



TOBACCO BOARD OF ZAMBIA

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PURPOSE FOR ENACTING OF SI 84 AND 85 OF 2018

PREAMBLE

Tobacco Board of Zambia was instituted by the Tobacco Act CAP 237 and further enhanced by the Tobacco Levy Act CAP 238 of the laws of Zambia with the mandate to;

1. Promote, protect and maintain the production, sale, preparation for subsequent use and export of tobacco grown in the Republic;
2. Control and Regulate the production, marketing and export of tobacco;
3. Carry out tobacco research;
4. Obtain and collate statistics relating to the production, marketing, manufacture and consumption of tobacco inside and outside the Republic;
5. Provide and operate such services and other facilities as may be necessary or convenient for the tobacco industry;
6. Advise the Minister on all matters relating to tobacco; and
7. Do all things which the provisions of the Tobacco Act CAP 237 and Tobacco Levy Act CAP 238 require to be done by the Board.

Tobacco Board of Zambia wish to bring to the attention of various stakeholders that **no new law** has been introduced to the industry except effecting the Power of the Minister to prescribe the rules regarding the Sale of Non Auctionable Tobacco, which due to its absence has caused a lot of unnecessary legal battles for the Board and Government.

BACKGROUND TO TOBACCO INDUSTRY OPERATIONS AND HOW SI 84 AND 85 WILL ADDRESS THE CHALLENGES

The tobacco industry in Zambia has been going through some challenges over a number of years some which include the following.

1. REGISTRATION OF GROWERS TO CONTROL AND REGULATE THE INDUSTRY

Tobacco Board of Zambia has a mandate to register all tobacco growers in Zambia under Part V Article 24 to 26 of the Tobacco Act CAP 237 of the laws of Zambia. The Board has noticed that the registration of growers in the industry is not controlled, making it difficult to know genuine growers from tobacco vendors. In

most cases growers register even on the day of marketing, putting the Zambian tobacco industry at risk with regards to issues of chemical compliance, traceability and tobacco quality. It also has a potential of promoting tobacco vending and side selling, which has a negative impact on the tobacco industry.

How the SI 85 of 2018 has addressed this challenge

In line with Part V Article 25 (a) and (b) the Minister is mandated to prescribe the regulations with regards to the registration period and the duration of registration of growers.

Therefore SI 85 of 2018 prescribes the dates for opening and closing of the selling season and the period for registration and validation of the registered growers. This will enable the industry stakeholders plan ahead and avoid speculation on the dates when the selling season will open and close, including the period when the registration and validation of the registered growers would take place.

2. SALE OF TOBACCO (NON AUCTIONABLE TOBACCO)

Currently the Tobacco Act only prescribes where and how the auctionable tobacco will be sold but does not prescribe where and how the non-auctionable tobacco is to be sold. This is contrary to the current practice obtaining in the industry where more than 80% of the tobacco grown in Zambia is non-auctionable. The Act however empowers the Minister to prescribe how non-auctionable tobacco will be sold under Part IX Article 73 and Part XV Article 100 of the Tobacco Act CAP 237 of the Laws of Zambia.

From past industry customary practice, the area where non-auctionable tobacco is sold has always been licenced as a Tobacco Sales Floor by the Board. This industry practice is not formalised and has not been documented anywhere other than based on directives from the Minister of Agriculture and gentleman agreement with the industry stakeholders.

The lack of prescription by the Minister of Agriculture has rendered the industry to be regulated out of stakeholders' goodwill to the extent that it has left room for possible legal challenge of Government by some stakeholders on the basis that the Government has no regulatory powers on non-auctionable.

How the SI 84 of 2018 has addressed this challenge

SI 84 of 2018 prescribes the procedures to be followed by the industry based on internationally accepted standards and current industry practice in the SADC region. The SI has not in any way increased the cost of doing business in the

Tobacco Industry, but has rather formalised and strengthened further the current industry customs and practices.

Further, SI 84 has addressed the following challenges;

2.1 BUYING LINE OF NON –AUCTIONABLE TOBACCO ON THE SALES FLOOR

Currently the Tobacco Buyers provide production inputs to the growers and during marketing they run the Sales Floors, they receive the tobacco, weigh the tobacco and classify it and provide the price of tobacco per kg. They give the growers whatever income remains after they have removed their input costs. This leaves the growers with very little income, and this system perpetuates the circle of poverty and indebtedness and makes it very difficult for growers to graduate from borrowing to self-financing.

This system has lacked transparency whilst at the same time disadvantages the tobacco growers as the Buyer who at the same time sponsored the grower determines the weight, grade and sales price of the product being bought.

How the SI 84 of 2018 has addressed this challenge

The SI has addressed this challenge by changing the buying line to having the Board appointed Classifier in line with the Subsidiary Act to the Tobacco Act CAP 237 of the laws of Zambia Part II Article 2. The appointed classifier by the Board will be independent of the grower/sponsor transaction and will put an internationally recognised grade on the tobacco on the sales floor. Next in line will be the tobacco Buyers who will validate the grade and put the price in line with the approved price matrix. The Growers' Representative will be last in the buying line. In the case of a dispute, an Arbitrator, who is a senior and experienced member of staff of the Board, will be called upon to resolve the dispute.

This process will bring transparency in the buying of tobacco and reduce on unnecessary disputes between buyers and growers and is in line with internationally approved standards.

2.2 PRICE OF TOBACCO PER KG

The Buyers of Tobacco do not provide the price Matrix to the Government on time on how much they will pay per Kilogram of Tobacco during a particular selling season. They only provide the price Matrix on the day before the marketing of

Tobacco starts making it difficult for Government to scrutinise the prices before they are applied for buying Tobacco. Because the price matrix is submitted late to government it is difficult for Government through Tobacco Board of Zambia to assess if such a price matrix takes into consideration the production costs.

How the SI 84 of 2018 has addressed this challenge

Statutory Instrument (SI) 84 of 2018 has addressed this challenge by ensuring that the Buyers provide the Price Matrix to the Government 60 days before opening of the Tobacco Sales Floor and also empowers Government to reject the price per Kilogram if such a price is below the cost of production.

This is for the benefit of fair trade and equity in the tobacco industry. It is important to mention that tobacco growers are also business persons who need to function in a levelled business environment which provides for fair trade. It is also worth noting that tobacco is a regulated crop and whoever wants to participate must follow what is enshrined in the laws of the land.

2.3 SELF SPONSORED TOBACCO GROWERS

Previously the tobacco industry in Zambia was financed by Government, Banks and Individuals. Tobacco buyers used to just come and buy the tobacco hence the focus of the Tobacco Act CAP 237 of the laws of Zambia on actionable tobacco as opposed to the non- actionable tobacco. As the industry progressed after privatisation in 1991 most tobacco operations were taken over by the private sector leading to growers failing to meet intended volumes set by the private buying companies. This led to the Buyers starting to contract growers so as to meet set volume targets.

Arising from the afore mentioned, currently 80% of the Tobacco grown in Zambia is grown under contract growing where a Buyer, popularly known as a Merchant provides all the inputs and assured market for the Tobacco. While about 20% of the tobacco produced in Zambia is by Self sponsored growers with no assured markets, even though in the event of production shortfalls for instance in the just ended marketing season the Merchants have fallen back on the 20% self-sponsored production for their convenience to meet their target shortfalls thus subjecting the self-sponsored growers to a speculative market year in year out consequently compelling the Government to be the buyer of last resort.

It is Government' desire to support the graduation of farmers from perpetual borrowing to self-financing as evidenced by the Government Policy on Farmers Input Support Programme(FISP) were farmers are encouraged to graduate and be self-financing after a period of three(3) years of Government support. This is the only assurance for sustainable tobacco growing in the country. Currently in the

tobacco industry tobacco growers who have shown the ability and potential to become self-financing are side-lined by tobacco Buyers and end up with their tobacco not being bought. This is in contrast to the government policy of promoting self-financing and economic independence.

The current trend in the Market is that the Merchants (Buyers) will buy tobacco that is sponsored by them and later only consider self-sponsored crop when they have a shortfall or when the growers they contracted have defaulted on their loans. They thus use the tobacco from self-sponsored growers to meet their volume shortfall targets or to recover their loans at a very heavily compromised or uneconomical price. This is what has brought up the issue of World Health Organisation-Framework Convention on Tobacco Control (WHO-FCTC) and other anti-tobacco campaigners to perceive the tobacco crop as a slavery crop while in actual fact it is a very lucrative crop if only challenges that SI 84 has intended to address can ironed out.

How the SI 84 of 2018 has addressed this challenge

The SI 84 of 2018 has empowered the Merchants/Buyers in partnership with the Tobacco Board of Zambia (TBZ) using the electronic grower registration system to identify growers from whom they will purchase the 20% self-sponsored crop during the selling season in advance. This will make the Merchants/Buyer plan ahead before the selling season opens. Since they will know the self-sponsored growers from whom they will purchase the tobacco. The knowing of growers from whom they would buy the 20% self-sponsored crop of their intended target volume, would also enable both the Buyers/Merchants and the Board to effectively monitor and inspect the self-sponsored growers adherence to the required production standards and tobacco styles which the particular Buyer wants. This would also help the Board and Government control illicit trade usually promoted by unregistered Tobacco Growers. Suffice to stress that the self-sponsored tobacco would be bought concurrently with the sponsored tobacco. This would in future open up room for auctioning of tobacco in Zambia in line with the 7th National Development Plan.

2.4 SEGREGATION OF RESPONSIBILITIES OF THE SALES FLOOR MANAGER WITH REGARDS TO THE SALE OF NON AUCTIONABLE TOBACCO

Currently Sales Floor Managers' Licences are also issued to Buyers and/ or Sponsors of tobacco. This compromises on freedom for other buyers in the industry to freely transact on these floors to buy non-auctionable tobacco. Especially in situations where the sponsor of tobacco is also the owner of the Sales Floor and at the same time the Buyer of his sponsored tobacco and sets conditions

on how other buyers can transact from such a Sales Floor. It also restricts the access by the growers who are not allowed to enter the Sales Floor to witness the market transactions in some cases. This is against the principles of fair trade and equity.

How the SI 84 of 2018 has addressed this challenge

The SI has segregated the ownership from Sales Floor management by bringing in Independent Sales Floor Managers who are neither linked to the Buyers nor the Grower to run the Sales Floors and the minimum distance between one Sale Floor and the other has also been prescribed. In an event that there is no qualified Sales Floor Manager Tobacco Board of Zambia is empowered to run the sales floors until such a time that a suitable independent Sales Floor Manager would be identified through a transparent open tender. This would further enhance transparency and level the playing field for all players in the industry and the Buyers will have a wider choice of Sales Floors from where they can purchase the non-auctionable tobacco. It would also provide the freedom to the all players in the transaction to freely enter the sales floors and participate and witness the business transactions at the sales floors.

OTHERS MATTERS

INCREASE IN THE COST OF DOING BUSINESS BY THE SPONSORS/TOBACCO BUYERS

Currently in the Tobacco value Chain; from land preparation, planting, harvest and marketing to Sales Floor Management and Administration including the payment of levies, the Tobacco Buyers do not incur a single cost, all costs are borne by the Tobacco Growers.

Below are the details:

i. Provision of agricultural inputs to Tobacco Growers by the Sponsors/Tobacco Buyers

All agricultural inputs that the Tobacco Buyers give to the Tobacco Growers are not free. The Tobacco Buyers make a mark-up/ a profit on it. The Tobacco Grower is made to pay back all the input costs with added mark up.

ii. Transportation of Tobacco.

The transportation of Tobacco by the Tobacco Growers from their fields to the Sales Floor is paid for in full by the Tobacco Grower.

iii. **Running of the Sales Floors**

The running cost of the sales floors is fully paid for by the Tobacco Grower through sales floor charges paid to the sales floor manager.

iv. **Administrative Costs**

The administrative costs for the sponsors in the field are fully paid for by the Tobacco Growers. Tobacco Growers are made to pay the Field Coordinators of the Sponsoring Companies for such things like registration to be sponsored including extension and packaging materials.

v. **Tobacco Levy**

The Tobacco Levy to Government through Tobacco Board of Zambia is paid for by the Tobacco Growers in as much as it is collected at the point of sale by the Buyer.

From the above you will note that the Tobacco Buyers do not pay any levy or tax and that the person bearing all costs in the value chain is the Tobacco Grower. Therefore, the Statutory Instruments 84 and 85 are meant to level the Business environment and ensure that the Tobacco grower who bears the costs within the Tobacco value chain has a fair deal.

In this regard, Tobacco Board of Zambia finds the claim by some Tobacco Buyers that the Statutory Instruments 84 and 85 of 2018 will increase their cost of doing business and their investment in Zambia, as being unfounded and aimed at subjecting the Tobacco growers to perpetual cycle of poverty and indebtedness making it extremely difficult for Tobacco growers to graduate from borrowing to self-financing.

Against the background of Tobacco Board of Zambia understanding of the Tobacco growers plight and needs, it would be wise for the Tobacco buyers to raise with proof specific provision in the two Statutory Instruments 84 and 85 of 2018 that would increase their cost of doing business in Zambia without involving the Tobacco Grower in the equation.

With regards the provision of Tobacco Buyers and Sponsors not running Sales Floors as demanded by the stakeholders, It is the Regional Practice and practical examples can be gotten from Malawi and Zimbabwe where most of the Buyers operating in Zambia have offices. In those Countries these companies have invested heavily but **DO NOT RUN** the Sales Floors. The Sales Floors in Malawi and Zimbabwe are run by **Independent Sales Floor Managers**.

Therefore, it is strange that the same companies are resisting to do what they do in other countries.

TOBACCO LEVY AND GOVERNING LAWS AROUND IT

As per section four (4) of the Tobacco Levy Act CAP 238 of the laws of Zambia, the Merchants/Buyers are required to collect 15 fees units per kilogramme of tobacco bought by them from the growers and remit the same to Government.

It is an offence for a person to fail or refuse to pay the levies as per section 12 of the Tobacco Levy Act.

Tobacco Board of Zambia wishes to retaliate that the 1% leviable rate which the Merchants/Buyers have been remitting to Government through Tobacco Board of Zambia was arrived at, at a tobacco stakeholders meeting in the similar fashion that the 2% was arrived at. Their implementation was by way of a directive by the Minister of Agriculture in form of a letter. The current 1% and the 2% did not change the Law on the amount of Tobacco Levies to be collected and remitted to Government as they are not supported by changes in the Tobacco Levy Act governing collection and remittance of tobacco levies.

As the law stands, before the enactment of Statutory Instrument 67 of 2018, the Tobacco Buyers have two options:

1. To remit the 2% they collected from the Tobacco Growers and currently sitting in their accounts or;
2. Remit 15 fee units.

We want to thank all those Buyers who have already remitted the 2% levy and wish them well.

Thank you

James Kasongo

Chief Executive Office/Board Secretary