

THE SUGAR ACT

Date of commencement : 13th April, 1967.

An Act to make further and better provision for the control of the sugar industry in Swaziland and for incidental and related matters.

Short title

1. This Act may be cited as the Sugar Act, 1967.

Interpretation

2. In this Act, unless the context otherwise requires -

"Agreement" means the Agreement referred to in section 6, as from time to time amended in accordance with the provisions of that Agreement and of this Act;

"association" means the association established under section 3;

"board" means the board referred to in section 8;

"by-product" means any substance other than sugar produced incidentally during the actual process of manufacturing sugar from sugar cane;

"constitution" means the constitution referred to in section 4, as from time to time amended in accordance with the provisions of that constitution;

"grower" means a person who produces sugar cane in Swaziland for the manufacture of sugar, and does not include a miller-cum-planter;

"miller" means a person who operates a sugar mill in Swaziland for the production of centrifugal sugar;

"miller-cum-planter" means a miller who is also registered as a quota grower under Schedule A to the Agreement;

"Minister" means the Minister for Commerce, Industry and Mines;

"quota" means a permit or licence to grow sugar cane for the manufacture of sugar and to deliver in each year a specified tonnage of sucrose to be extracted therefrom;

"refiner" means a person who converts raw sugar into refined or mill-white sugar, and includes a miller who converts raw sugar into refined or mill-white sugar;

"sugar" means crystalline or liquid sucrose in any of its recognized commercial forms,

derived from sugar cane and intended for human consumption;

"sugar industry" means the sugar industry in Swaziland and includes the growing of sugar cane, the manufacturing and the refining of sugar and the marketing and disposal of sugar and its by-products within the provisions of the Agreement.

Association to be a body corporate

3. There is hereby established a body corporate, to be known as the Swaziland Sugar Association, which shall be capable of suing and being sued in its corporate name and of performing all such acts as are prescribed from time to time in its constitution and as are necessary for, or incidental to, the carrying out of its functions under the Agreement and under this Act.

Constitution of the association

4. The constitution of the association is set out in Schedule E to the Agreement. (Amended A.1/1967).

Functions of the association

5. The functions of the association under this Act are to regulate the sugar industry in terms of the Agreement; and to advise the Minister on any matters relating to the sugar industry. (Amended A.1/1967).

Agreement to be binding on all persons in sugar industry. (Schedule - Part I)

6. The Agreement, set out in Part I of the Schedule, together with all amendments thereto effected in accordance with this Act and published in the Gazette, shall be binding upon all millers, growers, millers-cum-planters, refiners, and other persons engaged in any aspects of the sugar industry. (Amended A.1/1967).

Alteration of the Agreement (Schedule - Part II)

7. Notwithstanding anything contained in the Agreement, a purported alteration or amendment of any of the clauses of the Agreement specified in Part II of the Schedule shall be of no effect unless it is made with the prior written consent of the Minister. (Amended A.1/1967).

Quota Board

8. (1) There shall be established a quota board as provided in Chapter III of the Agreement, and such board and the association shall have all such powers and perform such functions as are allocated or given to them under the Agreement.

(2) The High Court may review a proceeding of the board on the petition of any person aggrieved thereby if it appears to the court that -

- (a) in the proceeding in question the board -
 - (i) exceeded its powers; or
 - (ii) failed to take into consideration matters relevant to the issues before it or otherwise failed to perform a duty; or
 - (iii) exercised its powers in an arbitrary, mala fide or grossly unreasonable manner; or
 - (iv) a point of law arose which the court should determine; or
 - (b) a person, who was disqualified from being a member, or, if a member, from taking part in the proceeding in question, whether in terms of the Agreement or otherwise, took part in the proceeding.
- (3) Subject to sub-section (4), where, upon the consideration on review of a proceeding of the board, the court finds good grounds for review, it may -
- (a) set aside the proceeding in question; and
 - (b) make such order as it considers fit, including an order that a special meeting of the board be convened for a rehearing, in accordance with the directions of the court, or for a reconsideration of the matter, or the taking of further evidence.
- (4) A proceeding shall not be set aside -
- (a) by reason of a formal or technical defect in a proceeding not, in the opinion of the court, resulting in a substantial injustice; or
 - (b) in any other case, unless the court is satisfied that the matter proved caused, or was calculated to cause, substantial prejudice to the petitioner.
- (5) On a petition under sub-section (2), the court may make such order as to costs as it deems just.
- (6) A person whose quota rights are adversely affected by a decision of the board under the provisions of clauses 20, 21 or 22 of the Agreement may appeal to the High Court against such decision.
- (7) On an appeal under sub-section (6), the court may -
- (a) allow the appeal and set aside the decision of the board; or
 - (b) make such order as it considers just and equitable including an order that a special meeting of the board be convened for a rehearing, in accordance with the directions of the court, or for a reconsideration of their decision,

or for the taking of further evidence; or

- (c) disallow the appeal in whole or in part; and may make such order as to costs as it deems just.
- (8) A petition for review under sub-section (2) and a notice of an appeal under sub-section (6) shall be filed in the High Court within fifteen days of the date on which the petitioner or the appellant, as the case may be, is notified of the decision of the board.
- (9) Except as provided in this section, there shall be no review of, or appeal from, the proceedings of the board. (Amended A.1/1967).

Powers of Minister

- 9. The Minister shall have all such powers and exercise all such functions as are given or reserved to him in terms of the Agreement. (Amended A.1/1967).

Evidence of change in agreement

- 10. Proof of publication in the Gazette of any alteration or amendment to the Agreement shall be prima facie evidence that such alteration or amendment was properly effected and that all matters necessary therefor, or precedent, or incidental thereto, were duly complied with. (Amended A.1/1967).

Restrictions on cultivation of sugar cane and manufacture, refining, importing and exporting of sugar

- 11. (1) No person shall grow or cultivate any sugar cane except in terms of a quota duly allocated or assigned to him in terms of the Agreement and to the extent permitted by the Agreement, or unless permitted by the Minister, after consultation with the association.
- (2) No person shall engage in the manufacture of sugar except in terms of a milling licence allocated or assigned to him in terms of the Agreement and to the extent permitted by such milling licence and the Agreement.
- (3) No person shall engage in the refining of sugar except as part of the manufacture of sugar pursuant to a milling licence granted to him in terms of the Agreement or except in terms of, and to the extent permitted by a permit granted to him in terms of sub-section (4).
- (4) The Minister may, on the advice of the Association, grant to any person permission in writing to refine sugar in such quantities and subject to such conditions as may be specified in the permission, and may, after due notice to the person affected, likewise cancel, vary or alter any such permission.

Provided that any permission so granted may, with the consent of the Minister but not otherwise, be assigned by the grantee thereof to any person.

- (5) No person other than the association shall import any sugar manufactured outside Swaziland or export any sugar manufactured in Swaziland except in terms of, and to the extent permitted by, a permission granted to him in terms of sub-section (6).
- (6) The Minister may, on the request of the association, grant to any other person permission in writing to import sugar manufactured outside Swaziland or to export sugar manufactured in Swaziland or any by-product of the manufacture of sugar in Swaziland, subject to such conditions as may be specified in the permission, and shall, on the like request, after due notice to the person affected, cancel, vary or alter any such permission.

Provided that any permission so granted may, with the consent of the Minister, but not otherwise, be assigned by the grantee to any person. (Amended A.1/1967).

Power of Minister to prescribe sugar prices

12. The Minister may, after consultation with the association, by notice in the Gazette -
 - (a) prescribe the maximum wholesale or retail price at which any type or grade of sugar may be sold or disposed of, by any person in any place or area specified in the notice, for consumption in Swaziland, and may prescribe different prices for different classes of user;
 - (b) amend or revoke any notice issued under this section.

Penalties

13. (1) Any person who contravenes or attempts to contravene any prohibition imposed under section 11, or the terms of any conditions attached to a permission under section 11(4) or 11(6), or the provisions of any notice published by the Minister in terms of section 12, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months or to a fine not exceeding two hundred rand or to both such imprisonment and fine, and in the case of a continuing offence to an additional fine not exceeding ten rand for every day during which the offence continues.
- (2) If any person is convicted of an offence referred to in sub-section (1), the court convicting him may enquire into and estimate the amount of profit made by him in consequence of his having committed such offence, and may, in addition to any sentence it may impose under sub-section (1), impose on the person so convicted a fine equal to the amount of the profit which the court so estimates he

made in consequence of his having committed such offence.

- (3) The court convicting a person of an offence under sub-section (1) may, if it thinks fit, declare any sugar or by-product produced at the trial of such person to be forfeited to the Government.

Responsibility of employers

14. (1) Whenever the manager, agent or servant of any person (hereinafter called the employer) does or omits to do anything in contravention of this Act, such employer shall be deemed himself to have contravened any provision thereof and shall be liable on conviction to the penalties therefor unless he proves to the satisfaction of the court that -
 - (a) in doing or omitting to do such thing such manager, agent or servant was acting without his knowledge or permission; and
 - (b) all reasonable steps were taken by him to prevent any act or omission of the kind in question.
- (2) Whenever an employer is by virtue of the provisions of sub-section liable for anything done or omitted by another person, the latter shall also be liable therefor as if he were the employer.

Provided that the provisions of this section shall not relieve such other person from any other liability which he shares with the employer.

Regulations

15. (1) The Minister may, after consultation with the association, make regulations generally for the further and better carrying out of the purposes of this Act.
- (2) The regulations made under this section may prescribe penalties for the contravention thereof not exceeding those mentioned in section 13(1).

Saving

16. Any permission granted to any person under the repealed control of Sugar Proclamation (Cap. 162) to grow or cultivate sugar cane or to manufacture sugar shall remain valid and in force until replaced by a quota or a milling licence, as the case may be, granted to that person in terms of the Agreement.

