

Tobacco Industry and Marketing (Prohibition of Side Marketing)  
Regulations, 2022

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IT is hereby notified that the Minister of Lands, Agriculture, Fisheries, Water and Rural Development has, in terms of section 80 of the Tobacco Industry and Marketing Act [*Chapter 18:20*], made the following regulations:—

*Title*

1. These regulations may be cited as the Tobacco Industry and Marketing (Side Marketing) Regulations, 2022.

*Application*

2. These regulations shall govern all transactions relating to the buying and selling of contract tobacco.

*Interpretation*

3. In these regulations—

“Board” means the Tobacco Industry and Marketing Board established by section 3 of the Act.

“buyer” means—

- (a) a person who buys unmanufactured tobacco; or
- (b) a person who is licensed under the Tobacco Industry and Marketing Act [*Chapter 18:20*] as a buyer of tobacco; or
- (c) a person who is registered or under Tobacco Industry and Marketing Act [*Chapter 18:20*] as an authorized buyer of auction tobacco; or
- (d) a contractor.

“contractor” means any person who enters into a scheme contract with a contract grower to grow tobacco on the condition that the contract grower will sell the contract tobacco to the contractor;

“contract grower” means a grower who enters into a scheme contract on with a contractor;

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“contract tobacco” means any tobacco that the contract grower has produced or undertaken to produce to a scheme contract;

“Minister” means the Minister responsible for Lands and Agriculture or any other Minister to whom the President may from time to time assign the administration of the Act;

“producer” means a person who, by himself or herself or his or her agents grows tobacco;

“scheme contract” means an unsecured contract between contract grower and a contractor to grow tobacco where under the contractor supplies agricultural inputs in return for the contract grower delivering the contract tobacco to the designated selling points specified in the scheme contract;

“sell” includes to keep, offer, expose, transmit, convey, prepare for sale, barter, exchange or hawk, display or advertise for sale, exchange or dispose of for valuable consideration;

“side marketing” means:

- (a) where a contract grower sells contracted tobacco other than to a contractor that they have been contracted to prior to extinguishing their contractual obligations with the indebted contractor; or
- (b) where a buyer buys contracted tobacco prior to the grower extinguishing their contractual obligations with the contractor; or
- (c) where an auction floor buys tobacco that has been contracted and the grower has not extinguished its contractual obligations.

*Promotion and protection of sale tobacco*

4. (1) The Board may enter into agreement with persons it will licence to buy contract tobacco in the scheme contract.

(2) These regulations shall apply to persons who enter into scheme contracts as defined in section 3.

*Registration of contractors*

5. (1) Every person who is, or intends to become a contractor shall register with the Board by completing and submitting form TIM1 as set out in the First Schedule to the Board.

(2) The Board shall issue a contractor who successfully applies as such a contractor's licence as set out in Form TIM2.

(3) If an application for a license is successful, the Board shall make an appropriate entry in the licensing register.

(4) A person who makes an application for a licence—

- (a) in the first quarter of the year, shall pay the full prescribed issuance fee; or
- (b) in the second quarter of the year, shall pay three-quarters of the prescribed issuance fee; or
- (c) in the third quarter or fourth quarter of the year, shall pay half of the prescribed issuance fee.

(5) Before cancellation of a contractor's license the Board shall call upon the contractor to show cause why he, she or it should not be deregistered.

(6) The Board may cancel the registration of any person if such person has—

- (a) not carried on business in the capacity in respect of which he or she was registered, for a period of twelve months; or
- (b) notified the Board of his or her intention to discontinue the operations in respect of which he or she has been registered and has made written application for the removal of his or her name from the register; or
- (c) furnished false information in his or her application for registration in terms of subsection (1).

(7) A person who is aggrieved by the cancellation of his or her registration in terms of subsection (2) shall have the right of appeal to the Minister whose decision shall be final.

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*Sale or delivery of Tobacco*

6. (1) No contract grower under a scheme contract to sell to a contractor shall sell or otherwise dispose of any contract tobacco except to their contractor. For the avoidance of doubt, a contract grower shall sell tobacco to their contractor up to an amount that extinguishes their indebtedness in terms of the scheme contract.

(2) Any contract tobacco which is required to be sold to the contractor in terms of this section shall be delivered at receiving points as designated by the contractor.

(4) Any contract grower who contravenes subsection (1) and (2) shall be guilty of an offence and liable to a fine not exceeding level five(5) or to imprisonment for a period not exceeding six(6) months or to both such fine and such imprisonment.

(5) Any person, whether a party to a scheme contract or not, who deals in or possesses tobacco in contravention of these regulations; that is to say purchases, receives, stores, sells, obtains, possesses, exports or otherwise disposes of such tobacco, or participates in side marketing in contravention of these regulations shall be guilty of an offence and liable to a fine not exceeding level five (5) or to imprisonment for a period not exceeding six (6) months or to both such fine and such imprisonment.

(6) Notwithstanding the penalty in subsection (5) any person found guilty in terms of that subsection may be ordered to compensate three times the loss that a particular contractor incurs due to such infringement.

(7) Notwithstanding any penalties as set out in subsection (5), the Board shall have the right to suspend the license of any buyer registered as a contractor for a period not exceeding four (4) years if it is satisfied that the contractor has contravened subsection (5).

*Submission of returns and keeping of records by contractors*

7. (1) Every contractor shall provide to the Board details of the support extended to a contract grower.

(2) Any contractor who—

(a) operates without registration; or

- (b) falsifies information; or
- (c) fails to submit returns on time; or
- (d) fails to give growers adequate inputs as per Board standard package within the stipulated time frame; or
- (e) fails to submit details of support extended to contract growers; or
- (f) fails to give minimum input package per hectare; or
- (g) knowingly contracts a contract grower already contracted by others; or
- (h) purchases contract tobacco contracted by others; or
- (i) misappropriates inputs; or
- (j) fails to release a contract grower from the scheme contract obligation once the grower has extinguished his or her obligations in terms of the scheme contract; or
- (k) fails to pay contract growers for contract tobacco received in terms of the scheme contract within 2 days of receipt;

shall be guilty of an offence and liable to a fine not exceeding level five (5) or to imprisonment for a period not exceeding six (6) months or to both such fine and such imprisonment.

(3) Notwithstanding the penalties set out in subsection (2), the Board shall have the power to suspend any buyers' licence for a period not exceeding four (4) years if it is satisfied that any licence holder has committed an offence in terms of subsection (2).

#### *Use of Agents*

8. If an agent of any buyer, contractor or contract grower violates any provision of these regulations, then the buyer, contractor and contract farmer shall be jointly liable to any penalty set out in these regulations.

#### *Renewal of licenses*

9. (1) Every licence shall be valid for a period of a year or part of a year ending on 31st December of the year in which the applicant received the licence, unless it is earlier surrendered to or cancelled by the Board.

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(2) Upon expiry of a licence, a licensee may renew it by making an application therefore no later than thirty (30) days after the expiry of the existing licence by submitting the prescribed form and renewal fee.

*Suspension or cancellation of contractors licenses*

10. (1) Subject to subsections (2) and (4), the Board may at any time suspend (for a period not exceeding sixty (60) days) or cancel any licence if the Board has reasonable grounds for believing that—

- (a) the licence was issued in error or through fraud or misrepresentation or non-disclosure of a material fact by the licensee; or
- (b) the licensee has contravened any provision of the Act or these regulations or any condition of his or her licence; or
- (c) the licensee has ceased the licensed operations.

(2) The Board shall notify the licensee in writing of its intention to suspend or cancel his or her licence and the reasons for doing so, and shall call upon the licensee to show cause, within 14 days from the date of the notice, why the licence should not be suspended or cancelled, as the case may be:

Provided that if in the opinion of the Board the licence needs to be immediately suspended or cancelled in the public interest he or she can issue the notice requiring the licensee to show cause after suspending or cancelling the licence.

(3) If, at the expiry of the period specified in the notice given in terms of subsection (2), and after considering any representations made by the licensee, the Board is satisfied that the licence concerned should be suspended or cancelled, the licensing authority shall, by notice in writing to the licensee, suspend or cancel the licence or take such other action as it considers appropriate.

(4) The penalty of suspension is only available where there has been a contravention of any provision of the Act or these regulations or any condition of a licence which, is a contravention that can be easily or speedily remediated by the licensee:

Provided that—

- (a) if after the expiry of the period of suspension the licensee has not taken the remedial action, the licensing authority shall forthwith cancel the licence; or
- (b) on good cause shown by the licensee, the Board may extend the suspension for a period not exceeding thirty (30) days to allow the licensee to take the required remedial action. The Board shall immediately make an appropriate entry in the register of licences where it suspends or lifts a suspension of any licence or cancels it in accordance with this section.

*Appeals*

11. (1) A person who is aggrieved by the decision of the Board in terms of section 10 shall have a right of appeal to the Minister.

(2) On appeal in terms of subsection (2), the Minister may confirm, amend or revoke the decision of the Board.

(3) An appeal made in terms of subsection (2) does not suspend the decision of the Board.

(4) Any person who is aggrieved by the decision of the Minister in terms of subsection (3) may approach the High Court on review and or appeal.

“FIRST SCHEDULE (*Section 4*)

FORMS

Form TIM 1	Application for registration as a Contractor
Form TIM 2	Certificate of registration as a Contractor

Form TIM 1

APPLICATION FOR REGISTRATION AS A CONTRACTOR

- 1. Name of applicant: .....
- 2. ID/Company registration number:.....

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3. Physical address of applicant:.....  
.....

Telephone No. .... Cell phone No. .... Email address: .....

I, the undersigned declare that the information provided in this Form is true and correct.

Name in full:..... Authorised Signatory: .....

Designation:..... Date: .....

Form TIM 2  
SERIAL No.

CONTRACTOR'S LICENCE

Issued in accordance with the (Tobacco Industry and Marketing (Prohibition of Side Marketing) Regulations, 2022.

District:..... Licence No: .....

Name of Contractor: .....

ID/Company Registration Number: .....

Physical/Residential Address: .....

Physical Address(s) of Trading Site(s):.....  
.....  
.....

Telephone No. .... Cell phone No. .... Email address: .....

Expiry Date: 31st December of the year.....

Signature of Issuing Officer: .....

Designation: .....

Date and Stamp: .....

Renewal Endorsements: .....



S.I. 77 of 2022

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This Licence was renewed for the period ending the 31st of December of Year .....

Signature of renewing officer: .....

Date and Stamp: .....

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