves from the income/stabilization fund, the same will be utilized for payment of bonuses to smallholder tea growers, input support such as provision of subsidized fertilizer and credit for capital replacement for smallholder tea factories. 30% will be applied by the Board to:  -Enhance market access of Kenya tea in the emerging markets such as Russia, China, Japan, Common Wealth of independent States, North America, Iran and Poland;  -Enhance value addition and product diversification by establishment of a Tea Incubation Centre and a Common User Facility (CUF) to support Micro, Small, and Medium Enterprises (MSMEs);  -Capacity build county governments and tea stakeholders;</p>	<p>The Committee agreed to the proposed amendment subject to modifications. Since it had been first proposed by Hon. Cecily Mbarire and an agreement was reached, the Committee agreed to incorporate it in its amendments.</p> <p>The Committee recommended that the rate levied should be reduced from two per centum to a rate not exceeding one per centum of the auction value for teas sold through the auction.</p> <p>The Committee further recommended that the apportionment be in the following manner:</p> <p>(a) fifty per centum shall be applied by the Board for income or price stabilization for tea growers;  (b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;  (c) twenty per centum shall be remitted directly to the Tea Research Foundation;  (d) fifteen per centum shall be applied for infrastructure development in the tea subsector on a pro rata basis.</p> <p>On the proposed amendment providing that “the levy on tea imports shall be charged at a rate of 50% of the value of imported teas”, the Committee recommended the rate be capped at one hundred per centum in order to protect the domestic tea market and to discourage importation of cheap tea.</p>
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	<p>(a) payment of bonuses to smallholder tea growers;</p> <p>(b) input support scheme for tea growers;</p> <p>(c) credit for capital replacement for small holder tea factories.</p> <p>(6) The levy on tea imports shall be charged at a rate of 50% of the value of imported teas.</p> <p>(6) A person who fails to pay the tea levy imposed under this Act commits an offence.</p>	<p>10% of the levy shall be utilized to support research in tea which is currently underfunded and has significantly reduced on research work while remaining 10% shall be utilized for infrastructure development in the tea growing areas.</p> <p>This levy will be catered from the savings realized from the reduction of management fees which has been reduced from 2.5% to a maximum of 1.5% and brokerage fees which has been reduced from 1.25% to a maximum of 0.75% through the gazettelement fo the Tea Industry Regulations, 2020.</p>	
New Clause	<p>27(1) There is established a Fund to be known as the Tea Fund which shall be managed by the Board.</p> <p>(2) The Fund shall consist of-</p> <p>(a) monies appropriated by Parliament;</p> <p>(b) monies from the tea levy;</p> <p>(c) monies from a source approved by the Board;</p> <p>(d) grants and donations made to the Board.</p> <p>(3) The Board shall apply the monies received into the Fund to:</p> <p>(a) income/price stabilization;</p> <p>(b) market research and development;</p> <p>(c) value addition and product diversification;</p> <p>(d) conduct research; and</p> <p>(e) offer credit assistance to growers;</p> <p>(f) carry out the operations of the Board including regulation, compliance, enforcement and promotion;</p> <p>(g) any other lawful purpose approved by the Board.</p> <p>(5) The Board may, from time to time, issue guidelines for the</p>	<p>There is need to establish a tea fund for managing resources generated from the tea levy, Government grants and other sources for financing research, crop development, regulation, product promotion and value addition, establishing income stabilization fund for cushioning farmers from price fluctuations.</p>	<p>The Committee agreed to the proposed amendment subject to modifications. Since it had been first proposed by Hon. Cecily Mbarire and an agreement was reached, the Committee agreed to incorporate it in its amendments.</p> <p>However, the Committee recommended that an amendment be made on the manner of application of the monies received into the Tea Fund. Thus:</p> <p>The Board shall apply the monies received into the Fund to—</p> <p>(a) income or price stabilization;</p> <p>(b) research and development.</p>

	better management for the Fund in the best interest of tea growers, dealers and processors.		
Clause 26	<p>Amend clause 26(3) by deleting it in its entirety and substituting it with the following:</p> <p>(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.</p> <p>Amend clause 26 by introducing a new sub-clause 4 as follows:</p> <p>(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary.</p>	The period for preparation and presentation of annual estimates is prescribed in sections 31-43 of the Public Finance Management (PFM) Act 2012 and PFM Regulations 2015. The provisions on annual estimates should therefore be aligned to the said Act and Regulations.	The Committee agreed to the proposed amendment.
Clause 27	<p>Delete clause 27(1) in its entirety and substitute it with the following:</p> <p>(1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure and assets of the Board.</p> <p>(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Board together with—</p> <p>(a) a statement of the income and expenditure of the Board during that year; and</p> <p>(b) a statement of financial position of the Board on the last day of that year.</p> <p>(3) The accounts of the Board shall be audited and reported</p>	<p>-The period for preparation and presentation of financial statements is prescribed under section 101(4) the Public Finance Management (PFM) Act 2012 and PFM Regulations 2015 and should therefore not be varied as per the current provisions of the Bill.</p> <p>- Article 229(4) of the Constitution requires the Auditor-General to audit financial statements and give a report 6 months after the end of the financial year and it is therefore not feasible to present it together with financial statements after 3 months.</p> <p>- In addition, financial statements are prepared in accordance with the International Public Sector Accounting Standards (IPSAS Accrual). The term “balance sheet” is no longer used in accounting and should be deleted.</p>	The Committee agreed to the proposed amendment.

	upon in accordance with the provisions of the Public Audit Act, 2015.		
	<p>Amend clause 28(2) by deleting the words “balance sheet after the word report” and substituting it with “Financial Statements”.</p> <p>Amend clause 28(3) by deleting and substituting the words “balance sheet and statements” in clause 28(3) with “financial statements”.</p>	<p>Annual report and publication</p> <p>-The period for preparation and presentation of financial statements is prescribed under section 101(4) of the Public Finance Management (PFM) Act 2012 and PFM Regulations 2015 and cannot be varied by the Cabinet Secretary as stipulated in the proposed Tea Bill</p> <p>-Article 229(4) of the Constitution of Kenya requires the Auditor-General to audit financial statements and give a report 6 months after the end of the financial year and it is therefore not feasible to present it together with financial statements after 3 months.</p> <p>-Financial statements are prepared in accordance with the International Public Sector Accounting Standards (IPSAS Accrual) and the term “balance sheet” is no longer used.</p>	The Committee agreed to the proposed amendment.
New Clause	<p>Introduce new clause 30 as follows:</p> <p>30(1) There is established an advisory body to be known as Kenya Tea Council.</p> <p>(2) The function of the Council shall be to advocate for the national interests of the tea industry.</p> <p>(3) Membership of the council shall be drawn from tea industry value chain players.</p> <p>(4) The Cabinet Secretary shall formulate rules to guide the operations of the tea council.</p>	<p>For many years, the tea sector has lacked a national all-inclusive stakeholders’ body to address matters of common interest. A Tea Council to articulate common interests within the tea industry with membership from tea stakeholders is an ideal forum for addressing emerging and dynamic issues affecting the tea industry. The Council will also advocate for the interests of the tea industry at the national and county level. The establishment of a national Tea Council was also recommended by the Tea Industry Task Force 2016.</p>	<p>The Committee rejected the proposed amendment for the following reasons:</p> <p>(i) The proposed Kenya Tea Council adds another layer of a body besides the proposed Tea Board of Kenya whose members are largely a replica of the Tea Board of Kenya;</p> <p>(ii) A forum as proposed may still be convened without necessarily providing for it in the Act;</p> <p>(iii)The proposed Tea Council shall be an added cost considering that there are other amendments on the tea levy, Tea Fund, Tea Research Foundation and</p>

			this cost will cascade to the farmer.
Clause 33	<p>Amend clause 33 by inserting the following paragraphs after paragraph (e):</p> <p>(g) The procedure for licensing of dealers and processor;</p> <p>(h) The appeal process in case of refusal or denial of a licence;</p> <p>(i) Regulating and monitoring the entire value chain in the tea sub-sector;</p> <p>(j) Rules to regulate the conduct of tea auction including the volumes of tea to be sold through auction or through direct sales;</p> <p>(k) The promotion of fair and proper governance structures in institutions along the tea value chain in the interest of tea growers;</p> <p>(m) Rules for promotion of value addition and product diversification of tea;</p> <p>(n) Rules to ensure that any agreements, including any agreement with regard to contributions by farmers to their organizations, entered into between the farmers and duly registered organizations to which such farmers belong shall be respected by any third parties;</p> <p>(o) Rules to avoid conflict of interest in the ownership and dealings between tea growers, tea processors and tea dealers;</p> <p>(p) prescribing fees or charges for services rendered under this Act;</p> <p>(q) authorizing the examination and inspection of books and documents relating to the production, manufacture, distribution, auction, import and export of tea;</p> <p>(r) requiring the giving of tea related information, records to be kept and returns to be</p>	<p>- The clause has omitted some critical aspects of regulation, development and promotion of the tea sub-sector which are important for the effective regulation of the tea sub-sector.</p> <p>- In addition, it is important that the Cabinet Secretary is given sufficient powers to formulate an authoritative set of regulations which will allow for practical and effective application of the Act</p> <p>- Successful implementation of the Tea Act once enacted will be enhanced by providing the necessary support through complimentary subsidiary legislation</p>	The Committee agreed to the proposed amendments.

	<p>furnished to the Board relating to the industry;</p> <p>(s) The criteria for the pricing of green leaf;</p> <p>(r) prescribing maximum fees charged by players along the value chain;</p> <p>(t) prescribing the maximum number of board members for a smallholder tea processor;</p> <p>(u) prescribing the tenure of board members for smallholder tea processor;</p> <p>(v) procedures for ensuring internal democracy in tea growers' institutions and organizations.</p>		
New clause 35	<p>Insert a new clause 35</p> <p>35(1) An officer of the Board duly authorized in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—</p> <p>(a) enter any land or buildings occupied by the holder of a processor or dealer licence issued under this Act, or a person registered under this Act;</p> <p>(b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence or registration are being complied with; and</p> <p>(c) may require any person found thereon to give such information as the person may require;</p> <p>(d) may cease and remove any article or thing in respect of which the officer has reasonable grounds for believing that an offence under this Act or any regulations made thereunder is being or has been committed;</p>	<p>Entry and inspection.</p> <p>Insert a new clause 35 to provide for powers of entry and inspection to enable the Board to effectively execute the functions of compliance, surveillance and enforcement.</p>	<p>The Committee agreed to the proposed amendment. It had already provided for it under new Part IIIA on the appointment of crop inspectors.</p>



	<p>(e) do any other thing authorized under this Act.</p> <p>(2) A person who hinders or obstructs any person duly exercising or attempting to exercise any of the powers conferred by subsection (1), or who fails to give any information reasonably required commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or both.</p>		
New clause 36	<p>Introduce a new clause 36 as follows:</p> <p>36. If any conflict arises between the provisions of this Act and any other Act with respect to the development, management, marketing or regulation of tea, the provisions of this Act shall prevail.</p>	Insert a supersession provision with respect to tea	
Clause 39	<p>Amend clause 39 by introducing the following new subclauses:</p> <p>(2) A person who was an officer or member of staff of the former Tea Board of Kenya, immediately before the commencement of the Agriculture and Food Authority Act, 2013 not being under notice of dismissal or resignation or retirement, shall upon commencement of this Act and subject to subsection (3), become an officer or member of staff of the Board on their current or improved terms and conditions of service.</p> <p>(3) The members of staff referred to under subsection (2) shall be subjected to an internal vetting process.</p> <p>(4) Notwithstanding the provision of section 39(1) and</p>	<p>Staff</p> <p>-Currently, common services including human resource, legal, finance, corporate communication, ICT and audit are centralized at AFA Headquarters. There is need to provide additional clauses to transit the staff providing these essential common services who were deployed to AFA Headquarters upon commencement of the Crops Act and AFA Act.</p> <p>- In order to provide for any staff who may not wish to rejoin the new establishment, insert a new clause 39(3) to provide for the same.</p>	<p>The Committee rejected the proposed amendment. The proposed amendment seeks to transit staff who had not been transited under the Agriculture and Food Authority Act, 2013. Since the former Tea Act (Cap. 343) was repealed, the Bill cannot refer to it since it does not exist. A transitional provision's main object is to preserve the status of staff upon enactment of a new law.</p>

	(2) if a person does not intend to become an officer or member of staff of the Board they shall within a period of twenty one days from the appointed day, give notice in writing to the Board and such person shall be deemed not to have become such an officer or member of staff under subsection (1) and (2).		
New clause	<p>Amend by inserting an additional clause as follows:</p> <p>41(1) All funds, assets, and other property, moveable and immovable which immediately before the commencement of the Crops Act, 2013 were vested in the former Tea Board of Kenya shall, by virtue of this paragraph, vest in the Board.</p> <p>41(2) All funds, assets, and other property, moveable and immovable which have been acquired after commencement of the Crops Act, 2013 and Agriculture and Food Authority Act, 2013 relating to tea and were vested on Agriculture and Food Authority shall, by virtue of this paragraph, vest in the Board.</p> <p>41(3) On the appointed day, all rights, powers and liabilities, which immediately before that date were vest in, imposed on or enforceable against the Agriculture and Food Authority with respect to tea shall by virtue of this paragraph be invested in, imposed on or enforceable against the Board.</p>	<p>Assets and liabilities</p> <p>-There is no provision in the Bill for transiting the funds, assets, other property of AFA related to tea to the proposed Tea Board.</p> <p>- The assets which include buildings, vehicles and other movable and immovable assets were developed, built and bought using monies deducted from tea growers' earnings</p> <p>- The tea factories used to remit tea manufacturing cess deducted from growers' earnings to Tea Board of Kenya.</p> <p>- In 2012, the tea manufacturing cess was abolished and replaced with tea ad valorem levy paid by tea exporters at the point of export. The levy was used to fund the Tea Board of Kenya and Tea Research Foundation of Kenya. It is from these funds that the assets were acquired.</p> <p>Upon the commencement of Crops Act and AFA Act, 2013, the assets and liabilities of the former Tea Board of Kenya became vested, imposed and enforceable on AFA. The Bill should be amended to insert a clause to transit the funds, assets, and other property, rights, powers, liabilities and duties with respect to tea which are currently vested in, imposed on or enforceable against AFA to the proposed Tea Board on the appointed day.</p>	<p>The Committee rejected the proposed amendment. The proposed amendment seeks to transit assets and liabilities that had been vested in the former Tea Board of Kenya immediately before the commencement of the Agriculture and Food Authority Act, 2013. Since the former Tea Act (Cap. 343) was repealed, the Bill cannot refer to it since it does not exist. The Committee therefore recommended that reference be made to the existing Agriculture and Food Authority Act, 2013.</p>

		-Further, funds, assets, and other property acquired since the commencement of Crops Act and AFA Act relating to tea and vested on AFA need to be transited to the proposed Tea Board.	
New Clause	Introduce a new clause 36 as follows:  (1) 'If any conflict arises between the provisions of this Act and any other Act with respect to the development, management, marketing or regulation of tea, the provisions of this Act shall prevail'.	Insert a supersession provision with respect to tea	The Committee noted that this had already been provided for in Hon. Ben Momanyi's amendments.
SCHEDULES	Amend clause 1(3) under the schedule by deleting the word "five" before the words "members of the Board" and replacing it with "two thirds of the".	Convening of a Special Board Meeting  The quorum for requesting for a special Board meeting should be set as two third of the board members in line with the best practice.	The Committee agreed to this proposed amendment.
	Amend clause 1(5) under the schedule by deleting the word "five" before the word "members" and replacing it with "two thirds of the".	Conduct of the business of the Board  The quorum for the conduct of the business of the Board had been set as five members in the original Bill. Given that the composition and the number of the board members has now changed the quorum should be set as two thirds of the board members in line with the best practice.	The Committee rejected the proposed amendment since the amendments have not affected the number.

## 5 SUBMISSIONS FROM KENYA TEA DEVELOPMENT AGENCY HOLDING LIMITED

8. The Board of Kenya Tea Development Agency Holding Limited (KTDA) appeared before the Committee to clarify and provide more information on tabulation of management fees levied on farmers, delays in payments of Tea bonus, transport charges, direct sales versus auction tea sales among other things.
9. In their presentation KTDA proposed the following reforms to tackle challenges in the sector:

The Sessional Paper No. 2 of 1999 was the framework document of the Tea Industry in the run up to the liberalization of 1999/2000 and the current Tea Bill 2018 under discussion, follows the ideals of the Sessional Paper.

10. KTDA recommended that the Committee makes reference to the sessional paper when deliberating on the Bill especially in respect to management of the smallholder tea sector.
11. It was noted that, the Sessional Paper No. 2 of 1999 dwelt on the role of the Tea Board and Membership. It further covered the privatization of Small Holder sector, incorporation, shareholding, governance & implementation, company structure and management & associated companies and Repeal/dissolution of the KTDA Authority.
12. It was indicated that, Mwongozo Code of Governance recommends maximum of 9 directors, however the Tea Bill recommends a reduction of factory directors to three. The Companies Act and company articles guide on board sizes of all companies. To achieve objectivity and independence it is proposed that a Tea Tribunal be considered to hear disputes from the sector. The process would be shorter and less costly than the current court processes.
13. Small holder farmer funding for factories construction are based on equitable leaf deliveries.  
Farmer equity contribution is 50% and loan financing being the other 50%. Currently 12% of farmers contribute 50% of the leaf and 88% contribute the other 50% of the leaf. Farmers are given shares in their Factory Companies representing their respective equity contributions. These shares (from leaf deliveries) give the farmers their equitable say in decision making.
14. **The Fourth schedule of the Constitution of Kenya provides for Agricultural Policy as a function for the National Government, whilst Agriculture itself is devolved to the counties.**  
They recommended that, the draft National Tea Policy be concluded and rolled out. The County Tea Policies should then be drawn from this National Tea Policy. Tea Regulations should thereafter be drawn from the respective National and County tea policies
15. **Trade & Agriculture:** The (agricultural) green leaf becomes made tea and a trading commodity once it's manufactured at the factory. It ceases to be an agricultural product once it is manufactured. The made tea product becomes an internationally trading commodity, subject to inter country & international trading protocols, The reforms/national policy should separate and identify the agricultural and trading products and determine the separate legal regimes for the same.
16. **County Synergies** - With close synergies between the National Government, the proposed Tea Board, the tea factories, their managing agents and the respective County Governments, all parties would benefit, with tea farmers enjoying a share of county budgetary allocations.
17. A County Government, farmer, factory structure could be explored, this would comply with the Fourth Schedule of the Constitution of Kenya on devolved functions.

18. The reforms should further address the following Tea Industry challenges:

- Land subdivision,
- Climate Change National policy,
- Harmonization and reduction of Taxes
- Loan concessions to farmers,
- The Tea Directorate should revert to its old status of Tea Board to assist in opening up of tea markets.

## 6 MEETING WITH THE NATIONAL TREASURY ON THE TEA BILL AND CHALLENGES FACING TEA SECTOR

19. The National Treasury made the following presentation before the Committee:

### TAXES AND FEES LEVIED ON THE TEA SECTOR

#### Import Duty

- i) Taxation of imported tea is provided for under EAC Customs Management Act and the import duty rate is provided under East African Community Common External Tariff.
- ii) Imported processed tea attract import duty at a rate of 25%.
- iii) Imported tea for blending the Kenyan Tea for subsequent export is imported duty free under the EAC Duty Remission Scheme.

#### Value Added Tax

- i) VAT follows the principle of input- output. This principle provides for the deduction of the VAT paid on the inputs from the output tax and pays the net tax to the Kenya Revenue Authority. Therefore, the effective rate of tax is less than the general rate of 14%.
- ii) The VAT is a neutral tax in that it does not affect the investment decision since it is passed to the consumer.
- iii) VAT is categorized into three: -
  - **General rate** is 14 percent of the taxable value on goods and services. Kenya has the lowest VAT rate among the EAC member States. The rest have a standard rate of 18 percent.
  - **Exempt Status Applies** to goods that are unprocessed or services that are of basic necessity such as health and education. These goods or services uses little or no inputs that attract VAT to produce or to offer the services. In this category, the little input tax that may be incurred is not allowed for deduction. Therefore, processed goods that uses a lot of inputs that attract VAT are not supposed to be in this category.
  - **Zero rated Status.** This is limited to the exported goods and exported taxable services. This follows the international best practice and it is in accordance with the destination principle. The principle states that the payer of the tax shall be the consumer and that the tax shall be paid in the country where the goods are consumed. This allows the producer to claim input tax incurred through the value chain. The VAT Act, 2013 adopted the principle of limiting zero rating of

goods and taxable services to exports and exempt status to unprocessed goods and all other goods and services subject to tax at 14%.

20. Based on the above principle, **the unprocessed green tea is exempt from the VAT** under the First Schedule of the VAT Act, 2013. The rationale for exempting unprocessed green leaf is due to the fact that no input tax is incurred at this stage. The Treatment is similar to all unprocessed goods.
21. Processed tea attracts VAT at the rate of 14%. This is in line with other processed products such as coffee. Further, charging VAT allows the processor to claim input tax. The situation has been the same even before the VAT Act, 2013.
22. Zero rating in the VAT Act, 2013 is limited to exported goods and taxable services. This follows the destination principle which states that VAT should be paid where the goods are consumed.
23. By zero rating the exports, it allows the producer of the exported goods to claim from the Kenya Revenue Authority all the VAT paid in the entire value chain on the goods being exported. This makes the goods competitive in the export market.
24. Like any exports, exported tea is zero rated. This allows the tea processor to claim VAT paid along the value chain. The VAT Act, 2013 has also zero rated the supply of tea for export to the tea auction.

### **Income Tax**

25. Taxation of tea under Income Tax follows the international best practice and applies to all incomes.
  - i. **Income tax is charged on all income earned** in Kenya or deemed to be earned from Kenya. This include natural persons or legal persons.

Tea companies like any other company generating income from Kenya are subject to corporation tax at the rate of 25%.
  - ii. **Withholding tax** is not a separate tax from the income of an individual. It is applicable to all payment made by a company for management, consultancy, among other payments for the services rendered, at 10% for residents and 20% as final tax for non-residents. This also applies to tea sector in case the sector pays for management fees, consultancy services either to non-resident or non-residents persons.
  - iii. **Advance tax** is not a final tax. It is charged on commercial vehicles used by resident persons. The tax is applicable to all commercial vehicles irrespective of the Sector.

### **Users Charges**

26. These are charges on services based on the services provided to a person by a government agency to defray the cost of offering such services. The services are very important since it facilitates the person to export or import the goods while other services make the goods acceptable both local and international market. For example, the inspection of goods for quality standards give an assurance to the consumers of the goods that the goods to be consumed will not have negative effects on their health.
27. The charges on services provided by Government Agencies to tea sector include:

- Port Health Charges;
- Inspection and Grading Fee by Kenya Plant Health Inspectorate Services (KEPHIS);
- KEPHIS SPS Certificate;
- KEBS Quality Standard;
- KPA Port Charges ; and
- Agricultural Produce cess, among others.

**28. The Committee was informed that Fees and Levies charged on tea included: -**

- i. **Brokerage fees-** by brokers who represent the farmers at Mombasa Tea Auctions and therefore charge the brokerage fee.
- ii. **Warehouse fees** - a storage fee charged by the warehouse operator for storing the tea for farmers as the auction process goes on.
- iii. **Registration fees**
  - To be buyer at the tea auction, one has to pay KSh. 10,000 annual fee to Agriculture and Food Authority.
  - To be a processor, the company is required to pay KSh. 7,500 annually.
  - There is KSh. 10,000 fees for tea auction organizers, KSh. 2,000 fees for tea packers and KSh. 25,000 for every management agent.
- iv. **County fees**
  - Green leaf cess is levied that is levied at 1% on the gross value of the produce.
  - In Mombasa, there is KSh5, 000 levy as port health charges. This is annual and was inherited from the Mombasa municipal port health levy.
  - Then there is also the annual Sh10, 000 license fees charged by the county.
  - Tea companies deal with land rates that range from about 0.3 to 0.75 percent of undeveloped value annually.
- iv. **Kenya Plant Health Inspectorate (KEPHIS) fees**
  - There is a weekly inspection and grading fee from the Kenya Plant health inspectorate Service (KEPHIS). This is charged at Sh5, 000 per consignment and this doubles to Sh10, 000 per multiple consignment to one consignee that it inspects.
  - In addition, KEPHIS also asks for KSh1, 000 for the KEPHIS Sanitary and Phytosanitary certificate, which is charged weekly.
- v. **Kenya Bureau of Standard (KEBS) Levy**
  - The Kenya Bureau of Standards charges a levy at 0.2 percent of the value of made tea or KSh 400,000, depending on whichever is lower, for the product conformity. This is annual fee.
  - A similar amount is also paid for the KEBS quality standard, this time quarterly.
- vi. **National Environment Management Authority (NEMA) fees**
  - With regards to the National Environment Management Authority (NEMA), every tea factory company has to part with at least KSh55, 000 annually for the air emission license from environment watchdog. This is in line with the emission license as per Air Quality Regulations, 2014.
  - In addition, to get a water license, they have to pay KSh100, 000 annually as part of the Waste Water Regulations to NEMA.
  - The environmental watchdog also charges a 0.1 percent levy of investment costs on the NEMA environmental audit done every year.
- vii. **Kenya Ports Authority (KPA) fees**
  - Kenya Ports Authority (KPA) charges a KSh 9,000 levy for every 40 feet container at the time of loading.

- KPA also has the terminal handling charges of Sh200 for every 20 feet container, also charged at the time of loading.
- viii. **Directorate of Industry Training (DIT) Levy**
  - The Directorate of Industry Training Levy (DIT) charges tea factories a KSh 50 levy per employee. This fee is paid monthly and increases labour costs, which reduce how much money tea farmers take home at the end of the year.
- ix. **Kenya Maritime Authority (KMA) Levy**
  - The Kenya Maritime Authority is not left out. The industry now has to deal with Merchant Shipping Superintendent (MSS) levy which is charged at Sh10 per Tonne every year.
  - To get the Chamber of Commerce Certificate of Origin, the tea industry has to pay another levy, which is charged at 0.025 percent of the gross value of tea sold.

## CHALLENGES FACING KENYA'S TEA SECTOR & PROPOSED REFORMS

29. The following challenges were identified:

- i. **Unregulated brokerage fees:** - Tea farmers (producers) are not participating in the Mombasa tea auction and therefore, do not have an opportunity to negotiate prices. However, they enter into contracts with brokers who represents them at the auction with their tea samples. The brokerage fees is a cost deducted from the tea farmers.
- ii. Tea farmers are members of the East Africa Tea Trade Association (EATTA), which is responsible for organizing the Mombasa Tea Auction. Currently, only Ten (10) agents serving all the countries participating in the Mombasa Tea Auction. The number of agents has remained unchanged since the years 2013 to date.
- iii. **Warehousing fees:** The warehouses are responsible for holding the tea on behalf of farmers and buyers as they bid at the auction. There are approximately Thirteen Warehouses (13) for tea. The warehouses charge the storage fees which is partly borne by the tea farmers.
- iv. **Regulation of Tea Auction by EATTA:** The EATTA, the only tea auction in Africa regulates the tea auction in Mombasa. The auction brings together nine (9) countries in Africa and buyers (exporters) from more than fifty of countries internationally. The Mombasa tea auction accounts for the sale of 80 percent of the Kenyan tea and yet how tea price is determined in the auction is not clear. All the sale contracts are registered within the Tea Directorate under AFA within thirty days of finalization of the contract.
- v. **Low earnings to farmers per Kilo:** The Mombasa auction accounts for 74 percent of KTDA market outlets. Notably, KTDA auction prices of tea are normally higher in comparison to others from Kenya and in Africa. According to a World Bank Study conducted in 2014, KTDA prices are 12 percent above the average prices. However, the higher earnings from the tea auction does not translate to farmers proceeds.
- vi. **Unstructured Governance structure at KTDA:** Currently, KTDA has Eight (8) subsidiaries whose mandate is to improve the functioning of the tea sector for smallholder farmers and their livelihoods. Farmers elect the directors who sit in the company Boards. In addition, farmers also elect the committee members of the tea collection centers under KTDA. The factories are corporate shareholders of KTDA. The sixty-four (64) companies are guided by KTDA management agreements.



- vii. **Limited market information:** Ninety-nine tea packers along the tea value chain are restricted to purchase only from brokers and buyers. These groups are potential participants for the auction given that they add value to tea before consumption.
- viii. **Price information asymmetry:** The tea marketing in Kenya is characterized by market price information. For instance, auction information is shared with the trading members but little information is shared with the producer members from the auction.
- ix. **Poor consideration of public interest:** - Kenya has approximately 560,000 tea farmers and 68 tea factories, which create a substantial public interest in the country. The smallholder farmers are under KTDA management, which controls huge investment of its subsidiaries.

## PROPOSED MEASURES TO PROTECT THE TEA INDUSTRY

30. The following measures were proposed to address the challenges in the tea industry:

- i. Develop a regulatory regime, which empowers the regulator i.e. Agriculture and Food Authority to set and review competitive brokerage and warehousing fees.
- ii. Expunge all the restrictions on Tea Packers to purchase their blending Tea from brokers and buyers in Mombasa Auction.
- iii. Extinguish the role of EATTA and its rules in the auction and the tea value chain replacing with the sector's regulator, AFA;
- iv. Ensure the competitiveness of the terms and conditions of the agreements/ contracts between tea factories and KTDA Management services and provide for expansion of the role of farmers in pricing of services rendered by each of the KTDA subsidiaries.
- v. Provide for Governance arrangement that delineates the factories board of directors and KTDA management, and also separate the subsidiaries completely or create them as divisions/ departments within KTDA. In addition, if the KTDA subsidiaries are indispensable, then AFA have a role in determining shareholders (smallholder farmers) return on investment.
- vi. Increase the number of agents serving EATTA participating countries in the tea auction to enhance efficiency and effectiveness.
- vii. Provide for government involvement in provisions of extension services and a revenue sharing framework for smallholder farmers.
- viii. Provide a mechanism to guide or govern payment to the farmers for green leaf by the processing factories. In particular, the Government should develop regulations for green leaf payment process that guide the payment of farmers for the green leaf delivered to factories.  
Such guidelines may prescribe green leaf pricing formulae for the initial and final (bonus) payments and streamline deductions from farmer proceeds to eliminate compulsory deductions, and improve welfare of the stallholder farmers.
- ix. The Government through AFA should set up a scheme to facilitate sound inventory management by smallholder tea farmers without disrupting their livelihoods.
- x. The tea regulator AFA should promote the sales of Kenyan tea by ensuring registration and recognition of the Kenya mark of origin in all the potential market destinations.
- xi. There is need to fast track the development of an e-Auction to enable follow up on the bids offered as a source of information and permit tracing of farmer's tea delivered at the factory to value of tea fetched at the auction.
- xii. Cognizant of the public interest in tea matters, the Government should introduce requirement that high value decisions in the tea industry be subjected to public scrutiny process.

## **7 COMMITTEE OBSERVATIONS**

The Committee observed the following during its consideration and winnowing of the proposed amendments to the Tea Bill:

1. According to Part A of the Fifth Schedule of the VAT Act, 2012, supply of tea for export to tea auction centers and taxable supplies in respect to tea bought from the auction centers are zero rated. However, VAT on inputs used in tea production (e.g. electricity, tea processing machinery, tractors, fuel, packaging materials, all services) is payable in advance yet 92% of the tea produced in Kenya is destined for auction and is therefore zero rated. Claims for refund for VAT on these inputs take long thus, tying up billions of farmers' money at the National Treasury.
2. To control influx of tea imports into the country which compete with our locally produced teas, the Bill should provide for imposition of hundred percent 100% import duty on teas imported into the country.
3. To address the challenges in the tea sector, there is need for regulatory reforms to govern the tea sector effectively and provide for strengthening the functions and powers of the proposed regulator for effective development, regulation and promotion of the tea sub- sector.
4. There was a need to provide for the establishment of common User Facility (CUFs) for value addition in the tea sub-sector.
5. There should be clarity on the role of national and county government in regard to the regulation of the tea sector.
6. There should be clear provisions on licensing and registration of all value chain players
7. There is need to provide for the establishment of a Tea Fund with resources generated from the tea levy, government grants and other sources to finance establishment of an income stabilization fund to cushion tea farmers from price fluctuations.
8. To reduce the burden of the other levies and charges by other value chain actors to the tea grower, the fees paid to management agents and brokers should be regulated by the proposed Tea Board of Kenya.
9. There is need to streamline the election of directors of tea factories and to provide for the principle of one grower, one vote.

## 8 COMMITTEE RECOMMENDATIONS / AMENDMENTS

31. After considering the proposed amendment by various Members and submissions from various stakeholders, the Committee recommends the following proposed amendments by the Committee and the Members who had proposed amendments:

### CLAUSE 2

#### COMMITTEE

**THAT**, the Bill be amended by deleting clause 2 and substituting therefor the following new clause—

#### Interpretation.

#### 2. In this Act—

“auction” means a physical or electronic system where potential buyers place competitive bids for tea;

“auction organizer” means a person, company or firm established for the purpose of organizing tea auctions in Kenya;

“blending” means the art of mixing of teas of different types and grades to affect the flavour and characteristics of the tea for the purposes of packing and sale;

“Board” means the Tea Board of Kenya established under section 3;

“broker” means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between tea growers or tea factories and buyers for a fee;

“buyer” means a person, company or a firm engaged in acquiring made tea for sale in the local or export market, including export of imported tea;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“commercial green leaf transporter” means a person, a firm or a corporate body contracted by a tea factory to provide green leaf transport services from the farm or leaf collection center to the tea factory at a fee;

“commercial tea nursery” means a person or firm who maintains not less than five hundred tea seedlings or tea planting material for sale;

“county government” has the meaning assigned to it under Article 176 of the Constitution;

“crops inspector” means a person appointed as an inspector in accordance with section 24Y of the Act;

“export” means to take tea or cause tea to be taken out of the Kenya customs territory or out of an Export Processing Zone;

“exporter” means a person, a firm, or a corporate body engaged in the business of blending, packaging and exporting of tea in bulk or in value added form;

“Foundation” means the Tea Research Foundation established under section 24ZE;”

“Fund” means the Tea Fund established under section 24ZD;

“grower” means any person who is cultivating tea in an area;

“green leaf agreement” means an agreement between a tea grower and a tea factory relating to the delivery of green leaf;

“import” means to bring tea into or cause to be brought into the Kenya customs territory or into an Export Processing Zone;

“importer” means a person, a firm, or a corporate body engaged in the business of importing tea into Kenya;

“large scale tea grower” means a person cultivating tea in a parcel of land above fifty acres;

“levy” means the levy imposed by the Cabinet Secretary on tea exports and imports in accordance with section 24ZC;

“licensee” means a person who holds a manufacturing licence issued under the Act;

“made tea” means the derivative from tea leaf through a manufacturing process;

“management agent” means any person that is appointed by a tea factory through a specific management contract or agreement to perform or offer professional services other than company secretary services;

“manufacture” means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products and includes the packaging, labelling, distribution of tea and tea products for sale;

“manufacturing licence” means a licence issued under section 24;

“medium scale tea grower” means a person cultivating tea in a parcel of land of between ten and fifty acres;

“person” includes a firm, a company, an association, cooperative society or a corporate body;

“small scale tea grower” means a grower cultivating tea in a parcel of land of less than ten acres;

“specialty teas” means premium teas manufactured whole leaf, semi-aerated or non-aerated and includes green, purple, white, oolong and orthodox but does not include black curl tear and cut teas;

“tea” means the plant botanically known as *camellia sinensis* and includes its seed, tea plants and the leaf, whether on the plant or detached therefrom, and in the latter case, whether green tea or manufactured tea;

“tea dealer” includes a warehouse operator, buyer, exporter, importer, broker, packer, manufacturer, management agent, and auction organizer;

“tea factory” means a factory that processes and manufactures tea leaf into made tea;

“tea grower” means a person who grows tea or cultivates tea in Kenya;

“tea packer” any person who blends, brands and packs tea into packets or containers holding not more than ten kilograms of tea intended for sale locally or for export;

“value addition” means improvements on made tea through packaging, blending, flavoring, tea extracts, tea aroma and branding;

“warehouse” means a premise used for the storage of made tea and specialty tea by a warehouse operator;

“warehouse operator” means a company registered in Kenya which is in the business of storing tea.

**Hon. Cecily Mbarire**

THAT, clause 2 of the Bill be amended by inserting the following new definitions in proper alphabetical sequence—

“marketing agent” means any person that is registered and licensed to enter into a contract with a tea factory to perform or offer professional services in sales, value addition, product development and related marketing services on behalf of the tea factory at a fee;

“tea block” means a block set out in the First Schedule within which tea is grown;

**Hon. Gichimu Githinji**

THAT, clause 2 of the Bill be amended by inserting the following new definition in proper alphabetical sequence—

“tea block” means a block set out in the First Schedule within which tea is grown;

**CLAUSE 5**

**COMMITTEE**

THAT, the Bill be amended by deleting clause 5 and substituting therefor the following new clause—

Functions of the Board.

5. The functions of the Board shall be to—

- (a) develop, promote and regulate the development of the tea industry;
- (b) co-ordinate the activities of individuals and organizations within the tea industry;

- (c) facilitate equitable access to the resources, facilities and benefits of the tea industry by all interested parties;
- (d) make recommendations to the Cabinet Secretary on the formulation of policies, plans and strategies for the regulation of the tea sector;
- (e) register tea factories, small scale tea growers, medium scale tea growers, large scale tea growers, warehouse operators, tea packers, tea buyers, exporters, importers, tea brokers, management agents, tea auction organizers, commercial tea nurseries, commercial green leaf transporters;
- (f) license manufacturers;
- (g) promote best practices and standards in the production, processing, marketing, grading, storage, collection, transportation and warehousing of tea;
- (h) facilitate marketing and distribution of tea through gathering and dissemination of market information and monitoring of the local and global supply-demand situation;
- (i) co-ordinate prioritization of research in tea;
- (j) regulate the sale, import and exports of tea;
- (k) develop, implement and coordinate a national tea marketing strategy;
- (l) prescribe the maximum period and minimum amount for payment of green leaf;
- (m) promote and advise on strategies for value addition and product diversification;
- (n) promote demand and consumption of tea locally and internationally;
- (o) identify market needs and trends and advise the Cabinet Secretary on issues related to national and international tea trade;
- (p) collaborate with national and international trade bodies on tea related matters;
- (q) monitor, conduct surveillance and enforce compliance with tea standards, this Act and any regulations made under it;
- (r) advise the national government on levies, fees and import or export duties on tea;

- (s) advise the county governments on agricultural cess and fees;
- (t) oversee the efficient utilization of available Board's funds;
- (u) undertake capacity building, technology transfer and technical assistance to the counties on matters related to tea;
- (v) carry out such other functions as may be assigned to it by this Act, and any written law while respecting the roles of the two levels of governments."

**Hon. Richard Ronald Tonui**

**THAT**, Clause 5 of the Bill be amended in subclause (1) by inserting the following new paragraphs immediately after paragraph (c)—

- “(d) facilitate access to international markets;
- (e) promote and monitor tea trade in Kenya;
- (f) facilitate the development of skills and adoption of appropriate value addition technologies for tea and tea products before domestic use and export from Kenya;”

**Hon. Cecily Mbarire**

**THAT**, clause 5(2) of the Bill be amended—

- (c) in paragraph (b) by—
  - (iii) by inserting the following new sub paragraph immediately after subparagraph (iv)—
    - “(iva) license and regulate physical and electronic tea auctions”;
- (d) by inserting the following new paragraphs immediately after paragraph (b)—
  - (ba) prescribe rules for the eligibility of persons to vie for election or be appointed as board members of persons licensed under this Act;
  - (bb) recommend to the national and county governments appropriate measures for the grant of extension services and farm input subsidies to tea growers;

**CLAUSE 6**

**COMMITTEE**

**THAT**, Clause 6 of the Bill be amended in sub-clause (1) by inserting the following paragraphs immediately after paragraph (c)—

- “(ca) collaborate with such bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the object and purpose for which the Board is established;

(cb) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;”

(cc) ensure the proper and effective performance of the functions of the Board;

(cd) manage, control and administer the Tea Fund for purposes that promote the object and purpose of this Act.

## **CLAUSE 7**

### **COMMITTEE**

## **CLAUSE 7**

**THAT**, Clause 7 of the Bill be amended—

(a) in sub-clause (1)

by inserting the following new paragraph immediately after paragraph (c) —

“(ca) the Principal Secretary responsible for National Treasury or a representative nominated by the Principal Secretary in writing;”

(b) by inserting the following new subclause immediately after subclause (2)—

“(2A) The appointment of the chairperson or members of the Board under subsection (1) (a), (d), (e), (f), (g) and (ga) shall take into account the gender, regional and other diversities of the people of Kenya.”

**Hon. Gichimu Githinji**

## **CLAUSE 7**

**THAT**, the Bill be amended in clause 7(1) —

(a) by deleting paragraphs (d), (e), (f) and (g) and substituting therefor the following new paragraphs—

“(d) one person of either gender, who shall have knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternately by the Council of Governors;

(e) four persons, two of either gender, representing and elected by small scale and medium scale tea growers from the East and West of the tea blocks:

Provided that two persons shall be from each of the tea blocks;

(f) one person elected and representing large scale tea growers;

(g) one person elected and representing tea traders;”

**Hon. Millie Odhiambo**

**THAT**, clause 7 of the Bill be amended in subclause (1) by deleting paragraph (e) and substituting therefor the following new paragraph—



“(e) four persons, two of either gender, representing small-holder tea growers from the East and West tea blocks;”

#### **CLAUSE 8**

##### **COMMITTEE**

**THAT**, the Bill be amended by deleting clause 8 of the Bill and substituting therefor the following new clause—

Term of appointment.

8. (1) The persons appointed under section 7(1) (a), (d), (e), (f), (g) and (ga) shall serve for a term of three years renewable for one further term.

(2) The persons appointed under section 7(1) (a), (d), (e), (f), (g) and (ga) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times but not more than six months shall lapse between one appointment and another.

#### **CLAUSE 9**

**Hon. Millie Odhiambo**

**THAT**, clause 9(a) of the Bill be amended by deleting the words “the permission of the chairperson” appearing immediately after the words “the Board without” and substituting therefor the words “notifying the chairperson”.

#### **CLAUSE 13**

##### **COMMITTEE**

**THAT**, Clause 13 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub-clause—

“(3) A person is not qualified for appointment under subsection (1) unless the person—  
(a) holds a relevant degree from a university recognized in Kenya;  
(b) has at least ten years knowledge and experience in a relevant field;  
(c) has at least five years experience in a position of senior management;  
(d) meets the requirements of Chapter Six of the Constitution.”

#### **CLAUSE 15**

**Hon. Millie Odhiambo**

**THAT**, clause 15 of the Bill be amended in subclause (3) (d) by deleting the word “seven” appearing immediately after the words “at least” and substituting therefor the word “five”.

#### **CLAUSE 16**

**Hon. Millie Odhiambo**

**THAT**, clause 16 of the Bill be amended by—

- (a) renumbering the existing provision as subclause (1);
- (b) inserting the following new subclause immediately after subclause (1)—

“(2) In employing staff, the Board shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities.”

#### **CLAUSE 19**

**Hon. Cecily Mbarire**

**THAT**, clause 19 of the Bill be amended by inserting the word “First” immediately after the words “with the”;

#### **CLAUSE 20**

**Hon. Millie Odhiambo**

**THAT**, the Bill be amended by deleting clause 20 and substituting therefor the following new clause—

Role of national  
and county  
governments.

**20. (1)** The national government shall—

- (o) develop policies and regulations under this Act;
- (p) develop policy for marketing Kenyan tea internationally;
- (q) ensure the protection of intellectual property rights over its owners;
- (r) develop policy on labour standards in the tea sector;
- (s) develop policies on consumer protection;
- (t) develop policy on land planning as relates to tea-growing;
- (u) build capacity and provide technical assistance to county governments on new developments and technologies in the tea sector.

(2) Each county government shall implement the national government policies and in particular shall be responsible for—

- (k) the development of tea grown within the county;

- (l) disease control;
- (m) development and maintenance of markets;
- (n) cooperative societies within the county;
- (o) soil and water conservation.

**NEW PART BY THE COMMITTEE**

**NEW PART**

**THAT** the Bill be amended by deleting Part III and substituting therefor the following new Part—

**PART III- REGULATORY PROVISIONS**

Role of national and county governments in the development of tea.

**20.** (1) Pursuant to the Fourth Schedule of the Constitution –

- (c) the Board, on behalf of the national government, shall be responsible for licensing and charging of levies;
- (d) each county government shall implement the national government policies to the extent that the policies relate to the county and in particular shall be responsible for—
  - (vi) the development of tea grown within the county;
  - (vii) tea disease and pest control;
  - (viii) markets within the county;
  - (ix) cooperative societies within the county;
  - (x) register commercial tea nursery operators
  - (xi) soil and water conservation.

(2) In order to achieve the objects and purposes of this Act, the national and county governments shall provide an enabling environment for the development of the tea sector.

Registration of small scale tea growers and medium scale tea growers.

**21.** (1) A small scale tea grower and medium scale tea grower shall register with the tea factory to which the respective tea growers deliver green leaf or purple leaf using the prescribed form.

(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of small scale tea growers and medium scale tea growers and the appeal process in case of refusal or denial of registration.

(3) Every tea factory shall keep or cause to be kept for statistical purposes, a register of all small scale tea growers and medium scale tea growers registered under subsection (1) specifying—

- (e) the name of the small scale tea grower and medium scale tea grower;

- (f) the location, size and parcel number of the land on which the tea is grown;
- (g) the net weight in kilogrammes of green leaf delivered and amount paid submitted annually;
- (h) the variety of tea grown; and
- (i) such other information as the Board may prescribe.

(4) Where the tea factory has reasonable cause to believe that a person whose particulars are so recorded has ceased to be a small scale tea grower and medium scale tea grower, it may, after giving that person written notification by registered post of its intention to do so, remove their name from the register.

(5) The register referred to in subsection (6) shall be prima facie proof of the fact that a person is a registered small scale tea grower or medium scale tea grower.

(6) The tea factory shall furnish the Board with particulars of all registered small scale tea growers or medium scale tea growers in such manner as the Board may prescribe.

(7) A person shall not sell or offer for sale green leaf unless the person is registered with a tea factory in accordance with this Act.

(8) A tea factory shall only buy green leaf from its registered tea growers.

(9) A small scale tea grower or medium scale tea grower shall not sell green leaf to any person other than the tea factory where they are registered.

(10) A small scale tea grower or medium scale tea grower wishing to change the tea factory where they deliver their green leaf shall inform their respective tea factory by giving a minimum notice of thirty days.

(11) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding six months, or to both.

Board of  
directors of tea  
factory limited  
companies.

**22.** (1) The Board of Directors of tea factory limited companies shall be a maximum of five members.

(2) The Board shall put in place mechanisms to ensure that not more than two-thirds of the Board of Directors of tea factory limited companies elected or appointed are of the same gender.

(3) The Board of Directors of tea factory limited companies shall be elected through a democratic system of one grower, one vote.

(4) Where a Board member for tea factory limited companies is temporarily unable to perform their duties, the Board may appoint

another person from the respective block to act in their place during the period of absence.

Registration of large scale tea growers.

**23.** (1) A large scale tea grower shall register with the Board in a prescribed form and shall pay the prescribed fee.

(2) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of large scale tea growers and the appeal process in case of refusal or denial of registration.

(3) A person who grows tea in contravention of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or to both.

Tea grower certificate.

**24.** The manager of a tea factory shall issue a certificate of registration to a small scale tea grower, medium scale tea grower or a large scale tea grower in the form prescribed in regulations.

Licensing of manufacturers.

**24A.** (1) A person shall not manufacture tea for sale except under and in accordance with a licence issued under this Act.

(2) A person shall apply for a manufacturing licence to the Board in a prescribed form and shall pay the prescribed fee.

(3) The Board may, after consultation with the Cabinet Secretary —

- (d) issue a manufacturing licence, in accordance with this Act;
- (e) refuse to issue the licence on any ground which may appear to the Board to be sufficient and inform the applicant in writing of the reasons thereof;
- (f) cancel, vary or suspend any licence if in the findings of the Board, the licensee is found to have contravened the regulations made under this Act for the operation of manufacturing entities.

(4) A manufacturing licence issued under this section shall in addition to authorizing the holder to carry on the business set out in subsection (1), also authorize the holder to carry out the business of packing and blending tea.

(5) Before the issuance or renewal of a manufacturing licence for a tea factory limited company the Board shall satisfy itself that the applicant has a procurement policy providing for competitive procurement of goods and services.

Register of manufacturers.

**24B.** The Board shall maintain a register, in such form as prescribed in regulations, of all manufacturers licensed under this Act and shall enter therein, in respect of each tea factory —

- (a) the full names of the manufacturer;
- (b) the date of issue of the licence;
- (c) particulars of any cancellation, suspension or variation of the licence; and
- (d) any other particulars the Board may deem necessary.

Illegal  
manufacture,  
possession, etc.

**24C.** (1) A person commits an offence if the person—

- (c) manufactures tea for sale in contravention of this Act;
- (d) buys, sells, offers for sale, transports or has possession of tea which to the person's knowledge or belief—
  - (iii) has been grown, manufactured or processed otherwise than in accordance with this Act;
  - (iv) is from a non-registered grower or dealer of such crop.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction, to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding five years, or both.

(3) If a person is in possession or has control of tea for which the person is unable to account to the satisfaction of a crop inspector under this Act, such tea shall be deemed to have been grown, manufactured or dried otherwise than in accordance with this Act until the contrary is proved.

(4) If a person is convicted of an offence under this section, the court shall order that any tea and any vehicle, vessel or other conveyance in relation to which an offence has been committed shall be forfeited to the Government unless, in the case of a vehicle, vessel or other conveyance, the court deems it necessary, for reasons to be recorded by it in writing, not to do so.

Registration of  
warehouse  
operator.

**24D.** (1) Every warehouse operator shall register with the Board.

(2) A person shall not store tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of warehouse operators and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of  
tea packers.

**24E.** (1) Every tea packer shall register with the Board.

(2) A person shall not pack tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea packers and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term

not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a  
tea buyer,  
exporter or  
importer.

**24F.** (1) A person who intends to carry on the business of tea buying, tea exporting or tea importing shall register with the Board.

(2) A person shall not carry on the business of buying tea, exporting or importing tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea buyers, tea exporters and tea importers and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Tea imports.

**24G.** (1) A person who imports tea into Kenya shall prior to importation—

- (a) provide evidence that the teas they intend to import are not available in the local market or at the tea auction;
- (b) provide a sample of the teas to be imported and pre-import verification certificate from the country of origin; and
- (c) obtain pre-import approval from the Board.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a  
tea broker.

**24H.** (1) Every tea broker shall register with the Board.

(2) A person shall not negotiate the purchase or sale of tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for—

- (a) the procedure for registration of a tea broker and the appeal process in case of refusal or denial of registration;
- (b) the maximum number of tea factories that shall be served by a tea broker.

(4) The remuneration paid to a tea broker by a tea factory limited company and a tea buyer or exporter for services rendered shall not exceed zero point seven five per centum of the gross sales by the broker.

(5) A person who contravenes subsections (2) and (4) commits an offence and shall, on conviction, be liable to

imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a management agent.

**24I.** (1) Every management agent shall register with the Board.

(2) A person shall not perform or offer professional services to a tea factory unless the person is registered in accordance with this Act.

(3) Every management agent shall submit annual returns to the Board and a copy to the respective county government in the form prescribed.

(4) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a management agent and the appeal process in case of refusal or denial of registration.

(5) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Management agent agreement.

**24J.** (1) A person who intends to manufacture or deal in tea may engage the services of a management agent upon such terms and conditions as may be agreed in the management agreement between them.

(2) A management agent shall sign a management agreement with each tea factory limited company that they intend to offer management agent services to.

(3) A management agreement between a management agent and a tea factory, shall be—

- (a) submitted to the Board for review and approval before execution by parties; and
- (b) for a period of five years, and may be renewed upon expiry at the discretion of the tea factory.

(4) The remuneration for services rendered by a management agent to a tea factory limited company shall not exceed one point five per centum of the net sales value of the tea sold per year.

(5) The staff costs for personnel seconded to the tea factory limited company by a management agent shall be borne by the management agent.

(6) Company Secretarial services shall be excluded from services to be offered by a management agent to a tea factory limited company.

(7) A tea factory shall recruit its own in-house Company Secretary or outsource the service.

(8) Despite subsection (7), a tea factory may enter into an arrangement with one or more tea factories to have a joint in-house Company Secretary.



(9) A director of a tea factory shall not serve as a director in another company having a direct or indirect commercial relationship with the tea factory where the person is serving as a director.

(10) Where the provisions of subsection (9) apply, a director of a tea factory shall forthwith relinquish his or her position.

Registration of a  
tea auction  
organizer.

**24K.** (1) Every tea auction organizer shall register with the Board.

(2) A person shall not deal in tea as a tea auction organizer unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of a tea auction organizer and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Auction  
process.

**24L.** (1) All teas processed and manufactured in Kenya for the export market with the exception of orthodox and specialty teas shall be offered for sale exclusively at the tea auction floor.

(2) All tea factory limited companies shall register with the Board and the auction organizer to participate in the tea auction directly and not through management agents.

(3) An auction organizer shall establish an electronic trading platform for the auction of tea that will be usable and accessible to all players in the value chain.

(4) A buyer shall pay in full the value of the tea bids they have won at the auction before collecting or taking custody of the tea.

(5) Tea brokers, buyers and the auction organizers shall ensure that the proceeds from the sale of tea are remitted to the tea factories accounts within fourteen days from the date of the auction.

(6) A tea factory shall within thirty days of receipt of the proceeds of the sale of tea, pay tea growers—

- (a) at least fifty per centum of payment due for green leaf delivered every month;
- (b) the balance due to the tea grower within three months from the end of financial year.

(7) An auction organizer shall develop trading rules to govern its operations and the trading rules shall be submitted to the Board for approval.

Registration of  
commercial  
green leaf  
transporters.

**24M.** (1) A person who intends to carry on the business of commercial green leaf transporter shall register with the Board.

(2) A person shall not carry on the business of commercial green leaf transporter unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial green leaf transporters and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Registration of a commercial tea nursery.

**24N.** (1) A person who intends to establish a commercial tea nursery shall register with the county government where they intend to establish a tea nursery.

(2) A person shall not establish a commercial tea nursery unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial tea nurseries and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Considerations before registration and licensing and renewal.

**24O.** (1) The Board shall, before registering, licensing or renewing a registration or licence under this Act, satisfy itself that—

- (c) the applicant has complied with the provisions of this Act and any other relevant law; and
- (d) the applicant or the directors of the company are fit and proper for the function for which they seek a licence or registration.

(2) In determining whether a person is fit and proper, regard shall be had to—

- (c) whether they have taken part in any business practice in the tea value chain that in the opinion of the Board was fraudulent, prejudicial or otherwise improper; or which otherwise discredited their method of doing business; and
- (d) whether they have been directors of a company or entity whose licence or registration certificate has previously been revoked or suspended by the Board for any cause.

(3) In determining whether a person or director is fit and proper, the Board shall have due regard to the provisions of the Fair

No. 4 of 2015.  
No. 17 of 2015.

Administrative Action Act, 2015, the Companies Act, 2015 and any other relevant law.

Conditions of a licence.

**24P.** (1) A licence issued under this Act shall be subject to such conditions as the Board may determine and as are specified in the licence and to any conditions which may be prescribed.

(2) The Board shall consider the professional and moral suitability of a person applying for a license and satisfy itself that such a person is a fit and proper person for the grant of the license.

(3) For the purposes of this section, the criteria for assessing the professional or moral suitability of a person applying for a license shall be as prescribed in the Second Schedule.

(4) In considering an application for a license, the Board may require to be satisfied as to—

- (a) the financial condition and history of the applicant;
- (b) the integrity of its management;
- (c) the professional and moral suitability of the persons proposed to manage or control applicant;
- (d) the adequacy of the capital structure of the applicant; and
- (e) the public interest which will be served by the granting of the licence.

(2) The Board may at any time during the validity of a licence—

- (c) vary the conditions of the licence; or
- (d) impose conditions or further conditions on the licence.

Application for renewal of a licence.

**24Q.** (1) An application for the renewal of a licence under this Act shall be made to the Board in a form prescribed not later than the first day of the month of June in which the current licence is due to expire.

(2) Despite subsection (1), a late application may be made upon payment of a late application fee as may be prescribed by the Board.

Revocation or alteration of a licence.

**24R.** The Board may revoke, alter or suspend a licence issued under this Act if in its opinion—

- (c) an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the licence holder or any employee of the licence holder; or
- (d) a condition of the licence has been contravened or not complied with.

Surrender of licence.

**24S.** (1) The holder of a licence which is revoked shall immediately surrender it to the Board.

(2) A licence holder may at any time surrender the licence to the Board and the licence shall cease to have effect immediately.

Appeals to the High Court.

**24T.** (1) An applicant for or holder of a licence who is aggrieved by a decision of the Board may appeal to the High Court on or in respect of—

- (c) the grant, refusal, renewal, variation or revocation; or
- (d) the conditions imposed on the grant, renewal or variation, of a licence.

(2) An appeal under this section shall be lodged within thirty days from the date on which the appellant first received notice of the decision.

Approval of fees charged.

**24U.** Any fee, commission or other dues charged by a broker, management agent or an auction organizer shall be subject to prior approval by the Board.

Declaration of blended teas.

**24V.** (1) A person who blends any or various grades of tea produced in Kenya with any other tea produced outside Kenya shall declare the percentage of Kenyan tea on the packaging and on the blend sheet.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for term not exceeding three years or to a fine not exceeding five million shillings or to both.

Taxation of tea.

**24W.** (1) Fees imposed by a county government shall not in any way prejudice national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.

No. 2 of 2012

(2) The Cabinet Secretary shall, using the structures established under the Intergovernmental Relations Act, put in place mechanisms to harmonize fees and charges on tea across counties.

Tea value addition.

**24X.** (1) All tea buyers or exporters shall value add at least forty per centum of their annual Kenya tea exports within eight years of the commencement of this Act.

(2) The Cabinet Secretary shall in accordance with regulations made under this Act and in consultation with the Board, facilitate the establishment of Common User Facility for tea value addition as may be prescribed.

## **NEW PART BY THE COMMITTEE**

### **NEW PART**

**THAT** the Bill be amended by inserting the following new parts immediately after Part III—

### PART IIIA – APPOINTMENT OF CROP INSPECTORS

Appointment of  
crop inspectors.

**24Y.** (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

(2) For purposes of subsection (1), the Board may, by regulations, prescribe the qualifications for a crop inspector.

Entry and  
inspection.

**24Z.** A person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

- (d) enter any land or buildings occupied by the holder of a manufacturing licence issued under this Act, or a person registered under this Act;
- (e) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence or registration are being complied with; and
- (f) may require any person found thereon to give such information as the person may require.

Powers of entry.

**24ZA.** (1) For the purposes of this Act, an inspector who has reasonable grounds may at any reasonable time, enter upon any land, premises or vehicle and may take such persons and things as the inspector considers necessary and may—

- (f) perform the functions or exercise the powers conferred by this Act or any other written law;
- (g) make enquiries or carry out a search to ascertain if this Act is being complied with;
- (h) demand the production by a licence holder of the licence for examination;
- (i) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
- (j) do any other thing authorized under this Act.

(2) The owner or occupier of or any person on land or in premises or a vehicle which is entered under subsection (1) shall render such reasonable assistance as may be required by the inspector.

(3) A person who refuses, unreasonably delays or fails to comply with a requirement under subsection (2) commits an offence.

Obstruction of  
inspectors.

**24ZB.** (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three years, or both.

### **PART IIIB – ESTABLISHMENT OF TEA LEVY AND TEA FUND**

Establishment of  
Tea Levy.

**24ZC.** (1) The Cabinet Secretary may by notice in the *Gazette*, impose a levy to be levied on tea exports and imports, to be known as the tea levy.

(2) The levy imposed through a notice under subsection (1) shall be collected by the Board at a rate not exceeding one per centum of the auction value for teas sold through the auction and at such times, being not earlier than one after the date of publication of the notice, in such a manner, as is specified in the notice.

(3) The levy on tea imports shall be charged at a rate of one hundred per centum of the value of the imported teas.

(4) The levy imposed under this section shall be levied and collected in such manner as the Cabinet Secretary may prescribe through regulations.

(5) The tea levy collected under subsection (2) shall be apportioned as follows—

- (a) fifty per centum shall be applied by the Board for income or price stabilization for tea growers;
- (b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;
- (c) twenty per centum shall be remitted directly to the Tea Research Foundation;
- (d) fifteen per centum shall be applied for infrastructure development in the tea subsector on a pro rata basis.

(6) A person who fails to pay the tea levy imposed under this Act commits an offence.

Establishment of  
a Tea Fund.

**24ZD.** (1) There is established a Fund to be known as the Tea Fund which shall be managed by the Board.

(2) The Fund shall consist of-

- (a) monies appropriated by the National Assembly;
- (b) monies from the tea levy;
- (c) monies from a source approved by the Board;
- (d) grants and donations made to the Board.

(3) The Board shall apply the monies received into the Fund to—

- (a) income or price stabilization;
- (b) research and development.

### **PART IIIC- ESTABLISHMENT OF THE TEA RESEARCH FOUNDATION**

Establishment of  
the Tea  
Research  
Foundation.

**24ZE.** (1) There is hereby established a body to be known as the Tea Research Foundation.

(2) The Foundation is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (f) suing and being sued;
- (g) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (h) borrowing and lending money;
- (i) entering into contracts; and
- (j) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

Functions of the  
Foundation.

**24ZF.** (1) The Foundation shall—

- (c) promote, co-ordinate and regulate research in tea and tea diseases; and
- (d) expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the development of tea.

(2) For the purpose of carrying out its functions the Foundation shall—

- (n) formulate policy and make policy recommendations to the Cabinet Secretary on tea research;
- (o) prioritise areas for, and co-ordinate, tea research in Kenya in line with the national policy on tea;
- (p) determine and advise the Government on the resource requirements for tea research in Kenya both at the national and county level;
- (q) regulate, monitor and ensure that all tea research undertaken by other institutions or persons undertaking tea research is consistent with the national priorities specified in the relevant policy documents;
- (r) formulate or approve medium and long term research plans, strategies and budgets of the Foundation;
- (s) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Foundation;
- (t) support and promote the training and capacity building in relation to agricultural research;
- (u) liaise with and ensure the co-ordination of institutions, agencies and persons involved in tea research;
- (v) establish platforms for the purposes sharing of research information, advancing research and transfer of

- (c) a novel issue whose disposition requires the Board to consider an issue that it has not previously addressed; or
  - (d) a complex issue whose disposition requires the Board to obtain significant factual information to resolve a difficult legal, factual or policy issue.
- (5) The Board may dismiss a complaint if—
- (e) the complainant fails to show that it has been injured, or is likely to be injured as a direct result of the alleged contravention of the provisions of this Act as cited in the complaint;
  - (f) the factual allegations in the complaint are unsupported or are without merit;
  - (g) the factual allegations in the complaint, even if proven to be true, do not constitute a contravention of this Act or the regulations made thereunder; or
  - (h) it concludes that the exercise of its enforcement discretion would not be appropriate.
- (6) Where the Board dismisses a complaint, it shall notify the complainant and provide a written explanation.
- (7) Where the Board admits a complaint, it shall issue a written notification to the licensee complained of and the complainant indicating—
- (c) the specific provisions of this Act that the licensee has been alleged to contravene; and
  - (d) reasonable details of the alleged facts constituting the contravention.
- (8) A licensee that is the subject of a complaint shall, within fifteen days of receipt of the notification from the Board, submit a response providing the basis on which it disputes the allegations of contravention.
- (9) The Board shall, subject to section 29G on confidentiality, provide copies of all documents filed by each party to the other party.
- (10) The Board may—
- (e) allow the filing of additional responses by the parties;
  - (f) upon application and for good reasons, extend time for the filing of any documents or replies by the parties to the complaint;
  - (g) request the complainant or the licensee complained of to submit additional information at any time during the course of the enforcement proceedings; or
  - (h) direct an independent audit or appropriate investigation of the operations and books of account of



a licensee to obtain information relevant to the complaint.

Withdrawal of complaint.

**29B.** (1) A complainant may, at any time and with reasons, withdraw its complaint in writing addressed to the Board and the licensee complained of.

(2) The withdrawal of a complaint shall not preclude the Board from taking enforcement action on its own motion in the public interest.

Decision on a complaint.

**29C.** (1) The Board shall issue its decision on a complaint within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written notice to the parties and before the expiry of the sixty day review period, extend the time and specify the date by which it shall issue its decision.

Enforcement action.

**29D.** (1) Where the Board intends to commence an enforcement action against a licensee on its own motion, the Board shall—

(d) notify the licensee and clearly indicate the specific provisions of this Act the licensee is alleged to have contravened;

(e) allow the licensee at least fifteen days to respond in writing with a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the licensee disputes the allegation; and

(f) issue its decision within sixty days of receiving all necessary information.

(2) Where necessary, the Board may, by written notice to the licensee and before the expiry of the sixty day review period, extend the time and specify the date by which it shall issue its decision.

Interim directive.

**29E.** (1) At any time during an enforcement proceeding, the Board may issue an interim directive to a licensee to cease and desist from any specified conduct.

(2) In determining whether to issue an interim directive the Board shall consider whether—

(e) there is prima facie evidence that the licensee has contravened the provision of this Act;

(f) continuation of the licensee's conduct is likely to cause serious harm to other licensees, consumers or the general public;

(g) the potential harm of allowing the licensee to continue its conduct outweighs the burden on the licensee of ceasing the conduct; and

(h) issuance of the interim directive is in the public interest.

Enforcement  
measures.

**29F.** (1) Where the Board determines that a licensee has contravened any provision of this Act, the Board may take such enforcement measures as it considers appropriate, including—

- (g) issuing a written warning to the licensee;
- (h) directing the licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Act;
- (i) directing the licensee to take specific remedial action;
- (j) declaring any agreement or contract void;
- (k) imposing a financial penalty relative to the period that the breach persists; or
- (l) suspension or cancellation of the licence issued under this Act.

(2) A person aggrieved by the decision of the Board under this section may appeal to the High Court.

Confidentiality.

**29G.** (1) A party submitting information to the Board may request that the information submitted be treated as confidential.

(2) The Board shall grant a request for confidential treatment if the requesting party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment contains commercially sensitive information or that the disclosure of the information would have a material adverse impact.

(3) For the purposes of this section, “commercially sensitive information” includes information—

- (c) that is not otherwise available to the public; or
- (d) whose disclosure would cause commercial harm to the party or otherwise provide a commercial benefit to the party’s competitors, including business procedures, practices, plans or its assessment of market conditions.

## **CLAUSE 30**

### **COMMITTEE**

**THAT**, Clause 30 of the Bill be amended by—

- (a) deleting sub-clause (1);
- (b) deleting the expression “(2)” appearing immediately before sub-clause (2);

## **NEW CLAUSE**

### **COMMITTEE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 31—

Offences  
penalties.

and

**31A.** (1) A person commits an offence if the person—

- (a) without lawful excuse ignores or fails to obey any instruction issued by a member of the Board or an employee or agent of the Board in exercise of the powers or the performance of the functions of the Board under this Act;
- (b) willfully obstructs a member of the Board or an employee or agent of the Board in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to a member of the Board or an employee or agent of the Board in exercise of the powers or the performance of the functions of the Board under this Act.

(2) A person who contravenes subsection (1) is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding five years, or to both.

(3) A person who is convicted of an offence under this Act shall in addition to any other penalty have his or her licence or registration suspended or cancelled for such a period as the Board may decide.

## **CLAUSE 32**

### **COMMITTEE**

**THAT**, the Bill be amended by deleting clause 32 and substituting the following new clause—

General penalty.

**32.** A person who commits an offence under this Act for which no penalty is provided shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings or a fine not exceeding twice the value of the tea or tea products or, to imprisonment for a term not exceeding one year, or to both.

### **Hon. Eve Obara**

**THAT**, Clause 32 of the Bill be amended in sub-clause (1) by deleting the words “not less than twenty thousand shillings” appearing immediately after the words “on conviction, to a fine of” and substituting therefor the words “not exceeding five hundred thousand shillings”.

### **NEW CLAUSE**

## COMMITTEE

THAT, the Bill be amended by inserting the following new clause immediately after clause 32—

Offences relating  
to body corporate.

**32A.** If an offence under this Act is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

- (c) the act or omission constituting the offence took place without the person's knowledge; or
- (d) the person took reasonable steps to prevent the commission of the offence.

## CLAUSE 33

## COMMITTEE

THAT, the Bill be amended by deleting clause 33 and substituting therefor the following new clause—

Regulations.

**33.** (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for—

- (l) the regulation of the production, processing, importation and exportation of tea;
- (m) the procedure of registration of tea brokers, small scale tea growers, medium scale tea growers, large scale tea growers, commercial green leaf transporters, tea packers, tea buyers, tea importers, tea exporters, management agents, auction organizers, warehouse operators, commercial tea nurseries;
- (n) the procedure of licensing of tea manufacturers;
- (o) the forms to be used in the application for registration, licensing, contracts and related activities;
- (p) the prescribed areas for planting tea;
- (q) the appeal process in case of refusal or denial of a licence;
- (r) monitoring of the entire value chain in the tea sub-sector;
- (s) regulation of the conduct of tea auction including the volumes of tea to be sold through auction or through direct sales;
- (t) the promotion of fair and proper governance structures in institutions along the tea value chain in the interest of tea growers;

- (u) rules to avoid conflict of interest in the ownership and dealings between tea growers, tea factories and tea dealers;
- (v) the criteria for the pricing of green leaf;
- (w) maximum fees charged by players along the value chain;
- (x) the tenure of board members for tea factory;
- (y) procedures for ensuring internal democracy in tea growers' institutions and organizations;
- (z) value addition of tea exports and imports;
- (aa) control of pests and diseases;
- (bb) any fee charged under this Act;
- (cc) the regulation of contracts between growers, tea factories and other players in the tea industry;
- (dd) tea safety including transportation, processing and market standards of tea;
- (ee) submission of returns and reports by the holders of licences and registrations under this Act;
- (ff) regulation and controlling the method of blending, packaging and labelling of tea for purposes of traceability;
- (gg) standards, and the manner of grading and classification of made tea products under this Act; and
- (hh) anything required to be prescribed under this Act;

(3) For the purposes of Article 94(6) of the Constitution—

- (g) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;
- (h) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap. 2

No. 23 of 2013

**CLAUSE 34**

**COMMITTEE**

**CLAUSE 34**

**THAT**, clause 34 of the Bill be amended—

- (a) by renumbering the existing provision as subclause (1);
- (b) by inserting the following new subclause immediately after the renumbered subclause (1)—
  - “(2) The Crops Act, 2013 is amended in Part I of the First Schedule by deleting the expression “Tea.....*Camellia* spp.””

**CLAUSE 35**

**COMMITTEE**

**THAT**, the Bill be amended by deleting Clause 35 and substituting therefor the following new clause—

Transfer  
assets  
liabilities.

of  
and

**35.** All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Tea Directorate of the Agriculture and Food Authority and the Tea Research Institute of the Kenya Agricultural and Livestock Research Organization, shall, on the date of commencement of this Act, vest in the Board and the Foundation, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property.

**CLAUSE 36**

**COMMITTEE**

**THAT**, the Bill be amended by deleting Clause 36 and substituting therefor the following new clause—

Pending  
proceedings and  
claims.

**36.** All legal proceedings and claims pending in respect of actions and activities to which this Act apply shall be continued or enforced by or against the Board and the Foundation in the same manner as they would have been continued or enforced by or against the Agriculture and Food Authority and the Kenya Agricultural and Livestock Research Organization had this Act not been enacted.

**CLAUSE 38**

**COMMITTEE**

**THAT**, the Bill be amended by deleting clause 38 and substituting therefor the following new clause –

Existing licences  
and registrations.

**38.** All licences and registrations existing before the appointed day shall remain valid until their expiry, and subsequent licences and registrations shall be issued under this Act.

**CLAUSE 39**

**COMMITTEE**

**THAT**, the Bill be amended by deleting Clause 39 and substituting therefor the following new clause—

Transfer  
Staff. of

**39.** (1) The staff of the Tea Directorate employed by the Agriculture and Food Authority prior to the commencement of this Act, shall be the staff of the Board.

(2) The staff of the Tea Research Institute employed by the Kenya Agricultural and Livestock Research Organization prior to the commencement of this Act, shall be the staff of the Foundation.

#### **CLAUSE 40**

#### **COMMITTEE**

**THAT**, the Bill be amended by deleting Clause 40.

#### **NEW CLAUSES**

**Hon. Ben Momanyi**

**THAT**, the Bill be amended by inserting the following new clauses immediately after clause 32—

Conflict of laws.

**32A.** If any conflict arises between the provisions of this Act and any other Act with respect to the development of the tea crop, the provisions of this Act shall prevail.

Restraint of  
breaches of this  
Act.

**32B.** Any person who has who has reason to believe that the provisions of this Act have been, are being, or are about to be violated, may petition the High Court for –

- (i) declaration that the provisions of this Act are being, have been, or are about to be contravened;
- (j) an injunction, restraining any specified person from carrying out the contravention;
- (k) a writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Act;  
or
- (l) any other lawful remedy.

#### **SCHEDULE**

#### **COMMITTEE**

**THAT**, the Schedule of the Bill be amended—

- (a) by deleting the title and substituting therefore the following new title—

**“FIRST SCHEDULE”**

- (b) in clause (1) in paragraph (3) by deleting the word “five” appearing immediately after the words “by at least” and substituting therefor the words “two thirds of the”.

**Hon. Cecily Mbarire**

**THAT**, the Schedule of the Bill be amended by deleting the title and substituting therefor the following new title—

**“FIRST SCHEDULE”**

**Hon. Millie Odhiambo**

**THAT**, the Schedule of the Bill be amended by deleting the title and substituting therefor the following new title—

**“FIRST SCHEDULE [s. 19]”**

**Hon. Gichimu Githinji**

**THAT**, the Schedule of the Bill be amended by deleting the title and substituting therefor the following new title—

**“FIRST SCHEDULE”**

**NEW SCHEDULES**

**COMMITTEE**

**THAT**, the Bill be amended by inserting the following new Schedule immediately after the First Schedule—

**SECOND SCHEDULE**

**CRITERIA FOR ASSESSING PROFESSIONAL OR MORAL SUITABILITY**

1. In order to determine, for the purposes of this Act, the professional and moral suitability of persons, proposed to be Directors and senior officers of a licensee, the Board shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

- (k) possession of adequate professional credentials or experience or both for the position for which the person is proposed;
- (l) ability to recommend sound practices gleaned from other situations;
- (m) ability to provide dispassionate advice;
- (n) ability to avoid conflicts of interest in his or her activities and commitments with other organizations;
- (o) ability to absent oneself from decisions when the person is incapable of providing objective advice.



2. For the purpose of and without prejudice to the generality of the provisions of paragraph (1), the Board, may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that such person—

- (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
- (j) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence or other malpractices;
- (k) has taken part in any business practices that, in the opinion of the Board, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited the person's methods of conducting business; or
- (l) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on the person's competence and soundness of judgment.

3. The Board may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of the person as stipulated under the Act.

**Hon. Cecily Mbarire**

**THAT**, the Bill be amended by inserting the following new Schedules immediately after the First Schedule—

**SECOND SCHEDULE [s. 2]**

**TEA BLOCKS**

<b>BLOCK</b>	<b>COUNTIES</b>
EAST	Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.
WEST	Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga, Trans-Nzoia, Baringo, Bungoma, Elgeyo Marakwet and Uasin Gishu.

**Hon. Millie Odhiambo**

**THAT**, the Bill be amended by inserting the following new Schedule immediately after the First Schedule—

**SECOND SCHEDULE [s. 2]**

**TEA BLOCKS**

**BLOCK**

EAST

WEST

**COUNTIES**

Nyeri, Kirinyaga, Kiambu, Murang'a, Meru, Embu, Tharaka-Nithi, and Narok.


Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga, Trans-Nzoia, Baringo, Bungoma, Elgeyo Marakwet and Uasin Gishu.

**Hon. Gichimu Githinji**

**THAT**, the Bill be amended by inserting the following new Schedules immediately after the First Schedule—

**SECOND SCHEDULE [s. 2]**

<b>TEA BLOCKS</b>	
<b>BLOCK</b>	<b>COUNTIES</b>
EAST	Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, Meru and Narok.
WEST	Kericho, Bomet, Nakuru, Kisii, Nyamira, Nandi, Kakamega, Vihiga, Trans-Nzoia, Baringo, Bungoma, Elgeyo Marakwet and Uasin Gishu

SIGNED:  DATE: 25/11/2020

**THE HON. SILAS KIPKOECH TIREN, MP**

**THE CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK**

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON AGRICULTURE & LIVESTOCK

MEMBERS ATTENDANCE SCHEDULE

DATE: 25/11/2020

VENUE: 4TH FLOOR CONTINENTAL HOUSE

AGENDA: ADOPTION LIST OF THE ADDENDUM REPORT TO HEA BU, SENATE BU, NO 369 2018

	NAME	TITLE	SIGNATURE
1	Hon. Silas Kipkoech Tiren, MP.	CHAIRPERSON	
2	Hon. Catherine Waruguru, MP.	VICE-CHAIRPERSON	
3	Hon. Maison Leshoomo, MP.		
4	Hon. Ferdinand Wanyonyi, MP.	Member	
5	Hon. Dr. Chrisantus Wamalwa, CBS, MP.		
6	Hon. Simba Arati, MP.		
7	Hon. Francis Munyua Waititu, MP.		
8	Hon. Cecily Mbarire, MGH, MP.	Member	
9	Hon. Jude Njomo, MP.		
10	Hon. Adan Haji Yussuf, MP.	Member	
11	Hon. Janet Jepkemboi Sitienei, MP.	Member	
12	Hon. Julius Kibiwott Melly, MP.	Member	
13	Hon. Gooffrey Odanga, MP.	Member	
14	Hon. Martin Peters Owino, MP.	Member	
15	Hon. Joyce Kamene, MP.	Member	
16	Hon. Yegon Brighton Leonard, MP.	Member	
17	Hon. Dr. John Kanyuithia Mutunga, MP.	Member	
18	Hon. Gabriel Kago Mukuha, MP.		

Committee Clerk: 25/11/2020

Deputy Director in charge.....

