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DRAFT REGULATORY IMPACT ASSESSMENT (RIA) REPORT

TEA (REGISTRATION AND LICENSING) REGULATIONS, 2024

FOR

THE TEA BOARD OF KENYA (TBK)

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LIST OF ABBREVIATIONS

AFA: Agriculture and Food Authority

ABS: Access and Benefit-sharing

ASTGS: Agriculture Sector Transformation and Growth Strategy

BCR: Benefit-Cost Ratio

BETA: Bottom-Up Economic Transformation Agenda

CBA: Cost-Benefit Analysis

CIDP: County Integrated Development Plan

CTC: Crush, Tear, Curl

EATTA: East African Tea Trade Association

EPZ: Export Processing Zone

GDP: Gross Domestic Product

IRR: Internal Rate of Return

ITPAK: Independent Tea Producers' Association of Kenya

JASSCOM: Joint Agricultural Sector Consultation and Coordination Mechanism

KALRO: Kenya Agricultural and Livestock Research Organization

KEBS: Kenya Bureau of Standards

KEPHIS: Kenya Plant Health Inspectorate Service

KCSAS: Kenya Climate-Smart Agriculture Strategy

KPA: Kenya Ports Authority

KTDA: Kenya Tea Development Agency

KTGA: Kenya Tea Growers' Association

KTNA: Kenya Trade Network Agency

M&E: Monitoring and Evaluation

MEL: Monitoring, Evaluation, and Learning

MoALD: Ministry of Agriculture, Livestock, and Fisheries

NEMA: National Environment Management Authority

NPV: Net Present Value

OECD: Organization for Economic Cooperation and Development

PCPB: Pest Control Products Board

PSTAK: Purple and Specialty Tea Association of Kenya

R&D: Research and Development

RIA: Regulatory Impact Assessment

RIS: Regulatory Impact Statement

SDA: State Department for Agriculture

SDC: State Department for Cooperatives

SDI: State Department for Industry

SDIP: State Department for Investments Promotion

SEZ: Special Economic Zone

SWAG: Sectoral Working Agriculture Groups

TBK: Tea Board of Kenya

TF: Tea Factory

TNT: The National Treasury

TR: Tea Research

TRF: Tea Research Foundation

TRI: Tea Research Institute

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1.0 INTRODUCTION AND BACKGROUND

1.1. Background Information

Tea plays a vital role in Kenya's economy and is among the country's leading foreign exchange earners. It supports the livelihoods of over 7 million people directly and indirectly and accounts for about 2% of the Country's Gross Domestic Product (GDP). Tea cultivation, a rural-based economic activity, has led to the development of rural infrastructure such as roads, schools, telecommunication and other social amenities. Kenya produces an average of 500 million Kg of made tea annually, of which 91% is exported and 9% is consumed in the local market. (TBK, 2024)

The Tea industry in Kenya is regulated by the Tea Board of Kenya (hereinafter "the Board" or "TBK" interchangeably). TBK was established under Section 3 of the Tea Act (the Act) to regulate, develop, and promote the tea industry in Kenya. The Tea Act, 2020, was operationalized on 11 January 2021.

In Kenya, the first tea seedlings (*camellia sinensis*) were introduced by the white settlers in 1903 in Limuru (Kiambu County) on an experimental basis. Some of these tea bushes have grown into large trees, forming historical features on what is now called Unilever's Mabroukie Tea Estate. Although few private farmers established small tea gardens in Limuru and Kericho, commercial cultivation of tea in Kenya began in 1924. It remained an exclusive preoccupation of the colonialists until 1956 when African growers were allowed to start planting tea.

Tea is grown in the highlands located West and East of the Rift Valley at altitudes between 1,500 metres and 2,700 metres above sea level. The highlands are spread across 19 tea-growing counties, including Nakuru, Narok, Kericho, Bomet, Nyamira, Kisii, Kakamega, Bungoma, Vihiga, Nandi, Elgeyo Marakwet, Trans-Nzoia, Kiambu, Murang'a, Nyeri, Kirinyaga, Embu, Tharaka-Nithi, and Meru.

The ideal growing conditions for tea include tropical volcanic red soils and favourable weather patterns, such as well-distributed rainfall of between 1200 mm and 1400 mm per annum. Unlike other countries, Kenya produces tea year-round with minimal seasonal variations in quantity owing to its location along the equator.

In 2023, the total export volume increased by 16% (72.58 million kilograms from 450.33 million kgs recorded in 2022 to 522.92 million kgs. Owing to the increased volume of exports coupled with a favourable exchange rate for the USD and stable prices, the export earnings from tea reached a record of Kshs. 180.57 billion from Kshs. 138.09 billion the previous year. This represented a 31% increase in the value of exports (Kshs. 42.48 billion) and is the best earnings ever recorded by the tea industry over the years. The export unit price was slightly lower in dollar terms at USD 2.47 per kg compared to USD 2.62 in the previous year. However, due to the favourable exchange rate to the USD at 139.85 compared to 117.87 in the previous year, the unit price was much higher at Kshs. 345.32 compared to Kshs. 306.64 in the previous year. (TBK, 2023)

Kenyan tea is renowned worldwide for its quality and safety due to adherence to the industry's best agricultural practices (no pesticides or agrochemicals), good husbandry practices, selection of high-quality varieties, and skillful processing practices (no additives, preservatives or artificial colouring). This is also attributed to continuous improvements due to investment in modern technology and R&D; commitment to Global and National Food Safety standards (ISO, Hazard Analysis Critical Control Point (HACCP), KS1927), as well as compliance with environmental and social market requirements (Effluent Treatment Plant (ETP), Fair Trade etc.).

The Kenyan tea industry is generally structured into two sub-sectors: the large estate and the smallholder sub-sectors. They are supported by institutions such as the Tea Board of Kenya (a regulator), the East Africa Tea Trade Association (EATTA), which facilitates trade and the Board's Technical arm, the Tea Research Institute (TRI), which provides research for development services. The small-holder tea sub-sector is managed by the Kenya Tea Development Agency (KTDA), while the large estates are private companies affiliated with the Kenya Tea Growers Association (KTGA). The Government established the Nyayo Tea Zones Development Corporation (NTZDC) to promote environmental conservation by planting tea around forests. All the major stakeholders in the tea value chain are actively involved in formulating and implementing regulatory and policy frameworks in the sector. (AFA - Tea Directorate, 2024).

The Board's mandate, as provided for under the Tea Act 2020, is to regulate, develop, and promote the tea industry. The mission of the Board is "To sustainably develop and promote the tea value chain through effective regulation for economic growth and transformation."

The regulatory roles of the Board as a state corporation that regulates the tea industry in Kenya as provided under section 5 of the Tea Act include:

- *Licensing*: Licensing tea factories and other entities in the tea industry.
- *Registration*: Registering tea growers, warehouse operators, exporters, importers and brokers, among others.
- *Compliance*: Ensuring that tea factories and traders comply with the Tea Act 2020 and other relevant laws.
- *Enforcement*: Enforcing regulations in the tea industry.
- *Surveillance*: Conducting inspections to check for irregular trading, counterfeit tea, and illegal imports.
- *Promoting best practices*: Promoting best practices and standards in the tea industry.
- *Facilitating marketing and distribution:* Facilitating the marketing and distribution of tea.

- *Prescribing payment periods*: Prescribing the minimum amount and maximum period for payment of green leaf.
- *Promoting demand*: Promoting the consumption and demand of tea locally and internationally.

TBK also coordinates activities in the tea industry and facilitates access to resources and benefits for all interested parties, among other functions.

It is essential to have an effective legal framework in place to facilitate the Board's execution of its mandate and steer the tea industry to further development. The legal framework ought to enable this vital sector to contribute to the Government's bottom-up Economic Transformation Agenda (BETA) aspirations. The draft regulations will provide the legal framework for TBK to execute this mandate as outlined in this report.

1.2. Regulatory Impact Assessment Process

Regulatory Impact Assessment (RIA) is a systemic approach to critically assess the positive and negative effects of proposed or existing regulatory and non-regulatory alternatives. It is an evidence-based approach to policymaking. RIA requirements apply to proposals for new and amending regulations, and to policy proposals that may result in new or amended regulations (regulatory proposals). It is an instrument that authorizes the determination and consequences of introducing a new regulatory regime. The systematic use of RIA has been recognized as a key means to improve the efficiency, transparency and accountability of decision-making.

Over the last few decades, RIA has emerged as a key instrument to support evidence-based and coordinated policymaking. The systematic use of RIA is recognized as a key means to improve the efficiency, transparency and accountability of decision-making. RIA typically encourages several "good governance" features and contributes to a better business-enabling environment. In the 1980s, RIA gained popularity and traction in the US and the UK in the second half of the 1990s. By 2015, all 34 Organization for Economic Cooperation and Development (OECD) members at the time reported having "some form of RIA" in place.

RIA is a flexible tool that helps governments make better regulatory and other policy decisions based on information and empirical analysis about the potential consequences of government action. RIA aims to ensure that better policy options are chosen by establishing a systematic and consistent framework, including stakeholder consultation, for assessing the potential impacts of government action.

When embedded in the policy process, a systematic application of RIA trains decision-makers to ask and answer targeted questions at the beginning of the policy cycle about the need for and goals of regulation and the possible consequences of government action. The many methods used in RIA – including benefit-cost, cost-effectiveness, and least-cost tests, as well as partial tests such as administrative burden and small-business tests – are means of giving order to complex qualitative and quantitative information about the potential effects of regulatory measures.

The final products of this systematic process of analysis are self-contained documents called RIAs (or Regulatory Impact Statements, RISs). The RIAs deal with substantive policy issues, are read and utilised by decision-makers, and are normally available for public scrutiny and subject to evaluation, but increasingly so in parallel with the drafting phase) of an independent oversight authority. Although methodologies vary across countries, several key elements are common. A RIA normally includes:

i. Problem definition and justification for regulatory action;
ii. Data, on which the analysis is based;
iii. Results of the consultation with affected parties and stakeholders;
iv. Identification of a number of feasible policy options;
v. Estimation and comparison of the different (qualitative and quantitative) impacts of each policy option; and
vi. Selection of a preferred option accompanied by a prospective analysis of its implementation and, more recently, providing a basis for ex-post review.

There is no single RIA model. The institutional setup for RIA depends on legal, political, economic and social conditions. However, good practices have been identified internationally, and there are converging patterns in how RIA is institutionalised. The institutional framework for RIA often includes legal provisions which embed RIA in the policy formulation process and stipulate criteria about its scope of applicability. A governmental body is often tasked with the oversight of the quality of RIA documents and the RIA process.

A Regulatory Impact Analysis (RIA) is a broad tool now used in most developed countries and an increasing number of developing and transition countries to improve the understanding of regulation's economic and social welfare impacts. It is widely recognized as an important mechanism that can improve the business environment and promote regulatory efficiency and effectiveness. RIA allows policymakers to assess trade-offs, consider new ways to regulate, and identify the most suitable alternatives to regulation. In essence, RIA systematically and consistently examines the positive and negative impacts arising from proposed government actions and communicates the information to decision-makers and other stakeholders.

RIA is an important factor in designing a good-quality law as it helps to provide valid arguments supporting a planned regulation. The process is designed to improve the quality of regulation by ensuring that the decision-maker is fully informed when making regulatory instruments. The RIA process is designed to encourage careful consideration, at an early stage, of the fundamental question of whether regulatory action is required or whether policy objectives can be achieved by alternate or non-regulatory measures with lower costs for business and the community. RIA may sometimes indicate that non-legislative measures are the best solution to a particular social and economic problem. Thus, RIA helps to avoid the production of redundant laws and reduces the bureaucratic burden on enterprises.

Kenyan courts have made decisions to underscore the importance of RIA in the development of regulations. In ***Kenya Association of Manufacturers & 2 others v Cabinet Secretary, Ministry of Environment and Natural Resources & 3 Others [2017] eKLR***, the court demonstrated that it is strictly incumbent on a regulation-making body to assess the impact of the proposed Regulations on the stakeholders and that failure to conduct it has the potential of rendering a statutory instrument null and void if challenged on that basis.

Accordingly, Kenyan courts have underscored the need to comply with the Statutory Instruments Act strictly. First, the courts have found that an RIA must begin with consulting stakeholders as that is the only sure way of determining the regulatory impact on the stakeholders, whether individual or juridical persons. Secondly, as was addressed in ***British American Tobacco Ltd v Cabinet Secretary for the Ministry of Health & 4 others [2015] eKLR***, the mode of consultations is key, but this depends on the circumstances of each case, as was held in the case of ***Republic v MOALF & Others Exparte Council of Governors and Harrison Munyi (as the Chairman of the New National Farmers' Association) [2016] eKLR*****.**

Regarding the process that the assessment ought to take, the court *in* ***Okiya Omtatah Okoiti v Commissioner General, Kenya Revenue Authority & 2 others [2017] eKLR*** posited the chronology of the procedure as follows: consultation of stakeholders; regulatory impact assessment; preparation of an explanatory memorandum; tabling of the statutory instrument in the relevant house; and consideration of the same by the Committee of Delegated legislation. This is in line with the requirements of the Statutory Instruments Act.

1.3 Objective of the Assignment

The general objective of the assignment is to conduct a regulatory impact assessment (RIA) for the proposed Tea (Registration and Licensing) Regulations 2024 and prepare a regulatory impact statement (RIS) for it in accordance with sections 6, 7, 8, and 9 of the Statutory Instruments Act, 2013.

The Consultant evaluated the effects of the proposed draft Tea (Registration and Licensing) Regulations 2024 both on the public and the private sectors to inform the choice of the most appropriate way to achieve the objectives of the proposed Regulations. The Consultant further evaluated the major feasible alternatives of the intended regulatory action and other practical non-regulatory options. The assignment further examined the benefits obtained from the proposed Regulations and the costs of imposing the proposed Regulations on the industry players.

The specific objectives of the assignment were to:

i. Assess the costs and benefits of the Regulations which include and are not limited to economic, environmental, and social impact, as well as administrative and compliance costs.
ii. Assess the effects of the draft Regulations on the public and private sectors as well as on the rights and fundamental freedoms of the industry players.
iii. Prepare a regulatory impact statement for the draft regulations.
iv. Prepare an Explanatory Memorandum for the draft Regulations.
v. Prepare a notice on the Regulatory Impact Statement, which will be published in the Kenya Gazette and other daily newspapers; and
vi. Prepare a draft Certificate of Compliance in accordance with section 7(4) of the Statutory Instruments Act.

1.4 Project Deliverables

The assignment resulted in the following deliverables: -

i. A Regulatory Impact Statement (RIS) which included the following information about the proposed statutory instrument in clear and precise language—
    a. A Statement of the Objectives and Reasons for the Tea (Registration and Licensing) Regulations 2024.
    b. Statement on Regulatory & Non-Regulatory Options.
    c. Costs-Benefit Analysis (CBA) (Economic, Environmental and Social Impact/Administration and Compliance Cost/Assessment of Return on Investment (Benefit)/Quantification of the Benefit/Distribution of Impacts).
    d. Reasons why other Regulatory Options are not appropriate, including other Practical Options/maintaining the Status Quo.
    e. Recommendations.
    f. Conclusion.
ii. Notice of the RIA and the Regulatory Impact Statement guided by the Statutory Instruments Act.
iii. An Explanatory Memorandum guided by Section 8 and the First Schedule of the Statutory Instruments Act, 2013 and containing the following:
    a. Purpose of the statutory instrument
    b. Legislative context
    c. Policy background
    d. Consultation outcome
    e. Guidance
    f. Impact
iv. Monitoring and review.
v. Appended contacts of all persons contacted in the delivery of the RIA.
vi. Report on stakeholders’ feedback and recommendations on how they will be addressed in the Regulations.

1.5 Methodology and Approach

The approach to the assignment entailed an inception meeting, detailed desk review and synthesis of the draft Tea (Registration and Licensing) Regulations 2024 against the provisions of the Constitution of Kenya 2010, Tea Act 2020 and other relevant laws and regulations. The Consultant also reviewed relevant literature, including agriculture policies, strategies and publications, Vision 2030, Tea value chain and economic analysis reports and other key policy documents for qualitative analysis, quantitative analysis, comparative analysis, trend analysis of data from these documents, trend analysis of judicial decisions on regulatory impact assessment and public participation records to validate secondary data obtained from the documents. The Consultant validated stakeholders' engagement through public participation forums where views and comments were received from the key stakeholders and members of the public. The Consultant presented the draft Regulatory Impact Statement and draft Regulations to a national validation workshop organized by the Ministry to collect further comments from key stakeholders. The Consultant thereafter prepared and submitted a final report together with accompanying documents to the Board after incorporating useful comments from the workshop.

1.6 Objectives of the Regulations (Scope and Purpose of the Regulations)

The Purpose of the Tea (Registration and Licensing) Regulations 2024 is to provide for the registration and licensing of tea factories, small-scale tea growers, medium-scale tea growers, large-scale tea growers, commercial tea nurseries, commercial green leaf transporters and tea dealers in line with powers given to the Cabinet Secretary under Section 74 of the Tea Act, 2020. The Regulations specifically seek to provide for the following as provided for under section 3 (2) of the draft Regulations: -

a) procedure for registration of small-scale tea growers, medium-scale tea growers, large-scale tea growers, commercial tea nurseries, commercial green leaf transporters and tea dealers.
b) procedure for licensing tea manufacturers is as follows:
c) the terms and conditions for issuance of manufacturing licenses and for registration of tea factories, small-scale tea growers, medium-scale tea growers, large-scale tea growers, commercial tea nurseries, commercial green leaf transporters and tea dealers;
d) declaration and submission of returns on tea; and
e) fees charged under the Act and any regulations made there under.

2.0 ASSESSMENT OF THE NATURE AND EXTENT OF THE PROBLEM

2.1 The Nature of the Problem

Tea production in Kenya has increased exponentially over the last 10 years. There is, therefore, a need for increased markets and diversification of the traditional Kenya tea markets to absorb this increasing production. This will require significant investment in the promotion, marketing and tea products development of Kenya tea to avoid holding large stocks of unsold tea, which will directly affect all industry actors and tea production in the future. (MoALD, 2024)

Kenyan Tea, however, faces the problems of high production costs, low value addition, price fluctuations, and climate change, which lead to low earnings by tea growers. Potential interventions to these challenges include product diversification, value addition, and novel marketing strategies.

The Board and its technical arm, the Tea Research Foundation (TRF), have partially depended on the exchequer to fund their operations. They have both contributed significantly and positively to making the Kenyan tea sub-sector a successful industry. This support from the exchequer has been on the decline, however, due to increased competing needs which have remained limited. The government's failure to fully implement the Maputo Declaration on Agriculture and Food Security (the Maputo Declaration), which obliged African governments to invest 10% of their annual national budgets in agricultural development and required the funds to be shared among multiple agencies, means that there is little money to support the Board's functions. This is a serious threat to the sector's competitiveness, especially in the face of challenges such as declining productivity and climate change, and to support the development of value addition technologies. (Kamanga, 2023)

Additional revenues generated from levies and fees introduced through these regulations will buttress the Board's financial position, enabling it to better invest in securing the future of the Kenyan tea industry.

Although the tea industry has been completely liberalised, government control still exists under the Board, whose directors are directly elected by key stakeholders in the industry. The government continues to oversee the maintenance of rural access roads, which generally creates an enabling environment for the expansion of domestic and international tea markets. The mandate of the Board also includes registration of growers, licensing of tea manufacturing factories, research, registration of buyers, brokers, packers, management agents and tea consumption promotion. All these actors are critical for the tea industry's continued success, hence the need to establish an effective framework for their registration and licensing for their effective regulation to benefit the entire tea industry. (Gesimba, 2005)

The government of Kenya liberalized the tea sector in the early 2000s, where the purchase of tea leaves from the farmers was privatized and rendered a willing-buyer-willing-seller scenario. This saw an increased number of tea brokers who relied on buying tea from farmers and selling it to the factories and processing firms, commonly referred to as "tea hawking". To the surprise of many, particularly the small tea growers, the expected results of liberalisation were overturned. It, instead, led to the steady decline of the country's largest sector. This decline has been characterised by reduced production, declining tea quality, increased complaints among the small-scale/grower tea farmers and increased poverty levels in tea-growing communities.

Whereas 'tea hawking' remains illegal, it has continued unabetted with roadside purchases of green leaf from farmers with the least consideration of hygiene in handling and transportation of the produce. In many instances, vehicles used to transport non-food-friendly materials, such as tea, to factories also expose end consumers to potentially harmful substances. (Kingoina, 2020)

Whereas Kenya is known to produce high-quality tea free from pesticides and other harmful chemicals, there have been serious concerns about the declining quality of Kenyan tea, which is a big threat to its preference in the global market. This declining quality trend is predominantly attributed to reduced surveillance and monitoring of the industry for quality and standards at all levels. It also poses a threat to the long-held, high-quality reputation of Kenyan tea.

TBK provides various essential and critical services necessary for the well-functioning of the tea industry with no direct charges to the industry players. Government funding for TBK, as well as other regulatory agencies to facilitate its services, has been declining. The National Treasury has, therefore, directed that such agencies charge for services they provide in their respective sectors to finance their operations. This situation has affected the ability of TBK to effectively provide these essential services to the tea sub-sector, which threatens the performance and further development of the sub-sector. (TBK, 2023)

The absence of a specific levy on tea imports into the country exposes local tea to competition from unbridled imports of cheap and low-quality tea, including imports from neighbouring tea-producing countries. This may threaten the desired development of the local tea market, which currently accounts for only 9% of the tea produced in Kenya and may distort local market tea demand and prices.

Protecting the Kenyan tea industry from new pests or diseases remains a priority to ensure its continued development. Therefore, it is important that the sector be regulated to ensure that high-quality tea is produced.

From the foregoing, it is evident that an effective framework is needed for the registration and licensing of all tea industry actors and to generate additional reliable revenue to support the critical pillars of the Kenyan tea industry. This will ensure Kenya remains a key player in the tea industry worldwide.

2.2 The Extent of the Problem

The tea industry continues to face challenges in research and development (R&D), production, manufacturing and trade, both domestically and internationally. Though industry has done comparatively well over the years, the environment is fast changing due to factors like climate change, land subdivisions to uneconomical sizes, competition from emerging tea-producing countries and the emergence of new tea hubs such as the Dubai Tea Trade Centre. It is necessary to adopt innovative approaches to ensure that Kenya continues to consolidate the competitive advantage so far achieved and to keep its position as a leading player in the rapidly transforming global tea industry.

The critical importance of the roles of the Tea Board and its technical arm, the TRI, in the realization of this objective cannot be over-emphasized.

The lack of diversity in the Kenyan tea industry remains a major challenge to its competitiveness in the global tea market. This is due to low investment in product development and promotion due to inadequate funding.

The two types of tea processed in Kenya are black and green teas. Currently, all KTDA factories are only processing black teas. Green tea is different from black tea because the fermentation of green leaves is arrested in manufacturing it (Tea Board of Kenya, 2011). Kenya tea has, for many years been sold in its whole form, although recently, the tea sector has been looking at the likelihood of selling tea extracts (Tea Board of Kenya, 2011). Tea is primarily processed using the Cut, Tear and Curl (CTC) technique to guarantee maximum cuppage per unit weight.

Despite being the leading exporter of tea in the world, accounting for 25% of the Global tea export volume, Kenya's export earnings from tea are lower compared to its competitors, such as Sri Lanka and China. For example, in 2022, Sri Lanka exported 247 million kgs, 45% less in quantity than Kenya but recorded 5% more earnings at USD 1.245 Billion. Consequently, the average tea export price realized by Sri Lanka was higher at USD 5.04 per kg compared to USD 2.60 per kg for Kenya tea exports. This is a price difference of USD 2.44 for the export of every kg by the two countries. (KALRO-TRI, 2022)

TBK continues to provide different services necessary in the Kenyan tea sub-sector with no direct charges to the industry players. Government funding for TBK to facilitate the provision of these services has been declining. For instance, in the 2022/23 financial year, the Board received a total revenue of Kshs. 324.3 million from Government grants and internally generated resources. From this revenue, the Board applied for Kshs. 385.6 million in its programmes thus having a deficit of Kshs. 61.3 million. This situation will affect the ability of TBK to effectively provide these essential services to the tea sub-sector which directly threatens the performance and further development of the sub-sector. (TBK, 2023)

There is, therefore, a need for increased investment in tea research, product development and diversification, product promotion and market diversification, which needs significant additional funding. (Kagira et al, 2012)

Tea hawking is emerging as a major challenge in the Kenya tea industry, not only denying farmers their rightful earnings but also seriously compromising the quality of green leaf reaching factories. It has also led to the diversion of green leaf, denying factories not only the volumes needed to operate efficiently but also the opportunity to recover credit advanced to their growers. According to Kegonde (2005), the tea sector in Kenya faces tea hawking challenges that are widespread in the West Rift Valley tea-growing region. This happens among small-scale farmers who prefer to sell their green leaves for immediate payment rather than wait for monthly payments. This practice may be attributed to high poverty levels. The problem with tea hawking is that farmers only receive a low payment at the farm gate payment, missing out on the annual “bonus” payment misses out on the annual payment commonly called “bonus” that is which is usually a high price per kilogram. In Kenya, tea hawking is illegal because it leads to the exploitation of smallholder farmers by middlemen who purchase tea leaves from farmers at very low prices and later resell the produce to large multinational tea firms at a significant markup. To protect the sustainability of the small-holder tea sector, tea hawking should remain illegal and outlawed. Smallholder tea farmers should continue selling their tea through KTDA, as this enables them to achieve enormous economies of scale, leading to high farmers’ incomes.

This has led to the need for the registration and licensing of the various tea sector actors to curb this menace and ensure compliance with the various relevant standards and guidelines. It also highlights the need to ensure consistency in the quality of Kenyan tea to protect its image in the global market.

2.3 Justification for the Tea (Registration and Licensing) Regulations

The tea industry in Kenya is an essential contributor to the nation's economy. It supports the livelihoods of over 7 million people directly and indirectly and accounts for about 2% of the Country’s Gross Domestic Product (GDP). Tea cultivation, a rural-based economic activity, has led to the development of rural infrastructure such as roads, schools, telecommunication and other social amenities. Kenya produces an average of 500 million Kg of made tea annually, of which 91% is exported and 9% is consumed in the local market.

Tea, therefore, contributes immensely to the socio-economic development of the country. It is the leading foreign exchange earner, amounting to 20% of the total foreign exchange earnings and contributing 4% of the GDP. It further provides livelihood, supports 0.64 million Kenyans and contributes to rural development. (TBK. 2023)

In Kenya, the success of high tea production is attributed to three main factors. The first is the government policy formulated after independence that focused on integrating small-scale growers into the mainstream of tea cultivation. It is estimated that small-scale tea production under the Kenya Tea Development Agency (KTDA) accounts for about 60 per cent of the total tea produced. In comparison, the remaining 40 per cent comes from the multinational sector and large-scale growers. The second factor behind Kenya’s tea success is establishing an efficient estate sector operated by global tea companies. This development introduced a revolutionary management system in the industry, leading to a five-fold increase in output. The third factor is the selection of high-yielding varieties by the Tea Board of Kenya’s technical arm, the Tea Research Foundation of Kenya (TRFK), along with the selective application of herbicides and improved planting and cultivation methods. These three factors have significantly impacted the country's tea volume (KIPPRA, 2020).

Currently, the tea industry's regulation, development, promotion, research, and infrastructure face significant underfunding, necessitating the creation of a sustainable framework for oversight and governance. The Tea (Registration and Licensing) Regulations have been developed to provide clear procedures for registering and licensing all value chain actors in the tea sector. The regulations are designed to support the tea industry's effective regulation, development, and promotion, ensuring its competitiveness and long-term sustainability.

Section 74 of the Tea Act gives powers to the Cabinet Secretary to make regulations to operationalise the Tea Act better. This includes providing for 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 organisers, warehouse operators, commercial tea nurseries and the licensing of tea manufacturers.

The draft Tea (Registration and Licensing) Regulations, 2024, have been developed to establish the framework for registering and licensing tea value chain players. The regulations outline the procedures and requirements for registration and how licensing will be administered and enforced in line with the authority granted to the Cabinet Secretary under Section 74 of the Tea Act. (TBK, 2024)

The absence of a practical framework for the registration and licensing of the tea sector actors can lead to several challenges, including:

- **Quality Control Issues**: Without proper registration and licensing, there may be a lack of standardised quality control, leading to inconsistent tea quality.
- **Market Access Problems:** Inadequate registration and licensing of sector actors can hinder access to international markets that require stringent quality and safety standards.
- **Economic Losses:** Inadequate registration and licensing in the industry can result in economic losses due to the inability to meet export requirements and potential product rejection.
- **Regulatory Non-compliance:** Poorly regulated registration and licensing of crucial industry actors can lead to non-compliance with local and international regulations, resulting in fines and legal issues.
- **Reputation Damage:** The reputation of Kenya's tea industry could be damaged if exported products do not meet quality standards, affecting long-term market trust and demand.

These challenges highlight the importance of proper registration and licensing to ensure the sustainability and growth of the tea industry. (Gesimba, 2005)

Across the globe, registration and licensing of actors in the tea industry for national interests is joint. For example, the Tea Act of 1953 is India's key legislation regulating the tea industry. It established the Tea Board of India to promote the industry's development by regulating tea production and export. The Act also facilitated the formation of Tea Councils across various states to support industry growth. Additionally, it mandated the registration of tea estates, factories, and Tea Board export licenses, regulated tea quality standards, and appointed tea inspectors responsible for inspecting tea gardens and factories (Tea Board India, 2024).

In Sri Lanka, the Sri Lanka Tea Board (SLTB) was established as a fully government-owned statutory institution by an Act of Parliament on 1st January 1976. The primary objectives of the SLTB under the above Act are the development of the tea industry in Sri Lanka, the promotion of Ceylon (Sri Lankan) Tea globally, and the implementation of regulatory requirements to be followed by the industry. Regulations concerning production, cultivation and replanting, the establishment and operation of tea factories and the conduct of the Colombo Tea Auctions are the responsibility, under the Act, of the Board. Its statutory responsibilities also include maintaining tea quality standards, issuing packaging guidelines, warehousing requirements, etc., framed under the Sri Lanka Tea Board Law, the Tea Control Act No. 51 of 1957 and the Tea (Tax and Control of Exports) Act No. 16 of 1959. (Sri Lanka Tea Board. 2024)

In Tanzania, the Tea Board of Tanzania (TBT) is a corporate body established by the Tea Act No. 3 of 1997, following the separation of the regulatory and development functions of the former Tanzania Tea Authority. TBT is responsible for regulating the tea industry in Tanzania, which includes overseeing and improving tea cultivation and processing, licensing tea blenders and packers, collecting, keeping, and maintaining industry statistics, controlling pests and diseases, and supporting research on all aspects of the tea industry (Tea Board of Tanzania, 2024).

In Uganda the tea industry in Uganda is regulated by several acts and regulations, including:

a. *Uganda Tea Growers Corporation Act* requires anyone who wants to plant tea to register as a tea grower with the corporation.
b. *Uganda Tea Authority Act 1974:* Established the Uganda Tea Authority, which is responsible for the export and marketing of tea, as well as the growing, harvesting, and processing of tea. The Act also includes a licensing system for tea cultivation and manufacturing.
c. *Uganda Tea Authority (Prescription of Forms) Regulations*: Prescribes the forms required for applications to erect a tea factory, obtain a tea manufacturing license.

2.4 Regulatory Context

Licensing and registration in the Kenyan tea industry has been integral to the sector's development over time.

The British post-colonization introduced tea to Kenya. The colonial government, however, prohibited local tea cultivation. Kenyans were allowed to own tea estates and cultivate them later in the twentieth century. This commenced in the 1950s with smallholder tea cultivation, and later, the first tea factory for smallholder farmers was established in 1957 (KTDA,2022).

The first legal instrument to govern the production of tea in Kenya was enacted as the Tea Ordinance, 1934 (No. 46 of 1934). This Ordinance was revised by the Tea Ordinance, 1948 (No. 52 of 1948), which became effective on 15th August 1948. The objectives of the Tea Ordinance of 1948 were to provide for the control of the production of tea in the Colony. The Directorate of Agriculture was responsible for controlling the production of tea by issuing licenses and permits to farmers until 1950 when TBK was established under the Tea Act (Cap 343) to regulate the industry.

In 1960 the Special Crop Development Authority (SCDA) was established to regulate the production of selected crops.

In 1964, SCDA was replaced by the establishment of the Kenya Tea Development Authority (KTDA) under the Agriculture Act (Cap 318) Section 91, Legal Notice No. 42. KTDA took over the management of smallholder tea from multinational tea companies. In 1999, the government launched Sessional Paper No. 2 on the privatization and restructuring of the tea industry, which brought major changes to the reforms of TBK. It also led to the privatization of KTDA, which was then transformed into Kenya Tea Development Agency Ltd. As a result, the tea industry enhanced processing capacity, with smallholder tea factories increasing from 45 in 1999 to 71 by 2023. There has been improved management of tea factories due to enhanced corporate governance and modalities to strengthen TBK and enable it to undertake its mandated role as the main regulatory body.

The privatization of the Kenya Tea Development Authority (KTDA) through the formation of Kenya Tea Development Agency Ltd (KTDA) in the year 2000 under the Companies Act CAP 486 was also meant to achieve improvement in the management of the tea factories. This would be by allowing farmers to play a rightful role in decision-making and attaining adequate processing capacity to bridge the gap between takings of the smallholder and large estates at the farm level. In 2009, Kenya Tea Development Agency Ltd. changed its name to Kenya Tea Development Agency (KTDA) Holdings Ltd.

Further reforms were instituted through the implementation of the Task Force Report of 2007 so that the TBK could be responsive to the needs of the Kenyan tea industry's stakeholders. It would also assist in overcoming the global challenge of climate change and increase the low returns from Kenya's popular and most consumed product of black CTC tea. This resulted in the amendment of the Tea Act in 2011 and the regulations thereof, which changed the funding for tea industry regulation, promotion, infrastructural development and research from tea cess to Tea *Ad-valorem* Levy. Before its revocation in 2016, the industry managed to acquire modern equipment for research to address the prevailing challenges in the tea industry.

In 2013, following agriculture sector legislative reforms that sought to harmonize numerous statutes governing agriculture, the Tea Act and CAP 343 were repealed, and the Agriculture and

Food Authority (AFA) Act and Crops Act were enacted. Further, the Kenya Agricultural and Livestock Research Organization (KALRO) Act was enacted to consolidate the former agricultural research institutions, including TRI. This led to dissatisfaction among industry stakeholders regarding service delivery, inadequate regulation leading to poor compliance, and conflicting roles between the AFA and the County Governments.

In 2014, AFA was established under Section 3 of the AFA Act following the operationalisation of the Crops Act 2013, which repealed the legislation establishing TBK amongst other agricultural commodity state corporations.

In its 2016 report, the Presidential Task Force on Tea recommended scrapping the tea levy. This position denied the Board, and by extension, the TRI, the much-needed resources to support the further development of the tea industry in Kenya.

The Tea Act 2020 was assented to on 23rd December 2020. It came into force on 11th January 2021, re-establishing the TBK with the mandate of, among others, monitoring and licensing agencies involved in the buying and selling of tea. (MoALD, 2024)

Though the Tea Act 2020 provided for licensing and registration of the various tea sector actors to facilitate the continued development of an efficient and effective tea industry in the country, this Act is yet to be fully operationalized. The proposed Tea (Registration and Licensing) Regulations 2024, therefore, seek to fully operationalize the registration and licensing aspects for the different actors in the industry to realise the envisaged benefits of the Tea Act 2020.

2.5 Current Policy and Legal Status

The tea industry plays an important role in the country's social-economic development. It is among the leading foreign exchange earners for the country and a source of regular income for over 600,000 tea growers. It further, directly and indirectly, creates employment for over 6.5 million people along its value chain. The Tea Act 2020 is the primary legislation guiding the tea industry's regulation, promotion and development. However, other legislation and policies in the agricultural sector and other related sectors support it. These are set out below.

The Constitution of Kenya (CoK): Article 10 of the Constitution provides for the participation of the people in the enactment of any law. National values and principles bind all state organs, state officers, public officers, and all persons whenever they apply the Constitution and enact any law. The Fourth Schedule of the Constitution provides for the devolution of specific functions in agriculture to the County Governments. The National Government retains the executive function of policy decision-making under Part 1 Section 29 of the Fourth Schedule. At the same time, the counties take up the implementation task of the policies generated by the National Government. The COK further stipulates that the two levels of government shall conduct their mutual relations based on consultation and cooperation (Article 6 and Article 189 (1) (b) (c)). Due to the importance of agriculture to economic development and the realization of the Constitutional requirements, it is necessary to have an Agricultural Policy that guides the development of the entire Agricultural Sector and unbundles National and County Government functions. The roles of county governments include agriculture (crop husbandry); implementation of programmes in the agricultural sector to address food security in the county; development of programmes to intervene on soil and water management and conservation of the natural resource base for agriculture; land development services for horticultural production for food security and others.

In addition, the Constitution of Kenya, 2010 (CoK 2010) under Article 11 (3) (b), provides for the Parliament to enact legislation to recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics, and their use by the communities of Kenya. Moreover, there are initiatives to provide for an Access and Benefit-sharing (ABS) system that will allow for access and exchange of seeds among communities, i.e., recognizing the importance of farmer-managed seed systems.

Tea Act No. 23 of 2020: Section 3 of the Act establishes the Tea Board of Kenya ("the Board"). Under section 5 (e) and (f), the Board has the mandate to:

i) 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; and

ii) license manufacturers.

Section 20 of the Act provides that the Board, on behalf of the national government, is responsible for licensing and that each county government shall implement the national government's policies.

Each small-scale and medium-scale grower shall register with the tea factory to which the respective tea growers deliver green leaf or purple leaf in accordance with section 21 of the Act. Large-scale tea growers are required to register with the Board under section 23 of the Act.

Any person manufacturing tea for sale is required to apply for a licence from the Board as per section 25 (2) of the Act. The Board is required to maintain a register of:

i) Manufacturers
ii) Tea packers
iii) Warehouse packers
iv) Tea buyers
v) Exporters and importers
vi) Tea broker
vii) Management agent
viii) Tea auction organizer
ix) Commercial green leaf transporters
x) Commercial tea nursery

These entities are required to register with the Board.

Under section 40 (1) of the Act, the Board may determine the conditions upon which a licence is issued. The Board has the power to renew, alter and revoke a licence issued to any person.

Crops Act No. 16 of 2013: This is the principal legislation in the agricultural sector enacted to accelerate the growth and development of agriculture in general. Under this Act, tea is a scheduled crop. AFA is responsible for registering and licensing all dealers of scheduled crops. AFA is also designated to issue and renew licences. This function has, however, been taken up by the Tea Board of Kenya under the Tea Act.

The Crops (Tea Industry) Regulations 2020: The purpose of the Regulations is to guide the development, promotion, and regulation of the tea industry. AFA is the entity responsible for the issuance of tea manufacturing licences.

The regulations provide for the registration and licensing provisions for commercial tea nurseries, tea growers, tea packers, tea buyers, exporters, tea brokers, management agents, auction organizers, and tea importers. They also contain the prescribed forms for registration and licensing.

These are functions that are now under the mandate of the Tea Board under the Tea Act.

Trade Description Act (Cap 505): This is an Act of Parliament to prohibit misdescriptions of goods, services, accommodation and facilities provided during trade and prohibit false or misleading indications as to the price of goods. It further confers powers to require information or instructions relating to goods to be marked on, to accompany the goods, or to be included in advertisements.

Weights and Measures Act (Cap 513): This is an Act of Parliament to amend and consolidate the laws relating to the use, manufacture and sale of weights and measures and to provide for the introduction of the International System of Units (ISU). This Act would apply to agriculture produce trading regarding their correct weights and labeling for efficient marketing. Regulation 12 of the Tea (Registration and Licensing) Regulations, 2024 provides that the provisions of this Act shall apply to the weighing of green leaf by a tea factory.

Standards Act (Cap 496): This is an Act of Parliament to promote the standardization of the specification of commodities and to provide for the standardization of commodities and codes of practice; to establish a Kenya Bureau of Standards, to define its functions and provide for its management and control; and for matters incidental to, and connected with, the foregoing.

Pest Control Products Act (Cap 346): This is an Act of Parliament to regulate the importation, exportation, manufacture, distribution, and use of products used for the control of pests, the organic function of plants and animals, and related purposes.

Food, Drugs and Chemical Substance Act (Cap 254) is an Act of Parliament that makes provision for the prevention of adulteration of food, drugs and chemical substances. This Act provides rules for the placing on the market of food, drugs for man and animal and chemical substances, establishes the Public Health (Standards) Board and makes otherwise provisions for the control of the quality and safety of food, drugs, and chemical substances to be placed on the market of Kenya.

Public Health Act (Cap 242)—It is concerned with protecting public health in Kenya and lays down rules relative to, among other things, food hygiene and protection of foodstuffs, the keeping of animals, protection of public water supplies, the prevention and destruction of mosquitos, and the abatement of nuisances, including nuisances arising from sewerage. The Act establishes the Central Board of Health and County health management boards. It also establishes and defines the functions of health authorities.

County Governments Act No. 17 of 2012: The various County Integrated Development Plans (CIDPs) and country-specific legislation, policies, and strategies: Individual County governments have developed different pieces of country-specific legislation, policies, and strategies for the development of agricultural production and marketing in the individual counties. These instruments will affect the tea industry differently in the individual counties.

The Kenya Agricultural and Livestock Research Act No. 17 of 2013: This is an Act of Parliament to provide for the establishment and functions of KALRO, for organs of the Organization, for the coordination of agricultural research activities in Kenya, and for connected purposes.

The Plant Protection Act (Cap 324) is an Act of Parliament to improve provisions for preventing the introduction and spread of disease-destructive plants. It also provides for the requirements of seeds and plants that are ready for imports and exports, including the accompaniment of the Phytosanitary Certificate. Imports from tea are thus subject to the provisions of this Act.

Agriculture Sector Transformation and Growth Strategy (ASTGS), 2019 -2029: The central theme of the ASTGS (2019–2029) is food and nutrition security. The ASTGS seeks to improve food and nutrition security by transforming Kenya's agriculture sector into one that is vibrant, commercially oriented, and modern and has three anchors: increasing incomes of small-scale farmers, pastoralists, and fisherfolk; increasing agricultural output and value-added and increasing household food resilience. The ASTGS identified 13 value chains with the highest potential for transformation that will be at the center of its identified nine implementation flagships. These value chains include crops such as potatoes, staples such as maize, rice, and beans, fruits and vegetables, beef, poultry, sheep/goats, dairy, and camels among livestock, and fish. The ASTGS's inclusion of tea among its priority value chains indicates the critical role this crop has and the importance of the proper functioning of the tea industry in the agricultural development and transformation of the country. It notes that tea is one of Kenya's highest export earners, making up to 60% of Kenya's crop production. The Strategy also recognizes that Kenya can adopt some strategies such as the "Buy Kenya" campaign and Small and Medium Enterprises (SMEs) knowledge and skills building. This can extend to branded tea in high tea-growing regions.

Kenya Vision 2030: Through its 5-year Medium Term Plans, this is a nationwide multi-sectorial national strategy that outlines the main policies, legal and institutional reforms as well as programs and projects that the Government plans to implement during the period 2008-2030, which aims to transform Kenya into a newly industrializing, middle-income country providing a high-quality life to all its citizens through three pillars: economic, social and political.

Agricultural Policy 2021: It was formulated in line with the relevant provisions of the Constitution and provides a clear roadmap to the realization of Vision 2030 agricultural goals and targets. It identifies current challenges in the agricultural sector and outlines suitable guidelines to address them. The Policy recognizes tea as a leading foreign exchange earner and its export value was Kshs. 104.1 billion in 2019, Kshs. 134.8 billion in 2018 and Kshs. 134.8 billion in 2017. It remained one of the key agricultural items in domestic exports in 2019. However, the value of tea exports declined by 18.2 per cent from Kshs. 138.8 billion in 2018 to Kshs. 113.6 billion in 2019.

Kenya Climate-Smart Agriculture Strategy 2017 – 2026: It is keen on addressing the gaps in policy implementation and actualization of policies. The broad objective of the Kenya Climate-Smart Agriculture Strategy (KCSAS) is to adapt to climate change and build resilience of agricultural systems while minimizing emissions for enhanced food and nutritional security and improved livelihoods. It recognizes the national issues on climate change and agriculture, such as a temperature rise of 2°, which would lead to large areas of Kenya currently suited to growing tea becoming unsuitable. This would have an enormous impact on the tea industry, which directly and indirectly employs three million Kenyans or about 8% of the population.

International and regional conventions and agreements: Kenya is also a signatory of various international policies employed by the international community to regulate trading or reduce the volatility of different product markets. These include trade agreements, international arrangements or controls or limitations on activities on commodities markets, and regional and bilateral policies that governments employ to regulate trade. These policies, among other things, may include export bans, variable export taxes or import tariffs. These regional and global policies, protocols and treaties, including the East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA), African Union (AU), African Regional Property Organization (ARIPO), United Nations (UN) and the World Trade Organization (WTO) Agreement affect the performance of agriculture in the country through specific international requirements for trade, market access sanitary and phytosanitary standards among. The tea levy is imposed on both the importation and exportation of tea. This will have an impact on international trade in tea and will be subject to these trade agreements, international arrangements, regional and bilateral policies, protocols and treaties.

Bottom-Up Economic Transformation Agenda (BETA): The Bottom-Up Economic Transformation Plan 2022-2027 is the manifesto of the Kenya Kwanza administration that will be implemented over the next five years. The agenda is built on five main pillars: economic diversification, industrialization and value addition. One of the major crop value chains is the tea value chain. The Plan recognizes the need to mobilize tea farmers into cooperatives, establish incubation centers for specialty tea diversification, develop export markets and products as well as implement a global marketing strategy among others. It also includes an implementation matrix with an indicative budget and department responsible. Some include the State Department for Cooperatives (SDC), State Department for Industry (SDI), State Department for Investments Promotion (SDIP), State Department for Agriculture (SDA), TBK, The National Treasury (TNT), KTDA, Independent Tea Factories and the East Africa Tea Trade Association (EATTA).

3.0 EFFECTS OF PROPOSED REGULATIONS

This chapter examines the effects of the proposed regulations on the public and private sectors and on individuals' fundamental rights and freedoms.

3.1 THE TEA (REGISTRATION AND LICENSING) REGULATIONS 2024

These Regulations have been developed by the Cabinet Secretary for Agriculture and Livestock Development in consultation with the Tea Board of Kenya in the exercise of the powers by sections 74 of the Tea Act, 2020.

Regulation 1 of these regulations prescribes the citation of the regulations.

Regulation 2 contains the interpretation of the regulations and specifies the meanings of terminologies employed in the regulations.

Regulation 3 gives the object and purpose of these Regulations. The main object and purpose of the regulations are to provide for the registration and licensing of tea factories, small-scale tea growers, medium-scale tea growers, large-scale tea growers, commercial tea nurseries, commercial green leaf transporters and tea dealers. This regulation further prescribes the procedure, terms and conditions for the registration of all categories of tea growers, tea manufacturers, commercial tea nurseries, commercial green leaf transporters and tea dealers, declaration and submission of returns on tea and fees charged under the Act and any regulations made there under.

This regulation will enable the establishment and maintenance of an accurate real-time database of all these critical actors within the Kenyan tea industry, allowing for close monitoring, supervision and regulation of the tea industry. It will also provide accurate data on the trends in the industry to inform decision-making and policy development. The provisions of this regulation may, however, be viewed by some industry actors as excessive bureaucracy and interference with private businesses.

Regulation 4 defines the procedure for the application for registration of a commercial tea nursery to the respective County Government. It further sets out a thirty-day timeline for the County Government to consider any application received and the county to issue a no-objection, approve and issue a certificate of registration before licensing the applicants by the Board. or to reject and notify the applicant, indicating the reasons for the decision.

This regulation also requires a person registered under it to submit annual returns to the respective County Government and a copy to the Board by the 15th day of January each year.

This regulation will ensure effective monitoring, supervision and regulation of commercial tea operators. This will ensure that tea growers will only access quality and recommended tea varieties by T.R.I to establish or expand their tea fields. It will also allow monitoring of the production and availability of planting materials in the tea-growing regions and the country at large through annual returns. The provisions of this regulation may, however, be viewed by some as excessive bureaucracy and interference in private businesses, which may drive practising tea nursery operators out of business due to their inability to meet the requirements of these regulations.

Regulation 5 provides for the application for registration of small-scale and medium-scale tea growers. It requires such growers to register with the respective tea factory where they deliver green leaf, and for the tea factory to verify the tea growers' details before registration, for the tea factory to issue the growers a grower's number. It further requires the tea factory to prepare a farm verification report on the tea grower's eligibility, which shall be kept in the tea factory for inspection by the Board. Where an application is rejected, the tea factory manager must notify the applicant of the decision.

This regulation additionally requires a tea factory to maintain a register of all growers registered under the regulation who supply green leaf to the tea factory. The register shall contain, among others, the grower's number, the grower's personal details, land size, number of bushes, the average production and the tea buying centre. The tea factory is also required to submit a copy of such a register to the Board and the respective County Government by the 15th day of January every year. The details of the large-scale tea growers will also be deposited with the county to allow the County Government to have statistics on all tea growers within their counties for planning purposes

This regulation will enable the establishment and maintenance of an accurate real-time database of small-scale and medium-scale tea growers in each tea-growing county. To efficiently realize this, the Tea Board of Kenya will be expected to support this process through its national digital growers register for reference by factories to enforce compliance with the requirements on registration of growers under the Tea Act and Tea Regulations. It will further allow for close monitoring, supervision, regulation and enforcement in the tea industry, as well as provide accurate data on the trends in the industry to inform decision-making and policy development in each tea-growing county. This regulation will further assist the tea menace by ensuring that only verified and registered growers deliver tea to the factories. However, some small-scale and medium-scale tea growers may view this regulation's provisions as excessive bureaucracy and interference in private farmers' businesses.

Regulation 6 provides for the application for registration of large-scale tea growers and for the tea factory to issue the grower with a grower's number and prohibits a large-scale tea grower from selling or delivering green leaf to a tea factory to which they are not registered. This regulation sets out a timeline of sixty days for the Board to consider any application received to approve and issue a certificate of registration or to reject and notify the applicant, indicating the reasons for the decision. Since registration certificates are not transferable, a new owner of the large-scale tea holding will be required to reapply for a new registration certificate. It further prohibits the holder of a registration certificate issued under this regulation from transferring ownership of its holdings without obtaining a no-objection from the Board.

This regulation will enable the establishment and maintenance of an accurate real-time database of large-scale tea growers in the country, including foreign-owned estates. It will thus allow for close monitoring, supervision, and regulation of tea production and provide accurate data on industry trends to inform decision-making and policy development. However, some large-scale tea growers, especially foreign-owned estates, may view the provisions of this regulation as excessive bureaucracy and interference in private farmers' businesses.

Regulation 7 restricts double registration by a small-scale tea grower and medium-scale tea grower of their parcel of land planted with tea with more than one tea factory at a time. The regulation further indicates an exception to the registration of a parcel of land planted with more than one type of tea, green or purple, with more than one factory at a time for the purpose of processing the different teas. The regulation subsequently requires provision of proof by the registered owner supported by a letter from the area Chief to the tea factory where a parcel of land is sub-divided, but separate title deeds have not been issued.

This will discourage unfair trade practices by growers who may want to divert their green leaf to alternative factories for various reasons. Some practices include avoiding paying for inputs, credit or advances issued by a specific factory, or illegal green tea diversion in situations of family disputes. However, this regulation may be viewed by growers as tying them to factories and denying them the option of choice, including in situations where a specific factory is underperforming or mismanaged.

Regulation 8 provides for the change of a tea factory. It requires a tea grower wishing to change the factory where they deliver green leaf to inform their respective factory by giving a minimum notice of thirty days. The factory is also required to release the grower within one month of the receipt of the notice, subject to the grower clearing any outstanding dues with the factory. Where an objection to the notice is raised, the matter is referred to by the Board for mediation.

This regulation provides an avenue for growers to change their factory choice within the timelines set while protecting factories from losses from unsettled dues by any migrating growers.

Regulation 9 requires that any change in particulars of growers be notified, in writing, to the respective tea factory in the case of small-scale and medium-scale tea growers, or to the Board in the case of large-scale tea growers. Where a registered grower ceases to grow or cultivate tea, the respective tea factory or the Board may, after giving that person a written notification of its intention to do so, remove the name of that grower from the register. This regulation pronounces an offence for contravention of the provisions of this regulation.

The regulation will restrict unauthorized changes to a grower's particulars and thus protect growers, especially the aged and/or illiterate growers, from possible defrauding of their rights by their kin and other white-coloured criminals. This regulation will also ensure continuous updating of the growers' registers, crop acreage, and tea production trends for informed decision-making and planning.

Regulation 10 provides for the registration of a commercial green leaf transporter and expressly prohibits persons not registered by the Board from operating as commercial green leaf transporters. This regulation also specifies the procedure for the application and approval or rejection of any such application. This regulation prescribes an annual registration fee payable by green leaf transporters, issuance and display of an identification sticker to every vehicle registered by the Board as a commercial green leaf transporter, conditions an applicant must comply with including the Tea Act, the Tea Industry Code of Practice KS: 2128, the Public Health Act and any other relevant law. Lastly, it prescribes contravention of this regulation's provision as a punishable offence.

This regulation will ensure that only certified registered transporters who meet all the defined requirements will transport green leaf. This will ensure hygiene is maintained during the handling and transportation of tea to the factories, thus protecting consumers from exposure to harmful substances from the use of vessels that transport such harmful substances.

The regulation of commercial green leaf transporters will also contribute to less tea hawking, which not only robs farmers of their returns but also often compromises hygiene during transportation. The introduction of this regulation may, however, eliminate active commercial green leaf transporters unable to meet the conditions set herein out of business. Additionally, prescribing an annual registration fee may also be viewed as increasing the cost of doing business for transporters.

Regulation 11 defines the contents of a green leaf agreement and allows the factory and the tea grower to enter into agreements for the duration of their choice., and outlines the obligations and responsibilities of each party, including the performance standards to be adhered to by the tea factory limited company, the quality standards of green leaf to be delivered by the tea grower, and a dispute resolution clause. This green leaf agreement is applicable to Tea Factory Limited Company only. It provides for the minimum content of a green leaf supply agreement, but parties are at liberty to adopt negotiated terms with approval of the Board.

This regulation will introduce accountability on the part of both the factory and the grower, which will enhance efficiency and performance by both parties, benefiting both the Kenyan tea industry at large.

Regulation 12 mandates the provisions of the Weights and Measures Act CAP 513 to apply to the weighing of green leaf by a tea factory.

This regulation will allow the application of the provisions of the existing Weights and Measures Act, which already has a proven implementation framework for weighing green leaf at factories.

Regulation 13 requires a commercial green leaf transporter to enter into an annual green leaf transport agreement with the tea factory where they intend to provide green leaf transport services. The commercial green leaf transporter is also required to transport tea only to the tea factory. It has signed a green leaf transportation agreement with the company and only uses designated motor vehicles. This regulation further requires such a transporter to comply with the Tea Industry Code of Practice KS: 2128, the Public Health Act and any other relevant law. This regulation lastly prescribes a punishable offence for contravention of the provision of this regulation.

This regulation will ensure that transporters are bound by agreements to deliver tea to the factory promptly and appropriately, minimizing the loss of quality tea due to delayed or non-delivery. It also ensures that no tea in transit is diverted to other factories. The requirement to use designated vehicles will help maintain hygiene during transportation and reduce the practice of tea hawking, which is primarily carried out using pickup trucks.

Regulation 14 provides for the registration of a management agent and requires that a person not operate as a management agent unless they are registered by the Board. This regulation defines the procedure for the registration of management agents, the approval and issuance of a certificate of registration, the rejection of such applications, and notification of the applicant indicating the reasons for such decision. Registered agents are also required to make annual returns to the Board.

This regulation will ensure the registration of all management agents in the tea industry, allowing for monitoring and supervision of their operations and their regulations. Thus, it will safeguard the interests of other tea industry actors who employ the services of such agents. The annual returns of registered agents to the Board will enable the Board to maintain reliable real-time data on trends in the tea industry.

However, this regulation may shut out already-practising management agents from business because they are unable to meet the registration conditions, which could be viewed as increased bureaucracy in the industry.

Regulation 15 provides for management agent agreements with every tea factory to which they intend to provide management agent services or any person who intends to manufacture or deal in tea. Thus, it specifies the terms and conditions of the agreement.

This regulation will enhance accountability and responsibility, particularly for management agents, thereby protecting the interests of factories and other entities that rely on their services.

Regulation 16 requires the registration of warehouse operators, mandating that all warehouse operators be registered with the Board. It also defines the procedure for application, approval, rejection, and notification of applicants, including reasons for rejection. This regulation ensures that all warehouse operators in the tea industry are registered, facilitating the monitoring and supervision of their operations. Doing so helps regulate the industry, safeguarding the interests of other tea sector actors who utilize the services of these operators and ensure the maintenance of quality in storage.

This regulation may, however, shut out existing warehouse operators from business who may not meet the conditions set by these regulations.

Regulation 17 stipulates that no person may operate as a tea packer unless they are registered with the Board. It outlines the procedure for application, approval, rejection, and notification of applicants, including the reasons for rejection. This regulation also mandates that every tea packer submits monthly statistical returns to the Board and the respective County Government. Failure to comply with this regulation constitutes an offence, subject to penalties.
Under these regulations, a tea packer is required to comply with the Tea Industry Code of Practice KS: 2128, the Public Health Act, and any other relevant laws, including the applicable Food Safety and Hygiene Standards.

This regulation will ensure the registration of all tea packers, allowing for the monitoring and supervision of their operations and regulations, and thus ensuring compliance with set quality and hygiene standards. The monthly statistical returns will provide the Board and respective county Governments with real-time data and information on tea packaging and trade trends to inform planning and decision-making.

Regulation 18 provides for the registration of an auction organiser and requires all persons who organise tea auctions or deal in tea as tea auction organisers to be registered by the Board. This regulation defines the procedure for the registration of an auction organizer, approval and issuance of a certificate of registration; and/or rejection of such applications and notifying the applicant indicating the reasons for such decision and the procedure for renewal of registration.

Registered auction organizers are also required to submit to the Board a monthly tea auction report of all teas sold through the auction in the previous month.

This regulation will ensure the registration of all tea auction organizers, allowing for the monitoring and supervision of their operations and their regulation. Thus, it will eliminate or reduce unfair trade practices in tea auctions through collusion and other illegal practices.

Regulation 19 provides for revocation or alteration of registrations and requires registered persons under these regulations to commence operations within one year from the date of issuance of a registration certificate, failure to which such registration certificate shall lapse.

This regulation also mandates the Board or the County Government to revoke, alter, suspend or vary a registration certificate for failure to comply with the provisions of the Act and these Regulations or committing an offence under the Act or in respect of the registered activity under any other law. This is done after the affected person has been notified of the intention to revoke, suspend, cancel or vary a registration and afforded an opportunity to be heard and provide an appeal mechanism to the Cabinet Secretary within 30 days of such a decision.

This regulation will eliminate speculators who seek registrations to exploit existing or emerging opportunities in the industry for their own selfish gains, to the detriment of other industry actors. Thus, it will instil compliance in the industry.

Regulation 20 provides for the surrender of a revoked registration certificate. It requires the holder of a revoked registration certificate to surrender it to the Board or the County Government immediately. Upon surrender, such a registration certificate ceases to have effect immediately.

This regulation will promptly eliminate actors whose registrations have been revoked from the tea sector, protecting industry actors from agents who have been deemed unfit to operate in the industry.

Regulation 21 governs tea manufacturing licensing and requires all tea manufacturers to hold a valid tea manufacturing license. This regulation outlines the procedure and requirements for applying for a tea manufacturing license, including those for manufacturing high-value specialty teas. Key requirements include conducting a feasibility study for the proposed tea manufacturing factory, submitting a marketing plan for specialty tea production, providing a certified copy of the growers' register, demonstrating adequate financial capacity to construct the factory and begin operations, and specifying the factory's energy source. For new factories, applicants must also have at least 700 hectares of planted tea bushes, or 50 hectares in the case of specialty tea manufacturing and comply with the radius of a new factory and guidelines of the location of tea buying centers provided for in the Green Leaf Quality Guidelines.

The regulation also sets out the applicable fees for each type of license, specifies timelines for processing manufacturing applications in accordance with the National Processing Capacity Survey, the Act, and other relevant laws, and defines the procedure for approving or rejecting applications. In the event of rejection, applicants must be notified of the reasons for the decision. The regulation also outlines the procedure for license renewal.

Additionally, the regulation grants the Board the authority to cancel, modify, or suspend any manufacturing license if the licensee violates the provisions of the Act or these Regulations.

This regulation will ensure compliance with set tea manufacturing standards, maintaining the high-quality standards Kenyan tea is known for while also protecting consumers from unhygienic manufactured tea.

Regulation 22 sets out the obligations of the holder of a manufacturing license and requires a holder of a manufacturing license or specialty license to construct and commission the tea factory within three years from the date of issuance of license. The holder of the manufacturing license also does not vary the type of tea manufactured and is granted processing capacity of their licence without the prior approval of the Board. This regulation also requires the holder of a manufacturing licence or speciality tea manufacturing licence to furnish the Board with a certified copy of their register of growers as may be specified by the Board. It further requires the holder of a manufacturing license to facilitate remittance of contributions to a registered tea growers' association pursuant to any agreements entered between the tea growers and those Associations. This regulation also requires the holder of a manufacturing licence or a specialty tea manufacturing licence to notify the Board of any intended sale or transfer of ownership of its tea factory at least six months before the transaction is effected. It further prohibits the construction of a tea factory without a valid manufacturing licence from the Board.

This regulation will eliminate speculators holding dormant manufacturing licenses and thus distort the industry structure. The regulation will ensure that no idle manufacturing capacity is developed by requiring manufacturers to submit growers' registers. Additionally, by facilitating the remittance of contributions to growers' associations, this regulation will contribute to the development of functional and effective growers' associations, which are an integral part of the tea sector's future self-regulation. Moreover, the regulation of the intended sale or transfer of ownership of manufacturing licenses will promote fair trade practices by checking on the development of monopolies or oligopolies through mergers and acquisitions, which may work to the detriment of other industry actors. The requirement to get approval before commencing construction of a manufacturing factory will avoid investment in unapproved/ idle facilities and future disputes and legal tussles between investors and the Board.

Regulation 23 empowers the Board to seize and remove or order the removal of any manufactured tea or processing capacity where it has reasonable grounds to believe that the processing capacity has been installed contrary to the conditions of the licence issued under these Regulations.

This will ensure compliance with approved processing capacities in all factories and avoid variations that may be used to engage in unauthorized and unfair trade practices.

Regulation 24 prescribes that the provisions of section 27 of the Act shall apply to the illegal manufacture, possession or trading of tea.

This regulation will check illegal tea manufacturing, possession, or trading and thus discourage possible unfair practices in the industry's manufacturing node.

Regulation 25 requires the holder of a manufacturing licence and a specialty tea manufacturing licence to make monthly and annual statistical returns to the Board and the respective County government. It also pronounces an offence for contravening these requirements.

This will provide the Board and the respective county governments with real-time data and trends on monthly and annual tea production statistics, which will be useful in informing planning, decision-making, and policy review or development at both the national and county levels.

Regulation 26 on revocation or alteration of a licence allows the Board to revoke, alter or suspend a licence where a licence holder fails to comply with the provisions of the Act and these Regulations. It further provides that before any licence is cancelled, revoked, suspended or varied under this regulation, the Board or the County Government shall allow the affected person to be heard. This regulation also allows a person who is aggrieved by the decision of the Board under this regulation to appeal to the High Court.

This regulation will enhance compliance with these regulations and relevant provisions of the Tea Act by imposing heavy penalties for license cancellation, revocation, or suspension. It also provides an appeal mechanism, thus promoting fairness in manufacturing.

Regulation 27 provides for the registration of a tea buyer or exporter. It also requires people not to carry on made tea-buying or exporting businesses unless the Board registers them. This regulation specifies the procedure and requirements for such registration. The procedures include a prescribed fee payable, an elaborate business plan demonstrating viability, a proposal to undertake value addition, and the creation of new market linkages. Other procedures include sourcing of tea and warehousing arrangement of tea; creation of employment opportunities; and technology transfer; evidence of suitable premises for value addition; and availability of equipment for the tea buyer or tea exporter to undertake tea value addition. This regulation requires the Board to issue a certificate of registration upon approval of such an application. In case of a rejected application, the Board shall notify the applicant indicating the reasons for its decision.

This regulation will establish a framework to regulate tea buyers and exporters and thus eliminate any possible distortion of the local and Kenya tea export destinations through the purposed actions of individual buyers or exporters. It will also promote innovation in the tea industry by specifically giving priority to value addition, technology transfer, and employment-creating ventures. The regulation may, however, be viewed as giving the Board a heavy hand in private enterprises.

Regulation 28 provides for the registration of a tea importer and requires a person not to carry on the business of tea importing unless the Board registers them. It defines the procedure for application for registration, approval and issuance of a certificate of registration, and rejection of such applications. It also provides for the need to notify the applicant, indicating the reasons for such a decision and the registration renewal procedure.

This regulation will regulate tea imports into the country and specifically protect the local tea market from the importation of cheap, low-quality tea that may distort the domestic tea market and expose local tea consumers to sub-standard or even unhealthy tea products.

Regulation 29 imposes a duty on imported or transit tea packed for the local market. It also requires every tea packer who packs imported or transit teas for the local markets to pay duty and value-added tax levied on such tea in accordance with the Act and any other relevant laws. It further pronounces an offence for contravention of the provisions of this regulation.

This regulation will help protect the local tea industry from the proliferation of imported tea products, which will likely distort the domestic tea market and allow the importation of specialty teas. The introduction of a duty on imported tea will also contribute to increased government revenue.

Regulation 30 introduces pre-import approvals and requires a person importing tea into Kenya to seek a pre-import approval issued by the Board. This regulation defines the procedure for applying for pre-import approvals, approval and issuance of a certificate of registration, and rejection of such applications. It also requires notifying the applicant indicating the reasons for a rejection decision. This regulation, however, exempts teas consigned for sale at the tea auction and transit teas from pre-import approval.

This regulation will ensure that the Board approves all intended imports to avoid disputes and legal tussles arising when such tea is within the country. These approvals will also allow the Board to regulate the types and volumes of tea imported into the country to avoid distorting individual tea product markets. Actors in the tea import space may view the provisions of this regulation as directly controlling their key business decisions. This regulation seeks to regulate and register tea imports in line with the best international standards and similar practices in other jurisdiction such as USA-Food and Drug Administration (FDA), European Union Economic Operators, Registration and identification, China -Import Food Enterprise Registration (GSCC), and is also intended to ensure that teas imported into Kenya meets the national, regional and international standards on tea.

Regulation 31 outlines the conditions for importing tea into the country. It requires importers to obtain a valid certificate of conformity to Kenya Tea Standards from an accredited institution in the country of origin. The Board is also authorized to analyze teas intended for importation or already imported, at the importer's cost, to ensure compliance with Kenya Tea Standards concerning quality, food safety, hygiene, and sanitary and phytosanitary regulations.

This regulation specifies that imported tea must be accompanied by a certificate of origin, a sanitary and phytosanitary certificate, and a certificate of analysis for pesticide residues issued by a competent authority in the country of origin. The Board will reject, seize, or destroy any import that fails to meet these conditions or re-export it to the country of origin at the importer's expense.

This regulation also requires that tea imported for blending or export be re-exported within six months of the date of import. It applies to teas imported or intended to be imported into the Kenya customs territory from an export processing zone and special economic zone. It further pronounces an offence for contravention of the provisions of this regulation.

This regulation will regulate the importation of tea and tea products into the country, thereby protecting the domestic tea market from the influx of cheap or substandard imports that could distort the local market. It will also ensure that all imported tea complies with the established Kenyan tea standards, safeguarding local consumers from potentially unhealthy products. Additionally, this regulation will ensure that imported tea meant for re-export meets the same quality standards as Kenyan tea, preventing the diversion of imported tea into the local market. This will help maintain the integrity of Kenya's highly regarded tea quality and avoid the re-exportation of low-quality tea that could damage its reputation.

Regulation 32 provides for the declaration of tea export and import consignments. It requires a person intending to import tea upon obtaining pre-import approval to declare information on all the tea imported or exported to the Board. It further pronounces an offence for any tea exporter or tea importer who provides false information under these Regulations.

This regulation will allow the Board to track and regulate tea import and export consignments as necessary and maintain real-time data on tea imports and exports to inform better industry planning and decision-making.

Regulation 33 mandates the Board to verify customs documentation on exports or imports of any tea consignment. If the consignment meets the requirements of the Act and these Regulations, the Board will issue an import or export release order. However, where an exporter or importer contravenes the provisions of the Act or any Regulations made thereunder, the Board will cancel an export or import release order or pre-import approval.

This regulation will enhance compliance with these regulations, the Act, and any other relevant regulations in the importation or export of tea to avert the heavy consequences pronounced by this regulation for any contravening of prescribed provisions.

Regulation 34 outlines the requirements for the registration of tea brokers, mandating that all individuals operating as tea brokers must be registered with the Board. This regulation specifies the procedure for applying for registration, including approval and issuance of a certificate of registration and the process for rejecting applications. In the case of rejection, the applicant must be notified of the reasons for the decision and the procedure for renewing their registration.

This regulation will ensure that only registered tea brokers operate in the industry, allowing for the monitoring and supervision of their operations and their regulations. Thus, this regulation will eliminate or reduce unfair trade practices in tea brokerage through collusion and other illegal practices.

Regulation 35 limits the number of tea factories company limited registered in Kenya serviced by a broker and requires that a tea broker offer brokerage services to not more than fifteen tea factories at the auction. This regulation requires a tea broker to sign a contract to offer brokerage services with each tea factory that they intend to offer brokerage services to and to furnish the Board with a copy of the contract on brokerage services entered into with each tea factory. It also mandates the Board to vary the maximum number of tea factories that a tea broker shall serve from time to time

This regulation will discourage the emergence of monopolistic or oligopolistic empires in tea brokerage that may distort tea auctions for self-driven interests.

Regulation 36 requires an exporter or importer to comply with the relevant customs laws and regulations on the transit-shipment of goods in handling transit teas and maintain the relevant documents for inspection by the Board.

This regulation will eliminate illegal shipments into or out of the country, prevent the dumping of transit shipments into the local domestic market, and ensure the collection of all revenue due from tea trading.

Regulation 37 requires every tea buyer, exporter, importer, and broker to submit monthly returns to the Board detailing the teas bought in the previous month and the source and destination of such tea. The Board pronounces an offence for contravention of this provision of the regulation.

This regulation will allow the Board to monitor and regulate tea trading trends. The Board will also maintain real-time data on tea trading volumes, sources, and destinations to inform better industry planning and decision-making.

Regulation 38 prohibits imports and exports of tea seeds or plants capable of being used for the propagation of tea without the approval of the Board and pronounces an offence for contravening this provision.

This regulation will help protect the local tea sector from the introduction of new pests and diseases that could threaten industry by preventing the importation of non-phytosanitary-certified materials. It will also safeguard against the unauthorized export of high-quality genetic material developed in Kenya to other tea-producing countries.

Regulation 39 mandates the Board to appoint crop inspectors to enforce compliance with the Act, these Regulations and any other relevant laws and defines the qualification requirements for such an appointment.

This regulation will ensure the presence of qualified technical personnel across the tea-growing regions to enforce compliance with the Act and these regulations, thereby supporting the realization of the intended benefits. However, some sector actors, particularly foreign-owned estates, may view this as interference in their operations or as unnecessary, considering themselves technically capable of managing their affairs without such inspections.

Regulation 40 prescribes the powers of a crop inspector and gives the crop inspectors power of entry and inspection specified in sections 50 and 51 of the Act.

This regulation will allow crop inspectors to discharge their mandate unhindered, thus enforcing compliance and supporting the realization of the intended benefits of these regulations.

Regulation 41 compels compliance with all specified relevant national, regional, and international standards and guidelines for all actors in the tea industry. This includes adherence to the Tea Industry Code of Practice KS: 2128 for green leaf transporters and tea dealers, green leaf quality guidelines for tea growers and manufacturers, and the establishment of suitable, clearly designated green leaf collection centers. These centers must comply with the Tea Industry Code of Practice KS: 2128, the Public Health Act, and any other relevant laws applicable to tea factories.

This regulation will ensure the further development of an efficient tea industry in the Country, capable of consistently producing high-quality tea and tea products competitively for the global market.

Regulation 42 provides guidelines for establishing and operating tea collection and buying centers. It requires that a tea factory construct its green leaf collection or buying centre at least 250 meters away from the collection or buying centre of another tea factory, and it may only collect green leaf from its designated centres. This regulation also mandates the respective County Government to inspect tea buying or collection centers to ensure compliance with national tea standards, the Act, these Regulations, and any other relevant laws. Additionally, it prescribes proper handling and transportation procedures for the collected green leaf.

This regulation will help avoid or reduce rivalry between factories competing for green leaf and avoid possible illegal trade practices, such as leaf diversion. It will also ensure the optimal operation of leaf collection or buying centres to maintain the quality of the leaf through the handling and transporting processes.

Regulation 43 mandates the Board to conduct quality analysis of made tea and tea products as necessary to ensure compliance with the Act.

Regulation 44 mandates the Board to regularly carry out surveillance inspections on tea production, processing, marketing, grading, storage, collection, transportation, and warehousing to ascertain and enforce compliance with these Regulations, the national tea standards, applicable international standards, and any other relevant law.

Both regulations 43 and 44 will promote and ensure consistent compliance with set tea quality standards across all nodes of the tea industry, thus preserving the highly held regard for the quality of Kenyan tea. However, the provisions of these regulations may be viewed as infringing on private business operations.

Regulation 45 specifies the timeline for renewing registrations or licenses. It requires that applications for renewal be submitted at least one month before the license or registration certificate expires. Furthermore, the regulation states that if an application for renewal has been submitted, the license or registration will remain in effect until a decision on the renewal is made. It also allows for late renewal applications, provided the applicant has a reasonable cause and pays a late application fee equal to 50% of the standard renewal fee.

This regulation ensures continuity in the operations of various agents across the tea industry value chain, preventing disruptions due to licensing and registration processes.

Regulation 46 authorizes the Board or the County Government, as applicable, to request any additional information deemed necessary to assess applications for registration or licensing under these Regulations.

This regulation enables a more thorough assessment of applications for registration or licensing to ensure that only credible individuals are authorized to operate within the Kenyan tea industry. However, some private sector actors may perceive it as an additional layer of interference or as a demand for information they consider private.

Regulation 47 requires the Board or the County Government, as applicable, to maintain a register of individuals registered or licensed under these Regulations. The Board or County Government may also publish the register in any manner it deems appropriate.

This regulation will ensure that the Board or the County Governments always have up-to-date registers of all actors across the various nodes of the tea industry value chain, enabling effective monitoring and regulation. However, sector actors may perceive the right of the Board or the County Governments to publish such registers as a potential infringement on data privacy.

Regulation 48 prohibits the transfer of any license or registration certificate issued under these Regulations to third parties.

This regulation will ensure that only persons who have been assessed and approved by the Board or the respective county governments are registered or licensed to operate in the tea industry. It will prevent unapproved persons from entering the sector through private transfers of registrations or licenses. However, this provision may be seen as contrary to the principles of free trade.

Regulation 49 prescribes the guidelines for notifying fees and charges within the tea industry. It requires tea brokers and management agents to negotiate fees, commissions, and other charges with tea factories, tea buyers, or tea exporters for the services they intend to provide. Additionally, tea brokers, tea auction organizers, and management agents are required seek prior approval from the Board before charging any fees, commissions, or other charges for services rendered, including those associated with the application or renewal of registration. They are also required to notify the Board of the fees and commissions they charge.

This regulation also requires the Board to collate information on fees and commissions charged and share it with the relevant County Governments annually.

This regulation will ensure consistency in fees, commissions, and other charges payable for the services in the sector and avoid exploitation by dominant agents of disadvantaged actors, including smaller factories. This provision may, however, be viewed as contrary to the principles of free trade.

Regulation 50 prescribes the general penalty for contravening the provisions of these regulations and advocates that a person who commits an offence under these Regulations for which no penalty is specified shall be liable, on conviction, to the penalty provided in section 71 of the Act.

This regulation will serve as a deterrence to non-compliance with the provisions of these regulations.

3.2 Affected Groups

The regulations will affect all actors within the tea industry value chain. These include:

i. National Government.
ii. County Governments.
iii. Government agencies – including TBK, TRI, Kenya Plant Health Inspectorate Service (KEPHIS), AFA, Pest Control Products Board (PCPB), KALRO, Kenya Bureau of Standards (KEBS) and National Environment Management Authority (NEMA).
iv. Small-scale tea growers.
v. Medium scale tea growers.
vi. Large-scale tea growers.
vii. Independent tea producers
viii. Tea industry associations/Organizations such as KTDA, KTGA, EATTA, Independent Tea Producers' Association of Kenya (ITPAK), Purple and Specialty Tea Association of Kenya (PSTAK)
ix. Kenyan tea buyers.
x. Tea processors/Factories.
xi. Tea traders.
xii. Tea Brokerage firms.
xiii. Tea Management agencies.
xiv. Tea auction organizers.
xv. Tea value addition agencies.
xvi. Tea Wholesalers/retailers (supermarkets, retail outlets).
xvii. Tea end consumers.
xviii. Tea Exporters.
xix. Tea Importers.
xx. Tea councils and associations abroad, such as the German Council.
xxi. Financial and micro-financial organization.
xxii. Tea industry auxiliary service providers.
xxiii. Academia and research organizations.
xxiv. Agricultural advisory services providers.

3.3 Effects on the Public Sector

The Constitution of Kenya (CoK) 2010 provides for two levels of government: national and county. The two levels of government have specific, residual and concurrent functions and powers as provided for under Article 186 and the Fourth Schedule – Part 1: National government and Part 2: County governments. The Fourth Schedule of the Constitution has specified functions of the National Government as formulation of agricultural policies and strategies to develop the sector, while the County governments are responsible for agriculture (crop husbandry), implementation of programmes in the agricultural sector to address food security soil and water management and conservation of the natural resource base for agriculture and land development services.

In view of the above, the anticipated of the proposed regulations on the public sector will be:

i. These regulations will establish a clear and practical framework that will regulate the operations of all actors in Kenya's tea industry. These include 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 organisers, warehouse operators, commercial tea nurseries and tea manufacturers. This will enhance coherence and synergy in the development of the sector.

ii. The regulations will allow the development and maintenance of a real-time database of all actors, their business volume trends, production capacities, product range and quality, etc. This will enable informed sector planning, decision-making, and policymaking.

iii. Total compliance with regulations coupled with increased surveillance, monitoring, and inspections across all nodes of the industry, including production, processing, marketing, grading, storage, collection, transportation, and warehousing, will guarantee the quality of Kenyan tea consistent with the national tea standards, applicable international standards, and any other relevant law.

iv. These regulations will eliminate illegal trade practices in the tea industry. These include unlawful imports, exports, processing and manufacturing and the menace of tea hawking. These practices deny the Government revenue in the form of taxes and levies and drain public resources used to fight them

v. Levies on tea imports will discourage the importation of tea and, therefore, protect the local Kenya tea industry from the proliferation of unbridled and cheap tea imports, including imports from neighbouring tea-producing countries.

vi. The revenue increase generated through the proposed fees and levies can be reinvested in the tea industry to support much-needed research to improve production and value addition. It will also be used for promotion, trade, and marketing development for Kenyan tea, thereby increasing the industry's returns.

vii. Increased investment in research, tea product development, market diversification, and development, supported by the increased revenue generated, will support increased production and improved tea quality and sales volumes. This will result in increased foreign exchange earnings and thus improved balance of payments for the Country

viii. Increased marketing investment will support developing and penetrating new markets for Kenyan tea and thus diversify the current traditional markets. Consequently, it will reduce Kenyan tea price fluctuations, securing and increasing foreign exchange earnings.

ix. With increased investment in branding and value addition of tea, Kenya will position herself as a source of high-end branded, value-added and speciality teas which attract premium prices. This will increase returns to the local tea producers, manufacturers and other tea value chain actors

x. Value-addition and production of branded and speciality teas will create jobs and business opportunities along the value addition and production of branded and speciality teas value chains.

xi. Improved infrastructure through improved maintenance of the dilapidated infrastructure in tea-growing regions will complement infrastructure development by other public agencies in tea-growing areas

xii. Increased revenue from the levies will enable the Board to better undertake its statutory and regulatory role in the industry including regulation of the industry and market development for Kenya’s tea. This will reduce the Board’s dependency on the National Treasury for funding to perform its regulatory functions in the sector.

xiii. Increased investment in tea research and regulation of tea nursery operators will ensure that tea growers across the country have access to recommended, high-quality tea variety planting materials for the establishment of new tea crops or replacing ageing crop fields. This will increase the nation’s tea production and tea quality.

xiv. The increased revenues of the Board will result in enhanced services in the tea subsector by the Board, including the clearance of tea exports and imports, monitoring and inspection of tea factories and other industry players, and promotion and development of Kenyan tea on the global stage.

xv. These regulations will promote consistency in fees, commissions, and other charges payable for the services in the sector and avoid exploitation by dominant agents of disadvantaged actors, including smaller factories. This provision may, however, be viewed as contrary to the principles of free trade.

xvi. Increased revenue from the levies will reduce the Board's funding dependency on the National Treasury.

xvii. Introducing the proposed fees and levies will make Kenyan tea more expensive in the world market, which may lead to a loss of the country's market share, where Kenyan tea already faces intense competition from other leading global exporters. This could also further reduce the already low domestic tea consumption.

xviii. Adopting and operationalising the regulations will require additional resources to facilitate public participation and the development of a framework to manage the registration and licensing processes and the proposed fees and levies.

3.4 Effects on the Private Sector

Private sector actors are critical stakeholders in the tea industry. They include- small scale tea growers, medium-scale tea growers, large-scale tea growers, tea industry associations/organizations (KTDA, KTGA, EATTA), independent tea producers (ITPs), Purple and Specialty Tea Association of Kenya (PSTAK), Kenyan tea buyers and exporters, tea importers, tea processors/factories, tea traders/dealers, tea brokerage firms, tea marketing agencies, tea management agencies, tea auction organizers, tea packers, tea councils and associations abroad such as the German Council, tea wholesalers/retailers (supermarkets, retail outlets) end tea consumers, financial and micro- financial organizations, tea industry auxiliary service providers, academia and research organizations among others.

These private sector actors are the principal drivers of the economy in this field.

The proposed Regulations will potentially affect the private sector in the following ways:

i. The tea industry will benefit from better services provided by the Board and supported by the increased Board revenue. These include crop research and development, increased access to agronomic services and technologies, clearance of tea exports and imports, monitoring and inspection of tea factories and other industry actors, surveillance, promoting Kenyan tea, and regulating the tea sub-sector.

ii. Increased access to tea research findings and recommendations, innovations, and technological developments. These include quality planting materials to support increased tea production, value addition, and tea product development and diversification. This will lead to increased returns to the tea sub-sector actors.

iii. Improved quality of Kenyan tea will result from increased adherence to national standards and guidelines across the industry and enhanced monitoring and surveillance of leaf quality in production, handling, transportation, processing, and manufacturing. This will ensure Kenyan tea remains one of the world's top-quality teas.

iv. The proposed levy on tea imports will discourage the importation of tea and, therefore, protect the Kenyan tea industry actors from the proliferation of cheap and unbridled tea imports, including teas from neighbouring tea-producing countries.

v. Increased access to Kenya's traditional export markets and alternative new tea markets. This will accord Kenyan tea exporters increased options to market their products. It will further guarantee a market for increasing tea production and ensure the stability of producers' tea prices.

vi. Increased tea value-addition and production of branded and specialty teas will create jobs and business opportunities along the value addition and production of branded and specialty teas value chains.

vii. These regulations will promote consistency in fees, commissions, and other charges payable for services in the sector. They will avoid exploitation by dominant agents of disadvantaged industry actors, including smaller factories.

viii. Enhanced regulation of the sector will eliminate unfair trade practices in the subsector, which often negatively affect the quality of Kenyan tea. These practices include illegal imports, exports, tea processing and manufacturing, and the menace of tea hawking.

ix. The proposed fees and levies will increase the cost of doing business for all actors in the tea industry, reducing returns for tea enterprises.

x. Local consumer prices for tea products will likely increase as the levy costs are transferred to the end consumers. This may further reduce the already low domestic tea consumption.

xi. Some provisions of these regulations may, however, be viewed as being contrary to the principles of free trade or infringing on the rights of private businesses.

xii. Improved infrastructure in tea-growing areas, supported by investments from increased Board revenue, will enhance maintenance of deteriorating infrastructure, reduce quality and green leaf losses during transportation and processing, and alleviate logistical challenges in tea production processes.

xiii. The prescribed levy rates for teas imported into the country will create investment opportunities for branded, specialty teas and other value-added tea products to serve the current and increasing demand for these tea products.

xiv. Tea consumers will be guaranteed quality and healthy tea in local and export markets.

xv. Introducing these levies may make Kenyan tea more expensive in the global and local markets, making exporters less competitive worldwide and potentially causing a loss of market share.

xvi. The prescribed fees and levies, especially for imported teas, will likely be viewed as prohibitive for business for actors in specialty teas and other value-added tea products not readily available in the country. This may sharply increase the costs of such tea products in the country and reduce their availability and uptake in the local market.

3.5. Effects on Fundamental Rights and Freedoms

The proposed regulations may affect the fundamental rights and freedoms of individuals and industry players in the following ways.

Article 31 of the Constitution provides for the right to privacy. This can be affected by the draft regulations. Various provisions in the proposed regulations provide that one must apply for registration of commercial tea factories, green leaf transporters, and registration of large-scale, small scale and medium-scale tea growers. The applications are to be made in the prescribed forms. These forms include personal data such as names, addresses, phone numbers, and PINs. The information is kept in registers by the tea factories and submitted to the Board and County Government annually. All these are data processing activities that ought to be done according to the provisions of the Data Protection Act. The Board and the tea factories should establish strong data protection mechanisms to protect personal data in line with the Data Protection Act (Cap 411C) and the respective regulations. The Board and tea factories should limit access to the filled forms to only required individuals to mitigate the risk of data mining.

Article 35 of the Constitution provides for the right of access to information. The draft regulations provide for the obligations of tea factories or the Board to keep different registers. These registers contain information on licensed tea growers and other persons. Members of the public may inspect these registers upon making a request under the Access to Information Act.

Article 46 of the Constitution provides for consumer rights and that consumers have the right to goods and services of reasonable quality and to information necessary for them to gain full benefit from goods and services for the protection of their health, safety and economic interests and to compensation for loss or injury arising from defects in goods or services. The draft regulations promote this right in several ways. The registration and licensing requirement will ensure that only authorised persons carry out the activities relating to tea growing, packing, and transporting, among others. The Board also inspects crops and monitors the compliance of the licensed persons with the standards set in the Act. This ensures that the products are safe for consumers.

Article 47 of the Constitution guarantees the right to expeditious, efficient, lawful, reasonable, and procedurally fair administrative action. The Regulations enhance this right by, for instance, providing that the Board shall give reasons for the decision where the Board rejects an application for registration or a license. The draft regulations also provide for issuing letters of objection or no objection, such as when a person wants to change from one tea factory to another.

4.0 REGULATORY AND NON-REGULATORY OPTIONS

This chapter highlights other regulatory and non-regulatory options that could be adopted to achieve the same intended objectives of the Tea (Registration and Licensing) Regulations 2024 in Kenya. The alternatives to rule-based regulation are more flexible than a rule-based approach because they may not require setting the rules out in legislation which then takes more time and effort to develop and change.

4.1 Option 1: Maintaining the Status Quo

Before considering new interventions, it is important to consider whether the problem could be resolved by making changes to practices within the existing regulatory framework, thus maintaining the status quo. Examples of this are:

i. Making use of existing laws, regulations and/or guidelines;
ii. Simplifying or clarifying existing regulations;
iii. Improving compliance and enforcement of existing regulations; or
iv. Making legal remedies more accessible or cheaper.

Though the Tea Act 2020, operationalised in January 2021, provided for licensing and registration of the various tea sector value chain actors to facilitate the continued development of an efficient and effective tea industry in the country, this Act is yet to be fully operationalised. The proposed Tea (Registration and Licensing) Regulations 2024 seek to fully operationalise the registration and licensing aspects for the different actors in the industry to realise the envisaged benefits of the Tea Act 2020. Therefore, Maintaining the status quo would leave the tea sub-sector in its current state with an ineffective regulatory framework and dire need for additional investment in crop research, product and technology developments, market development and diversification. This will leave the industry facing the threat of not being competitive enough in the world market and thus at risk of declining performance. Poor performance of this industry would be a threat to the stability of the national economy and to the livelihoods of millions of Kenyans who depend on this critical economic crop.

4.2 Option 2: Passing the Regulations

The Government can achieve its policy objectives by utilising taxpayer's money or through a range of non-spending interventions, including regulation. The aim and purpose of these Regulations are to provide for registering and licensing tea factories, small-scale tea growers, medium-scale tea growers, large-scale tea growers, commercial tea nurseries, commercial green leaf transporters, and tea dealers. These regulations prescribe the procedures and terms and conditions for the registration of all categories of tea growers, tea manufacturers, commercial tea nurseries, commercial green leaf transporters, and tea dealers, as well as the declaration and submission of returns on tea and the fees charged under the Act and any regulations made thereunder.

These Regulations also seek to generate additional revenue from the industry to support enhanced crop research, tea products and technology developments, market development, and diversification, which will ensure the sustainability and competitiveness of the Kenya tea industry in the global arena.

However, regulations may create costs for businesses and the public sector and, if overused, poorly designed, or poorly implemented, stifle competitiveness and growth.

Adoption and operationalization of the proposed Regulations will translate to the following:

i. These regulations will establish a clear and effective framework that will regulate the operations of all actors in Kenya's tea industry. They include 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 organisers, warehouse operators, commercial tea nurseries, and tea manufacturers. This will enhance coherence and synergy in the continued development of the sector.
ii. Increased tea research and development, thus improving production, quality, and value addition, including in the branded and specialty teas niche. This will increase industry actors' incomes and foreign exchange earnings for the country
iii. Better regulation of the sector to eliminate unfair trade practices in the sub-sector, including exploitation of smallholder tea producers by intermediaries and practices that contribute to the loss of quality of the world re-known tea
iv. Enhanced monitoring and surveillance of leaf quality, transportation, manufacturing and handling standards to reverse the declining quality of Kenya tea.
v. Increased access to Kenya's traditional tea market and the development of new alternate and diversified markets guarantees industry actors reliable markets for increasing tea production and stabilizing tea prices.
vi. Increased tea value addition and production of branded and specialty teas will create jobs and business opportunities along the value-addition and production of branded and specialty teas value chains.
vii. Levy on tea imports will discourage the importation of tea and therefore protect the Kenyan tea industry from the proliferation of cheap and unbridled tea.
viii. Increased revenue from proposed levies and fees will enable the Board to better undertake its role in the industry, including providing various critical services, regulating the industry, and developing the market for Kenyan tea.
ix. Tea industry actors will benefit from an expanded and diversified tea market for their produce and products. They will therefore benefit from a better volume of offtake, price stability, better prices, and thus better returns from their investments.
x. Branding and value addition of Kenyan tea and local production of specialty teas which attract premium prices, increasing returns to the local tea producers, manufacturers and other tea value chain actors.
xi. Increased revenue from the levy will reduce the Boards' dependency on the National Treasury for funding.
xii. Tea producers and other industry actors will have access to new research developments, including technologies that address their identified challenges and needs to improve their businesses.

The Regulations are thus important for the continued growth and sustainable development of the tea industry in Kenya, the agriculture sector in the country in general, and the national economy.

4.3 Option 3: Other Practical Options

Alternatives to regulation include information and education, market-based structures, self-regulation and co-regulation. In addition, any existing policies can be improved, without further regulation, using techniques such as behavioral insight or changing enforcement practices to improve compliance. Such approaches may be better or worse for business and the economy than an equivalent regulatory measure.

Alternatives to regulation include:

i. **No new intervention/do nothing**: This may include making use of existing laws (or none) and regulations, simplifying or clarifying existing laws and regulations, improving enforcement of existing laws and regulations, or making legal remedies more accessible or cheaper. As discussed in Section 4.1 above, the status quo in the sector is likely to remain since, currently, the existing framework is under the Crops (Tea Industry) Regulations, 2020.

ii. **Information and education:** Information and education can be used to empower the tea industry actors, including producers, processors, manufacturers, marketing agents, importers and exporters and other tea industry actors and stakeholders, to make their own decisions, improving choices for the mutual benefit of all. However, there are potential risks associated with this, since information and education can take time to make an impact. Access to information on research, technologies and market information in the country is still a big challenge and has remained very limited in the sector. The ability to use the little available information varies among the industry actors, the tea producers and other stakeholders. Besides, the available information may not reach all equally. It may also not be straightforward to assess how people will react or change their behaviour in response to industry information available. The use of information and education, however, will increase costs for the government and businesses that will be providing the information and education required.

iii. **Incentive/market-based structures:** The government can use economic instruments, such as taxes, subsidies, quotas and permits, vouchers, etc., as initiatives to realize the desired objectives. These initiatives, however, are only practically possible in well-developed and efficiently functioning sectors which have well-defined structures. This is unlike in the diverse tea industry with many actors at the different nodes of the tea value chain driven by very different objectives. Further, often these sorts of systems need their own regulation to establish the framework and may have additional costs to the government and are unlikely to be effective in the tea industry as it is currently structured.

4.4 Alternatives models of regulation:

i. **Self-regulation**.

Self-regulation entails industry players developing a framework to self-regulate a sector. This could be done using codes of conduct or practice, customer charters, standards or accreditation. In many cases, rules and codes of conduct or practice will be formulated by the industry representatives or organizations under their own initiative. However, regulating registration and licensing of all actors in an industry cannot be undertaken by the same industry actors as they cannot thereafter undertake surveillance, monitoring and inspections of their own very operations and activities. These activities include green leaf production, green leaf collection, processing, marketing, grading, storage, transportation and warehousing of tea to ascertain and enforce compliance with these Regulations, the national tea standards, applicable international standards and any other relevant law. Thus, even with the existing different and multiple industry organizations e.g. KTDA, KTGA, EATTA, ITPAK etc., self-regulation currently cannot be effectively possible to realize the objectives of the Tea Act 2020 and the proposed Tea (Registration and Licensing) Regulations 2024 which remain a mandate of the industry's principle regulatory agency, the Tea Board of Kenya.

ii. **Co-regulation.**

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop and operationalize a code of practice whose enforcement would be by the industry or a professional organization and accredited by the government. However, despite the clear potential benefits of co-regulation in an industry, the role of registration and licensing of industry actors in the tea industry, as provided in the Tea Act 2020, remains the legal mandate of the Tea Board of Kenya and cannot be substituted by co-regulation.

5.0 COST-BENEFIT ANALYSIS (CBA)

This chapter analyses the economic, environmental and social impacts as well as the administrative and compliance costs of adopting the proposed Regulations. It also assesses and quantifies the return on investments of the proposed Regulations; and how the impact of the proposed Regulations is likely to be distributed between the public and private sectors.

5.1 Economic Impacts of the Proposed Regulations

The economic impact of the proposed regulations are outlined below.

5.1.1 Economic benefits

The anticipated **economic benefits** of the proposed Regulations are: -

i. Improved production, quality, and value addition of Kenyan tea will increase income from tea, leading to increased returns for producers and other tea stakeholders.
ii. Increased tea exports and sales volumes resulted in increased foreign exchange earnings and, thus, an improved balance of payments for the country.
iii. Increased access to traditional tea markets and to newly developed alternative markets for Kenyan tea will lead to increased tea sales and reduced tea price fluctuations, assuring producers of stable tea prices and reliable markets.
iv. Increased tea research, technology and innovation in branded, specialty teas and other value-added tea products in the country.
v. Increased production of value-added tea, branded teas, and specialty teas that attract premium prices will increase returns to the local tea producers, manufacturers, and other tea value chain actors.
vi. Creation of more jobs and business opportunities in tea value-addition and production of branded and specialty teas.
vii. Elimination of unfair trade practices in the subsector, such as illegal tea imports and exports, middlemen's exploitation of smallholder producers, and quality-reducing practices.
viii. Improved infrastructure in tea-growing areas through ploughing back part of the increased revenue from the proposed fees and levies collected to maintain infrastructure.
ix. The proposed levy on tea imports will discourage the importation of tea into Kenya, protecting the local tea industry from the proliferation of unbridled and cheap imports. This will avoid frequent local market demand and enhance tea price stability.
x. Increased revenue from proposed fees and levies will enable the Board to better undertake its role in the industry, including regulation and market development for Kenya’s tea. It will also reduce the Board’s dependency on the National treasury for funding.

5.1.2 Economic Costs

The anticipated **economic costs** of the proposed Regulations are: -

i. The introduction of the proposed fees and levies may slightly affect the prices of Kenyan tea in the world market, making Kenyan tea less competitive.
ii. Price increases from the transfer of the cost of fees and levies to consumers will erode the competitiveness of Kenyan tea in the world market. This may lead to reduced demand for Kenyan tea, reduced volumes of offtake, and thus price instability in the subsector. It may eventually lead to the loss of livelihoods for tea-dependent households.
iii. The proposed fees and levies will increase the business cost for all tea industry actors.
iv. Local consumer prices for tea products are likely to increase as proposed fees and levies are transferred to the end consumers, which may further reduce domestic tea consumption slightly.
v. Reduced returns for all tea industry actors in the country due to the increased cost of doing business, which reduced their profits from their investments in the industry.
vi. The prescribed levy rate for imported tea may be viewed as prohibitive for business for actors in specialty teas and other value-added tea products.
vii. The affected tea industry actors may view compliance with all the provisions of these regulations as additional time-consuming and costly bureaucratic procedures.
viii. It is costly for the government to implement the regulations in the sector.

5.2 Social Impacts of the Proposed Regulations

The Regulations are expected to have the following social impacts.

5.2.1 Social benefits

The anticipated **social benefits** of the proposed Regulations are:

i. A well-regulated and growing tea industry will create sustainable employment opportunities, especially for rural youth in tea production, processing, manufacturing, trade, and marketing. This will improve the local community's standards of living.

ii. Increased production and marketing of quality tea(s) will translate to increased incomes for households in the tea value chain and thus increased households' disposable incomes to meet their daily needs.

iii. Reduced tide of rural-urban migration in search of employment opportunities by creating attractive well-paying alternatives in the rural areas.

iv. Improved infrastructure in rural areas through the development of modern or additional tea processing, manufacturing, and marketing facilities.

v. Improved income distribution among farm families and communities in general has reduced inequalities. This is due to the increased production and participation in the industry by smallholder producers, traders, agents, and dealers.

vi. Improved education levels and reduced illiteracy in societies due to improved incomes, thus improving the social well-being of rural communities.

vii. The proposed fees and levies collected will assist TBK in developing strategies and building capacity in the sector to comply with Environmental, Social, and Governance (ESG) principles and implement climate change programs. This will enhance the sector's sustainability.

viii. The funding from the proposed fees and levies will enable TBK to create awareness and empower locals on their rights to eradicate social ills in the tea-growing zones.

5.2.2 Social Costs

The anticipated **social costs** of the proposed Regulations are:

i. Consumer prices for tea products may increase slightly as proposed fees and levies are transferred to the end consumers thereby reducing tea consumption.

ii. Attractive tea prices from expanded markets and the marketing of value-added tea products may encourage increased hawking and theft of tea. The middlemen may want to benefit from quick earnings, as has been witnessed in other lucrative cash crop value chains in the country.

iii. Reduced competitiveness of Kenya tea in the world market due to increased prices resulting from the levy may lead to the loss of Kenya’s market share, which may threaten the livelihoods of millions of Kenyans who depend on the value chain.

5.3 Environmental Impacts of the Proposed Regulations

The proposed Regulations are expected to have the following environmental impacts.

5.3.1 Environmental benefits

The anticipated **environmental benefits** of the proposed Regulations are:

i. Research, breeding, and promotion of more climate-resilient tea cultivars and cultivars suitable for different agro zones and regions of the country will enable the expansion of tea production in marginal tea-growing zones.

ii. Reduced soil degradation due to improved crop cover from the increased land area under tea production and compliance with relevant tea guidelines, including the use of agro-chemicals.

iii. Improved land utilization and management, especially in otherwise idle, underutilized, low-potential, and marginal tea-growing areas.

iv. The proposed fees and levies collected will assist TBK in developing strategies and building capacity in the sector to comply with ESG principles and implement climate change programs. This will enhance the sector's environmental sustainability.

5.3.2 Environmental costs

The anticipated **<u>environmental costs</u>** of the proposed Regulations are:

i. Environmental degradation as a result of the installation of new or additional tea processing, manufacturing, marketing, and rural road infrastructure.
ii. Increased soil degradation due to the opening of new areas or expansion of land for tea production.

However, with proper and effective implementation of these regulations, these negative environmental impacts can be significantly mitigated, and impacts reduced.

5.4 Quantification of the Benefits

The remarkable growth of Kenya's tea industry has been attributed to the supportive role of TBK and the management of the smallholder sector by the Kenya Tea Development Agency (KTDA) over the years. The mandate of the Board, as provided under the Tea Act 2020, is regulation, development and promotion of the tea industry, and for connected purposes. "*To sustainably develop and promote the tea value chain through effective regulation for economic growth and transformation*". TBK undertakes tea research through the Tea Research Institute (TRI), which is TBK's technical arm.

TBK executes its mandate with resources from different sources. These include internally generated sources such as fees, levies and commissions for different services rendered by the Board and support from the exchequer.

However, it must be noted that the proposed regulations principally target the registration and licensing of tea industry actors. Although the importance of these two processes in the development of the tea industry cannot be underestimated, it is difficult to isolate the specific possible contributions or impacts of the registration, licensing, and regulation of tea industry actors only in the transformation and continued development of the sector.

In addition, whereas there are clear potential benefits from increased investment in tea agronomic and technology research, product development, market development, and promotion initiatives, it is difficult to attribute such benefits to regulations on registration and licensing.

However, the absence of a comprehensive and effective regulatory framework for the industry that encompasses registration, licensing and regulation of the tea sector actors can lead to several serious challenges in the industry, including:

- **Quality Control Issues:** Proper registration and licensing will ensure standardized quality control, ensuring consistency in the country's tea quality.
- **Market Access**: Inadequate registration and licensing of the sector actors can hinder access to international markets that require stringent quality and safety standards.
- **Economic Losses:** Inadequate registration and licensing in the industry can result in economic losses due to the inability to meet export requirements and potential product rejection.

- **Regulatory Non-compliance:** Poorly regulated registration and licensing of key industry actors can lead to non-compliance with local and international regulations, resulting in fines and legal issues.
- **Reputation Damage:** The reputation of Kenya's tea industry could be damaged by exports if products do not meet quality standards, affecting long-term market trust and demand.

The implementation of the proposed regulations will significantly contribute to fully addressing these challenges to the benefit of all industry stakeholders and the country, and most of such challenges have been reported in the country. Some challenges are outlined below -

i. A survey conducted by the Kenya Tea Development Agency across its seven regions showed that: -
   - In 2022, hawking escalated, where 60.3 million kilograms of green leaf were hawked, leading to the loss of Kshs 15.36 billion in farmers' earnings.
   - Region 5, which covers Kericho and Bomet counties, had the highest percentage of hawked green leaf at 42%, while Region 6, which covers Kisii and Nyamira counties, hawked 36% of their green leaf. Region 7 (Vihiga, Kakamega and Nandi) had an estimated hawking of 15.1 %.
   - Brokers are offering farmers a quick Kshs.25 at the farm gate. Consequently, the farmers divert tea from factories where they earn Kes 50. (TBK, 2023/Guguyu, 2023)

ii. Several independent tea factories have been confirmed to aid and abet tea hawking. Surveillance inspections have further shown that "*some are processing up to 15 million kilograms while their license capacity is 5 million kilograms*". That is way beyond their approved capacity, contrary to the Law–Tea Act (TBK, 2023)

iii. Analysis of trade mis-invoicing in Kenya in 2013 shows that the potential loss of revenue to the government was $907 million for the year, according to a study by Global Financial Integrity. Lost revenue due to mispriced exports ($140 million) may be related to the coffee, tea and spice trade, given that this category of goods makes up over 90 per cent of all exports. (Global Financial Integrity, 2018)

iv. Challenges in the tea sector have been compounded by increased poaching and invasion of brokers. Together, these have escalated green leaf theft in tea-growing areas. According to the tea agency, brokers offer farmers a quick Kshs. 25 at the farm gate. Consequently, the farmers divert tea from factories where they earn Kshs. 50. KTDA have noticed a proliferation of unregulated and unregistered small-scale factories. The agency is blaming them for illegally hawking tea leaves in various parts of the Mt Kenya region.

The potential benefits from increased investment in tea crop agronomic and technologies research and development by the Research Institute and from the sector development and promotion initiatives and regulation documented in various studies and reports can be used to elaborate the anticipated gains from the re-introduction and operationalization of these regulations on selected parameters. These parameters include:

i. **Gross Margin Analysis and enterprise profitability informal and informal marketing channels**

a) Standard gross margin per Hectare

Item	Unit Cost	Total Cost
Population per Hectare (1.2x0.60m)		13448
Average yield per bush per year (Kg)		1.2
Total yield per Hectare/yr-1 (Kg		16137.6
Tea income Unit price (Ksh)	**Amount (Ksh)**	
1st payment	14.50	233,995.20
2nd payment	35.00	564,816.00
Tea Output Value (TOV) (Kshs)		798,811.20
Variable costs (Kshs)	**Unit price (Ksh)**	**Amount (Ksh)**
Fertilizer (NPK 26:5:5) 12bags/ha -	1800.00	21,600.00
Fertilizer application 4bags/ Manday	250.00	750.00
Weed control(glyphosate)3ltrs/ha x 2times	1200.00	7,200.00
Herbicide application labour cost 3ltrs/Manday	250.00	500.00
Plucking cost	12.00	193,651.20
Variable Costs (VC)(Kshs)		245,233.20
Interest (13.5%VC)		33,106.48
Total Variable Cost (TVC)(Kshs)		**523,572.88**
Gross margin/year (Kshs)		
GM= TOV-TVC		**275,238.32**

(Source KALRO, 2019)

b) **Gross margin Comparative analysis with Formal and informal (Hawking) marketing**

Item	**Unit**	**Total (Kshs)**	**Unit**	**Total**
		Formal Marketing		**Informal (Hawking) Marketing**
Production				
Population per Hectare (1.2x0.60m)	No.	13448	No.	13448
Average yield per bush per year (Kg)	Kg	1.2	Kg	1.2
Total yield per Hectare/yr-1 (Kg)	Kg	16137.6	Kg	16137.6
Tea income Unit price (Ksh)				
1st payment (Kshs))	14.50/Kg	233,995.20	25	403440
2nd payment (Kshs)	35.00/Kg	564,816.00	0	0
Tea Output Value (TOV) (Kshs)	**Kshs**	**798,811.20**	**Kshs**	**403440**
Total Variable Cost (TVC)(Kshs)	**Kshs**	**523,572.88**	**Kshs**	**523,572.88**
Gross margin/year (Kshs)				
GM= TOV-TVC	**Kshs**	**275,238.32**	**Kshs**	**-120,132.88**

Gross margin per bush/year (Kshs)	**Kshs**	**20.6**	**Kshs**	**-8.93**
Benefit cost Ratio (BCR)	**Kshs**	**1.53**	**Kshs**	**0.77**

Gross Margin Analysis Data Interpretation

Interpretation of data:

i. **Gross margin Analysis**

From the above table, it is observed that when all other factors are held constant and only the marketing channel for green leaf tea production is varied:

- The Tea Output Value, or gross income per hectare of tea, is Kshs. 798,811.20 when using the formal marketing channel. In contrast, it is only Kshs. 403,440.00 when the informal (tea hawking) channel is used, representing 49.5% (Kshs. 395,371.20) reduction in potential income per hectare.

- The gross margin per hectare (Total Output Value Less Total Variable Cost) is Kshs. 275,238.32 when using the formal marketing channel, compared to a loss of Kshs. 120,132.88 with the informal channel. This indicates that growers using the informal marketing channel do not break even on their investment and instead incur losses.

- The gross margin per tea bush per year is Kshs. 20.6 with the formal marketing channel, whereas the informal marketing channel results in a loss of Kshs. 8.93 per bush for the grower.

ii. **Cost Benefit Analysis**

To determine financial viability CBA analysis uses three indicators:

a. Net Present Value (NPV)
b. Internal Rate of Return (IRR)
c. Benefit Cost Ratio (BCR)

In this case, the Benefit-Cost Ratio (BCR) is the preferred indicator due to the availability of sufficient documented data, which limits the determination of either NPV or IRR. The decision rule when using the BCR is as follows: if the BCR is greater than 1, the intervention is considered financially viable. A BCR of less than 1 indicates that the investment is not breaking even and is, in fact, loss-making.

From the above table the BCR for the formal marketing channel is 1.53, meaning that for every shilling invested, the grower earns a margin of Kshs. 0.53 (1.53 - 1.00). In contrast, the BCR for the informal marketing channel is 0.77, which translates to a loss of Kshs. 0.23 (1.00 - 0.77) for every shilling invested in the tea enterprise.

From the above analysis, measures must be taken to eliminate informal tea marketing channels such as tea hawking for tea growers, especially small tea growers, to realize the optimal potential returns from their investments.

ii. Green leaf production potential

- Over the past 50 years, improved technologies, including enhanced cultivars, have increased tea yields in Kenya. On large estates, yields have risen from an average of 1,500 kg to 3,300 kg of made tea per hectare per year, while smallholder production systems have increased from an average of 600 kg to 2,300 kg per hectare per year. This represents a 120% and 283% increase, respectively, for large estates and smallholder producers, attributable to investments in tea research. (Source: TRI, 2022)
- The Tea Research Institute (TRI) has developed over 1,000 improved clones with a broad genetic base, designed to adapt to challenging biotic and abiotic conditions. Among these, 58 cultivars have demonstrated consistent superiority in yield and quality across various agroecological and socio-economic settings. Notably, 22 of these cultivars can yield between 5,000 kg and 8,000 kg of tea made per hectare per year.
- Additional investment in research and commercialization of these cultivars could potentially increase tea production by up to 247% for smallholder producers and 142% for large estates. (Source: TRI, 2022)

iii. Value addition benefits

The proposed fees and levies will assist the sector in supporting the value-addition of the tea products. This will increase foreign exchange earnings from the exports derived from value-added tea.

Base year: 2022

Country	Tea exports (Mil. Kgs)	Ave. Price USD/Kg	Total earnings (USD Billion)	Comparative prices to Kenya
Sri Lanka	247	5.04	1.245	94.5%
China	375	5.55	2.082	95%
Kenya	540	2.60	1.182	0

(Source MoALD, 2024)

- From the above data:
  - A Kilo of export tea from Sri Lanka and China earned 94.5% and 95%, respectively, more compared to that from Kenya.
  - Selling in bulk rather than value-added form is the main reason for Kenya's lower earnings from tea exports compared to Sri Lanka and China, respectively.
  - 99% of Kenya tea is exported in bulk form (60 kg Packages) while 1% is value added mostly in blended form and in packages of less than 3 Kgs, instant tea, iced teas and tea extracts. (Source MoALD, 2024)

- The country can capture greater value by diversifying its tea products, offering beyond black CTC tea to include specialty teas such as green and purple tea. Increasing the output of specialty teas by 20% annually has the potential to yield additional Kshs. 18 billion for industry, the bulk of which will go to the producers and processors. (Source EATTA, 2018)
- Challenges of value addition and market diversification in the Kenyan tea industry include:
  - Limited research outputs on value-added products.
  - Tariff escalation in the destination markets.
  - Limited capacity for competitive packaging.
  - Difficulties in penetrating the retail sector in established markets.
  - High cost of inputs as well as expensive packaging materials, equipment and machinery.

The challenges can be addressed through additional investment in research in tea, product development and targeted promotion. (Source MoALD, 2024)

From the above discussions, it is quite clear that the expected economic, social, and environmental benefits from the implementation of the proposed Regulations heavily outweigh the corresponding costs. The analysis of the cost and benefits of implementation of the draft Regulations is, however, based on the following assumptions: -

i. The Regulations will be implemented holistically, with all their provisions implemented.
ii. The countries and tea-producing counties' development strategies and political and policy environment will continue to prioritize and support the development of the tea value chain.
iii. The climatic conditions will remain favourable for tea production.
iv. Tea sub-sector value chain actors and all other auxiliary industry actors will respond rationally to the implementation of the proposed Regulations and voluntarily comply with them.
v. The additional revenue generated from the various fees and levies will be used to further develop the tea subsector.

5.6 Administration and Compliance Costs

The RIA noted that resources would be required for the operationalization of the Regulations. These will include human resources and operation costs for monitoring and surveillance of leaf quality, transportation, processing, manufacturing, and handling standards, inspections of tea factories and other industry actors, product development and value addition, diversified promotion and marketing of Kenya tea, and raising awareness of the Regulations among all the tea sub-sector and industry players.

It is also assumed that additional resources will be allocated to the implementation of broader national agricultural, industrialization, and trade policies that support tea production, manufacturing, value addition, tea product development, and tea research, as well as the provision of agricultural services, among other areas. Resources will also be required to implement specific regulations, national tea, agricultural, industrialization, and trade strategies, Vision 2030, County Integrated Development Plans (CIDPs), the Government's Bottom-Up Economic Transformation Agenda (BETA), and other relevant sectoral policies and strategies.

5.7 Assessment of Return on Investment (Benefit)

Passing and operationalizing the proposed Tea (Registration and Licensing) Regulations, 2024, will be critical to facilitating the continued sustainable development of the Kenyan tea subsector and the full effective implementation of the Tea Act 2020.

Whereas it is difficult to directly apportion the impact of these regulations, whose primary objective is to create a framework for the registration and licensing of all tea industry actors, industry regulation is clearly a pillar for the transformation of the Kenyan tea industry.

Each of the different categories of industry players is critical for the efficient operation of the tea industry and is interdependent, with players in each node of the industry depending on the performance of the players in the other industry nodes. This means that the performance of the entire industry can be failed by any of the industry nodes, even those which may not seem to be very important. Similarly, the Kenyan tea brand's reputation in the global market is the result of the concerted efforts of all players across the industry. A compromise by any of the industry actors will hurt the brand.

These regulations also seek to generate additional resources for the Board to finance its operations to enable it to execute its mandate to bridge the increasing budget deficit arising from the reduced support from the exchequer. The additional resources to be generated from fees and levies prescribed in these regulations will allow the Board to increase investments in the development of key industry areas. These include the critical areas of tea research to ensure the development of technologies such as the breeding of new tea varieties adapted to the ever-increasing climate change effects and varieties adopted for marginal tea growing areas supplement production from traditional tea growing zones which are experiencing increasing land pressure. Further, to improve tea production and productivity, the regulations also seek to regulate the production of seedlings, which will ensure the production of adequate high-quality and suitable planting materials in every tea-growing region in the country. This will enable farmers to not only establish new tea fields but also replace the ageing and poor-performing tea fields.

The regulations will also pursue to restore the high-quality standards of tea, which Kenya is well known for, but which has been on a decline in recent times. This will be done through enhanced monitoring and surveillance of leaf quality, green leaf transportation, manufacturing and handling standards. It will also discourage unbridled and cheap importation of tea through the introduction of a levy on imported tea, thus protecting the local tea industry from undue competition. It will further facilitate and support the development of an efficient and well-regulated tea sub-sector in the Country.

Implementation of the regulations will also create numerous additional employment opportunities, both on-farm to increase production and off-farm to provide auxiliary services in the industry.

In broad terms, the RIA noted that the following broad benefits and returns on investment will be achieved:

i. Establishment of a clear and effective framework that will regulate the operations of all actors in Kenya’s tea industry. These include 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 organisers, warehouse operators, commercial tea nurseries and tea manufacturers. This will enhance coherence and synergy in the continued development of the sector
ii. Increased research in tea will produce new high-yielding, drought—and pest-resilient varieties and new tea and tea derivatives products. This will meet the changing demographics, tastes, and preferences in the global tea market.
iii. Tea production and productivity increased due to the use of better-yielding varieties and increased use of clean, high-quality planning materials.
iv. Reduced green tea post-harvest and quality losses due to poor handling and transportation through enhanced surveillance and increased compliance with these regulations' leaf collection and transportation guidelines.
v. Reducing or eliminating informal marketing of green leaf, commonly known as “hawking,” through registration of all growers and enforcing growers' and factories' agreements.
vi. Reduce or eliminate growers' diversion of green leaf to ensure that each tea factory operates at the approved capacity for efficiency. This will further avoid factory losses from unpaid credit advances to growers.
vii. Regulation and discouragement of tea imports into the country will protect the local tea market from unbridled imports of cheap and low-quality tea, including imports from neighboring tea-producing countries. This will avoid distortion of demand in the domestic tea market and the threatened development of the local tea market.
viii. Maintaining or restoring the high-quality standards of tea which Kenya is well known for, but which has been on a decline in recent times. This will be through enhanced monitoring and surveillance of leaf quality, green leaf transportation, manufacturing and handling standards
ix. Increased tea value addition and production of branded and specialty teas will create additional jobs and business opportunities along the value addition and production of branded and specialty teas value chains.
x. Increased revenue from proposed levies and fees will enable the Board to better undertake its role in the industry including provision of various critical services offered by the Board, regulation of the industry and market development for Kenyan tea.

xi. Tea industry actors will benefit from an expanded and diversified tea market for their produce and products. They will, therefore, benefit from a better volume of offtake, price stability, better prices, and thus better returns from their investments.
xii. Increased quality tea exports and sales volumes resulted in increased foreign exchange earnings and, thus, an improved balance of payments for the country.
xiii. Expansion into new markets for Kenyan tea, diversifying from over-reliance on the current traditional markets and thereby reducing tea price fluctuations. This will ensure producers of stable tea prices and reliable market outlets.
xiv. Increased incomes for tea producers resulting from the increase in tea production and good and stable prices. This will ensure improved livelihoods and social well-being of the rural communities in tea-producing regions
xv. Regulating tea imports and exports will control any illegal trade actions that can negatively impact on the domestic tea and export markets distorting tea demand and prices.

6.0 REASONS WHY OTHER REGULATORY OPTIONS ARE NOT APPROPRIATE

6.1 Option 1: Maintaining the Status Quo

Maintaining the *status quo* will mean the country does not fully operationalise the Tea Act 2020 and specifically does not put in place a framework to licence and register the tea industry actors. This will affect the surveillance and monitoring of their operations and compliance with the provisions of the Act, other relevant laws and guidelines that are in place to guide their individual operations for the good of the entire industry. It will also affect its competitiveness in the global arena. The Kenya tea industry is in dire need of additional investment in sector-critical areas such as tea crop research, product development and tea value addition, promotion of Kenya tea and market development for Kenya tea to maintain the country's edge in the world tea market. The Board, which plays a critical role in providing different services to the industry r, must continue to provide these services efficiently despite the reduced support from the Government, hence the need to generate additional resources.

Maintaining the status quo will have an impact on the tea sub-sector as follows:

i. The full implementation of all the provisions of the Tea Act 2020 will remain unachieved, and thus, the Act's objectives will remain unattainable.

ii. The tea sector will remain without an effective framework to regulate the registration and licensing of the different tea sector actors for its sustainable development.

iii. The current increasing hawking of tea, which denies growers the full benefits of their investment, efforts and production, will continue. This will make tea a less profitable farm enterprise and, in the long run, make a less priority crop. This will lead to reduced production and acreage, and a decline in quality

iv. Diversion of green leaf to other factories denies some factories deliveries from their recognized growers, forcing them to operate under capacity. This will make them unviable and deny such factories the opportunity to recover credit advanced to growers.

v. The loss of green leaf quality during handling at the tea buying centres, delayed transportation to the factories, losses due to non-collection of Greenleaf from the collection centres, and quality losses from using transport vessels not suitable for green leaf transportation or vessels continue.

vi. The quality of Kenyan tea for the market may continue to decline or remain low due to the continued loss of quality across the other different nodes of the tea industry.

vii. The highly regarded quality of Kenyan tea in the world market may continue to decline due to the cumulative losses in quality across the industry. This will reduce the current preference for Kenyan tea in the world market, reducing prices offered and volume uptake and thus reducing revenues from tea exports.

viii. Unregulated tea imports into the country will continue to expose the local tea sub-sector to competition from unbridled imports of cheap and low-quality tea, including imports from neighbouring tea producing, which distort local market tea demand and prices.

ix. The promotion of Kenyan tea in Kenyan tea market development, including diversification from the traditional markets, will not be realized. This may lead to holding stocks of unsold processed tea, which will affect payments to producers, affecting millions of Kenyans who derive livelihoods from the sub-sector.
x. Support for research in tea will remain limited to support the tea sub-sector's ability to respond to changing tea production technologies, demographic changes and changing tastes in the tea market. It will affect the ability of new tea products to remain competitive in the global arena.
xi. Non-regulating tea nurseries will continue to significantly limit the adoption and use of the many new high-yielding and high-quality tea varieties developed over the years through tea research for the establishment of new tea fields or in replacing old poor-performing tea fields.
xii. The industry will continue to remain without an accurate database of the different active actors in the tea sector, their operating capacities and levels of operations to inform sector decisions and policy development.
xiii. The provision of various critical services to the sub-sector will be affected by insufficient funding, which will negatively impact the general performance of the sub-sector. The board will have to depend more on the Government to provide these services to the industry.

The situation is undesirable, and the RIA recommends that the proposed Regulations be implemented to realize the optimal development and regulation of the tea sub-sector for the benefit of all stakeholders in the industry in the country. In addition, this industry will effectively contribute to the realisation of the objectives of the Vision 2030, the Agricultural Sector Transformation and Growth Strategy, the National Agriculture Sector Strategy, the Government's Bottom-Up Transformation Agenda and the respective tea producing Counties' CIDPs and other national policies and strategies on agricultural, trade, industrialisation and economic transformation.

6.2 Option 2: Other Practical Options

Alternatives to regulation include:

i. **No new intervention/do nothing**

This may involve utilizing existing regulations, simplifying or clarifying them, improving their enforcement, or making legal remedies more accessible and affordable. However, this approach may not bring about significant change. The status of the tea sub-sector in the country indicates that despite the Tea Act of 2020 providing for the registration and licensing of various tea industry actors, these provisions have yet to be fully realized. The current regulations seek to operationalize the registration and licensing aspects of the Act. Therefore, in the absence of any new interventions, the industry is likely to remain stagnant, which would be detrimental to all stakeholders in the sector and the country.

ii. **Information and education**

Information and education can empower stakeholders to make informed decisions, improving choices for the mutual benefit of all. However, this approach may take time to have an impact and might not always be well-received. Additionally, it could increase costs for the government, agencies, and businesses responsible for providing the necessary information and education. Consequently, the desired objectives for the common good are unlikely to be achieved unless the designated regulatory agency undertakes the registration and licensing of actors in any industry objectively.

iii. **Incentive/market-based structures**.

The government can utilize economic instruments, such as taxes, subsidies, and initiatives, to achieve its desired objectives. However, these initiatives are only feasible in well-developed and efficiently functioning sectors with clearly defined structures. Often, such systems require their own regulations to establish a framework, which may incur additional costs for the government. This makes them unlikely to be effective in Kenya's tea sub-sector and industry, which is fragmented and consists of multiple organizations, each representing different segments of actors driven by varying objectives and priorities. These regulations aim to establish a well-developed and functioning framework and structure for the different categories of industry sectors, enabling the implementation of incentives and market-based approaches.

6.3 Alternatives Models of Regulation

The alternative modes of regulating the tea sector include the following:

i. **Self-regulation**

Although the Kenyan tea sub-sector has multiple industry organizations such as KTDA, KTGA, EATTA, and ITPAK that could formulate and implement codes of conduct, customer charters, standards, or an accreditation system for self-regulation, these organizations do not provide a comprehensive representation of all sector actors. As a result, effective self-regulation in the tea industry, as it is currently structured, is not feasible. Furthermore, regulating the registration and licensing of all industry actors cannot be conducted by those same actors, as they cannot effectively oversee and objectively monitor their own operations. Therefore, despite the presence of industry representatives, effective self-regulation is currently unattainable, hindering the realization of the objectives set forth in the Tea Act of 2020 and the proposed Tea (Registration and Licensing) Regulations 2024. This responsibility remains with the principal regulatory agency for the industry, the Tea Board of Kenya.

ii. **Co-regulation.**

Co-regulation serves as an intermediate step between state-imposed regulation and self-regulation, involving some degree of explicit government involvement. In this model, the industry collaborates with the government to develop a code of practice, with enforcement carried out by the industry or a professional organization accredited by the government. However, despite the clear potential benefits of co-regulation in an industry, the responsibility for registration and licensing of industry actors in the tea sector, as outlined in the Tea Act 2020, remains the legal mandate of the Tea Board of Kenya. This responsibility cannot be substituted by co-regulation. Nevertheless, the regulatory agency may engage various industry representatives in the operationalization and implementation of registration and licensing for these organizations, fostering their buy-in and cooperation.

7.0 OUTCOME OF STAKEHOLDERS PARTICIPATION

This chapter examines the legal requirements and threshold for stakeholders' engagements in the regulation-making process. It also analyses the outcome of stakeholder engagements in developing the proposed regulations to assess whether they met the legal threshold set for stakeholders' engagements in Kenya.

7.1 Legal Basis for Stakeholder Engagements

The principle of public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process. This principle upholds the sovereignty of the people by allowing them to make views in the decision-making process. Section 2 of the Statutory Instruments Act, 2013 defines public participation as the involvement by the regulation-making Authority of persons or stakeholders that the statutory instrument may directly or indirectly apply to.

The Constitution of Kenya provides for national values and principles of good governance and participation of the people of Kenya. Article 10 provides for the involvement of the people in the enactment of any law. The national values and principles bind all state organs, state officers, public officers, and all persons whenever they, *inter-alia,* apply the Constitution and enact any law.

Courts of law have in several instances provided modes of ensuring public participation is effective and meaningful. For instance, in, ***Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others [2017] eKLR*** (para 164 – 5) the court of appeal stated:

> ***"…The mode, degree, scope and extent of public participation is to be determined on a case-by-case basis.***
> ***What is critical is a reasonable notice and reasonable opportunity for public participation. In determining what reasonable notice is, a realistic time frame for public participation should be given. Also, the purposes and level of public participation should be indicated. Reasonableness is also to be determined from the nature and importance of legislation or decision to be made, and the intensity of the impact of the legislation or decision on the public. The length of consultation during public participation should be given and the issues for consultation. Mechanisms to enable the widest reach to members of the public should be put in place; and if the matter is urgent the urgency should be explained…"***

Further, in ***Poverty Alleviation Network & Others v President of the Republic of South Africa & 19 others, CCT 86/08 [2010] ZACC 5***, public participation was emphasized in the following terms;

> ***"…engagement with the public is essential. Public participation informs the public of what is to be expected. It allows the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy. When a decision is made without consulting the public the result can never be an informed decision…"***

In the totality of all the above pronouncements, the following points are important in determining the effective threshold for public participation:

i. Public participation was never intended to be a superfluous or ornamental suggestion; rather, it should be implemented and enforced to have a practical substantive value.
ii. Public participation should never be a mere cosmetic venture, formality, and public relations exercise, rather it ought to be conducted in a manner that informs the public of what is at stake, and how it will impact society and the end document should mirror and reflect the spirit of the public in concern; and
iii. Public participation should never be equated to mere consultations. The product of legislation ought to be a true reflection of public participation so that the end product bears the seal of approval by the public.

Section 5 of the Statutory Instruments Act, 2013 requires a regulatory Authority to, before issuing a statutory instrument, make appropriate consultations with persons who are likely to be affected by the proposed instrument. Specifically, section 5(3) (a) of the Act requires a regulatory authority to notify, either directly or by advertisement, persons who are likely to be affected by the proposed regulation.

Failure to conduct stakeholder engagement may risk the regulation being challenged in court and subsequently annulled. For example, in ***Republic v Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries & 4 others Ex Parte Council of County Governors & another [2017] eKLR,*** the court declared the Coffee (General) Regulations 2016 unlawful for failure to comply with the provisions of the Statutory Instruments Act.

In ***ODM & 4 Others -vs- The Speaker of the National Assembly & 5 Others [CONSTITUTIONAL PETITION NO. E 491 OF 2023 (Consolidated with E010 of 2024 and E025 of 2024)]*** the court declared the Privatisation Act, 2023 unconstitutional for lack of meaningful and sufficient public participation. The court held that limiting public participation to select few stakeholders could not be considered reasonable, meaningful and effective both quantitatively and qualitatively as envisioned by the Constitution. The court pronounced that the public ought to have been informed of the intended public participation on the impugned Act.

In ***National Assembly & another v Okoiti & 55 others (Civil Appeal E003 of 2023 & . E016, E021, E049, E064 & E080 of 2024 (Consolidated)) [2024] KECA 876 (KLR) (31 July 2024) (Judgment) Neutral citation: [2024] KECA 876 (KLR)***, the Court of Appeal held that Article10 of the Constitution requires state organs and regulatory bodies to inform the general public and stakeholders why their views were not taken into account and why the views of some of the stakeholders were preferred over theirs. Such an approach will not only enhance accountability in the decision-making processes by State organs but also enhance public confidence in the processes and in our participatory democracy. It is on this basis that the court held that the Finance Act, 2023 offended Article 10 (1) and (2) (c) of the Constitution.

Stakeholder engagement is a statutory requirement and a constitutional mandate that the Authority should observe. It bears great importance to the public as it enables people who are likely to be affected by the proposed regulations to present their concerns to the regulatory body so that they can be considered in deciding the changes that need to be made to the draff regulations. This process should not be considered a formality. The views gathered during the process should be given serious consideration by the Authority even though they are not binding. Failure to consider the comments without justification may have adverse consequences on the draft regulations including legal, economic and cost implications.

7.2 Stakeholders Engagements

The Ministry of Agriculture and Livestock Development (the Ministry), together with the Tea Board of Kenya (TBK) organized stakeholders' engagement and public participation workshops to provide an opportunity for the public to participate in the regulation-making process. The Ministry held specific engagement workshops with key stakeholders including national government ministries, government agencies, research organisations and private players in the sector. The public workshops were distributed in different counties to allow for proper public participation.

The Authority held eleven consultative forums in different counties between 9th December 2024 and 18th March 2025. The public participation workshops took place at the following locations: Nairobi, Muranga, Kericho and Mombasa. The workshops attracted different stakeholders including growers, grower representatives, cooperative societies, retailers, processors, packers, brokers, exporters, Council of Governors, County Governments, State departments, private sector and research institutions.

On 29th January 2025 to 1st February 2025, the Authority presented the outcome of the public participation to the JASSCOM and SWAG PLS wherein the Authority incorporated the comments from the public participation exercise.

The records from the public forums show extensive deliberations on the myriad issues that arose from the proposed regulations Stakeholders were allowed to read and analyze the draff regulations and share their views with the Board. There was evidence to show that the Board collated, reviewed, and incorporated the issues raised into the proposed regulations and received comments from the workshops.

7.2.1 National Government/Level Consultations

Consultations were conducted with representatives of various national government agencies and state departments of the Ministry of Agriculture and Livestock Development, Tea Board of Kenya and Kenya Agriculture and Livestock Organization (KALRO)

7.2.2 County Governments/Level Consultations

The Ministry, in collaboration with the Board, conducted several public participation workshops in different counties such as Muranga, Kericho, Nairobi and Mombasa with a total of four counties being involved in the county consultations.

On 9th December 2024, the Ministry, in collaboration with TBK, held a meeting at TBK Hall in Nairobi County. The county represented in the consultations was Nairobi. The meeting was attended by representatives from the MOALD, Institute of Certified Secretaries, MMK, KTDA, Bahari Chai and farmers.

On 10th and 11th December 2024, the Ministry, in collaboration with the TBK, held a meeting at the Nokras Riverine Hotel in Muranga. The county represented in the consultations was Muranga. The meeting was attended by representatives from the MOALD, TBK, Kiminy Tea Factory (TF), Kirm Tea Factory, Imenti Tea Factory, Kinoro Tea Factory Company Ltd, Kionyo Tea Factory, Gatungiri Tea Factory, Ikumbit Tea Factory, Kagwe Tea Fcatory, Thumata Tea Factory, Kambaa Tea Factory, Ngere Tea Factory, Nduta Tea Factory, Theta Tea Factory, Herera Forest Edge Tea Factory, Githongo Tea Factory, Kionyo Tea Factory, Gacharage Tea Factory and farmers.

On 16th and 17th December 2024, the Ministry, in collaboration with the TBK, held a meeting at Sunshine in Kericho. The counties represented in the consultations were Kericho, Nyamira, Kisii, Nandi, Narok, Vihiga, Trans Nzoia and Kakamega. The meeting was attended by representatives from MOLAD, TBK, MMK, Kipsigis Highland Co- Operative Society Limited, Kenya Growers Tea Association (KTGA), farmers, Bowns Plantation, KTDA, KALRO, ICS and several tea factories including Twatwet TF, Lettein TF, Kebingi TF, Roret TF, Toror TF, Tombe TF, Roset TF, Nyankoba TF, Tombe TF, Mudete TF, Kabianga TF, Ogembo TF, Nyamache TF, Sotik TF, Mogogussek TF and Nyansiongo TF.

On 22nd and 23rd January 2025, the Ministry, in collaboration with the TBK, held a meeting at Tea Trade Centre in Mombasa. The counties represented in the consultations were Lamu and Tana River. The meeting was attended by representatives from Ministry of Agriculture & Livestock Development - State Department of Agriculture, Tea Board of Kenya, Kenya Tea Development Agency (KTDA), Kenya Tea Growers' Association (KTGA), Independent Tea Producers Association of Kenya (ITPAK), Tea Research Institute (TRI), East Africa Tea Trade Association(EATTA), Global Tea, Kenya Tea, Mogogosiek Tea Factory, Eastern Produce Kenya Limited (EPK Naza Tea Factory, Tusha Tea Limited, Choice Tea Brokers, Capital Tea, Cup of Tea Limited, Swafi Foods Limited, Almasi Chai Limited, Bahari (J) Company Limited, Waso Tea Limited, Empire Kenya EPZ Limited, EPRS Limited, Mabro EA Limited, Combrok Limited, Tea Brokers East Afica Limited, Imperial Tea Limited, Afro Tea Limited, Kenya Tea Grower's Association, Trust Tea Traders East Africa Limited, Neutec Tea Limited, Centraline Tea Brokers, Besty Tea Brokers Limited, Abbas Traders Limited, Trans- Atlantic Trading Company Limited, Wilpalm Tea Limited, Packamc Holdings Limited, Paulport Traders, Amber Tea Brokers, Kipkebe Limited (Sasini), Kirindo Traders Limited, Tropical Crepes and Communication Limited, Prudential Tea Brokers Limited, Kiptoo Tea Kenya PLC, Mizas Africa Commercial, Serene Sips Trading, Island Capital Venture, Greatwhale Packers, Global Tea, Tranzil Trading Limited, Atmco Enterprise Limited, Vintage Tea Limited, First Cup Coffee, Saman Tea Limited, Mizad Africa, Pwani Hauliers, Afro Tea Limited, Al- Khalifa Limited, ICS,

On 18th March 2025, the Ministry, in collaboration with TBK, held a meeting at Lake Naivasha in Nakuru. The meeting was attended by the representatives from the various counties where tea is grown including Nyamira, Bomet, Nakuru, Kirinyaga, Kisii, Muranga, Nyeri, Kiambu, Nandi, Tharaka Nithi and Meru.

7.2.3 Research and Academia

There The Ministry, in collaboration with the Board, involved stakeholders from research institutions such as KALRO and Tea Research Institute.

7.2.4 Private Sector

The Ministry, in collaboration with TBK, held various forums with various farmers, growers' associations, tea factories, cooperative societies, marketing organizations and packers and brokers, who gave considerable comments on improving the draff regulations.

7.3 Summary of Stakeholders' Views

Stakeholder views were captured, discussed, and addressed in consultative meetings. They were thereafter documented in a matrix, which indicates the issues and how they were addressed. Some views were incorporated into the proposed regulations, while others were not. The Ministry occasionally indicated the reasons for the non-adoption of some views, including the fact that some of the views had already been addressed by other regulations.

A summary of the public consultation outcomes was as follows:

Item	Key Areas of the Regulations	Proposed Changes by the Stakeholders	Responses from The Technical Drafting Team	Justification/Action Taken
1.	Regulation 4	Under The Tea Act the function of licensing has been given to the Board. The Act does not provide for an Inter-Governmental Registration and Licensing Committee.	Adopted	The provisions of establishment of Inter-Governmental Registration and Licensing Committee have been deleted and the regulations amended to provide for application for manufacturing licenses to the Board. A provision has been introduced to provide for obtaining no objection from the respective county before licensing by the Board.
2.	Regulation 5(3)	the Tea Board to verify the tea grower details in compliance with functions under the Tea Act. The tea factory should be able to rely fully on the information provided by a tea grower without being required to take	Not adopted	Under Section 21 of the Tea Act, it is the responsibility of the tea factory to register small-scale and medium-scale tea growers and not the Board. Verification of the tea grower details by the

		any further steps for verification.		tea factories is critical to validate the information given during registration and enable traceability which is critical more than many international markets. However, the Board will verify the details and register the large-scale tea growers in line with Section 23 of the Act.
3.	Regulation 5(7)	The Tea Board of Kenya to independently carry out a census of tea farmers and develop a comprehensive data base in conjunction with the KNBS, KIAMIS and this data base should be a reference for tea factories.	Partially adopted	Under Section 21 (3) of the Act, every tea factory is required to keep a register of all its small-scale and medium-scale tea growers. Under Section 5, the register is the primary proof that a small-scale or medium-scale tea grower is registered in a particular tea factory. The register is an important growers' management tool for the factory and critical in compliance monitoring by TBK. However, TBK will independently develop a national database of tea growers´ for use in planning, compliance monitoring and enforcement.
4.	Regulation 6 (4)	There exists a framework for regulation of the transfer of enterprises under CMA, the Competition Authority, Law of	Adopted by deleting Reg 6 (4)	Since registration certificates are not transferable, the new owner of the large-scale tea holding will only be required to

		Contracts Act and TBK purporting to carry out the regulation of transfer of businesses will be ultra vires		reapply for a new registration certificate.
5.	Registration 7	The private factories are doing double registration of farmers. If a tea factory is to be built, they should have their own tea. The number of Hectares should go up from 250Ha to 750Ha as many factories are not following the rules. The mushrooming tea factories are near each other. The radius of a new factory should be at least 15kms away and each tea factory should have its own tea buying centers.	Adopted	Reg 13(9) an applicant for a manufacturing license will be required to have 700Ha of planted tea bushes of 50Ha in case of specialty tea manufacture. The radius of a new factory and guidelines of the location of tea buying centers is provided for in the Green Leaf Quality Guidelines
6.	Regulation 8	Registration details for small-scale farmers to be shared with County Governments. The details of the large-scale tea growers should also be deposited with the county.	Adopted by amending Reg. 8 to provide for a register which will be shared with the respective County Governments by the Board	To enable the County Government, have statistics on tea growers within their counties for planning purposes.
7.	Regulation 11	Amend green leaf agreement to remove the 3year validity period as tea is a perennial crop.	Adopted by deleting the duration of the 3year contract	In order to give a leeway for the factory and the tea grower to enter into agreements for the duration of their choice.
8.	Regulation 13	To foster quality and all modes of harvesting, allow large scale/producers to register vehicles below	Adopted by deleting the 3 tonnes capacity requirement	The prescription of the tonnage will be stipulated in the guidelines being developed on the Green

		3tonnes including individual farmers with big hectarage.		Leaf Quality requirements for the tea industry.
9.	Regulation 17 (3)	Relates to Tea Packers, not Management Agent as indicated on the draft. Registration is acceptable, however, the form TBK/TB/G2 is demanding for private information from private contracts and internal business planning the requirements on the form are too many and should be scaled down more especially since the auction organizer has automated its functions. The form TBK/TB/G2 be revised.	Not adopted	Form TBK/TB/G2 only provides for submission of information on tea purchases and sales which is critical in collation of national statistics and planning. Value addition is one of the key agenda of the government and information on value added teas for the tea packers is critical in determining the progress towards the realization of the government priorities. The auction organizer is one of the licensees who is also required to submit their returns just like any other players. In addition, not all tea packers are members of the auction necessitating the information.
10.	Regulation 17	The source of the tea that is being packed by tea packers on the streets is not known. The teas being sold are not quality teas. TBK to check the source of the teas and whether they are quality teas or dust.	Adopted	Under the terms and conditions for registration of a tea packer, a tea packer is required to comply with Tea Industry Code of Practice KS: 2128, the Public Health Act and any other relevant laws. TBK will ensure that the packers comply with the Food Safety and Hygiene Standards.

				In addition, provisions requiring packers to indicate their source of tea will be incorporated in the tea industry general regulations.
11.	Regulation 19	Introduce a clause for affected parties to be notified of their intention to revoke, suspend, cancel or vary a registration in order to allow for a fair hearing.	Adopted and amended by amending Reg. 24	To ensure fairness in revocation, suspension, cancellation or variation of a registration certificate whilst complying with Article 47 of the Constitution and the requirements of Fair Administrative Action Act.
12.	Regulation 21	Rescind private companies that have not met the basic requirements and do not have their own tea.	Partially adopted	The Regulations have provided the terms and conditions for manufacturing license that must be met by new applicants before licensing. However, this cannot be applied retrospectively to the manufacturers who are already licensed but they will be given a timeline to comply before renewal of their licenses.
13.	Regulation 22	Requirement of notifying the Board of intended sale or transfer of ownership will lead to duplication of oversight and over regulation, making the regulatory framework burdensome and counterproductive. This disclosure violates the constitutional right to privacy and the right to	Partially adopted by specifying that it is sale or transfer of ownership of the tea factory that shall be notified	Reg. 22 (5) only requires the holder of a tea manufacturing license, to notify the regulator of the intended sale of their tea holdings but does not seek similar information that would be otherwise disclosed to other government agencies involved in transfer of land. This is aimed at safeguarding

		property. It is also a restriction on free market transactions and the basis for government involvement is not justified. Such a disclosure is also likely to attract undue influence and interference in a private transaction.		the interests of industry and country at large and therefore does not violate the right to privacy and property. The regulation does not seek to restrict transactions or transfers. In addition, Article 40 (3) of the Constitution allows the State to regulate property rights in public interest which, in this case, includes ensuring continuity and compliance in the key economic sub-sectors such as tea.
14.	Regulation 32	TBK to digitize and integrate systems with other relevant exports facilitation departments/agencies for ease of recording/tracking transactions.	Adopted by providing for modification of forms including the use of forms electronically in Reg. 32	To enhance integration with other government agencies and to facilitate tea export and import. In addition, the current system is integrated with the KENTRADE Single Window System which is a national gateway for imports and exports.
15.	Regulation 35	The number of brokers in the market. TBK should license more brokers to increase competition. The purpose of the law is to solve the problem. We have brokers from East of Rift. We need brokers from the West of Rift	Adopted	There is no limitation or restriction on the number of brokers. Any person who meets the minimum requirements for registration of a tea broker regardless of their origin, is entitled to be registered as a tea broker. Currently we have tea brokers from both East and West of Rift.

16.	Regulation 41	Clarify the scope and the relevant standards Incorporate transitionary requirements for existing operators to meet compliance with the green leaf quality guidelines	Adopted by amending Reg. 41 to specify the standards to be complied with	Since tea is a food product, it is important to provide clarity on the need to comply with the relevant national, regional and international Standards by all industry players.
17.	Regulation 48	Disclosures to be done to Tea Board of Kenya. Delete the requirement on the licensee to disclose to the County Government. Harmonize requirements with National legislation and ensure nondiscrimination.	Not adopted	Certain aspects of agriculture, including primary production, are a devolved function in the Constitution. In addition, the County Government can seek additional information from the value chain players whom they are registering as provided for under the Tea Act (e.g. commercial tea nursery operators)
18.	Regulation 51	A tea broker, tea auction organizer and management agent shall seek prior approval from the Board before charging any fees, commission and other charges for the services rendered. This is an unreasonable and unnecessary restriction. Including this gives the impression that the Board can reject a private commercial agreement between two parties for management services. This is a breach of a party's right to property which includes the right to	Partially adopted by amending Reg 51	Amended Reg 51 to align it with Section 45 of the Tea Act.

		derive income from services rendered or assets owned. This also interferes with the freedom to conduct business and set commercial rates.		
19.	General	TBK should develop a comprehensive standard on environmental, social, carbon-trading and other areas to address the issue of multiple standards in the tea industry	Adopted	To be incorporated in the Tea Industry General Regulations.
20.	General	Prohibit tea hawking	Adopted	The prohibition of buying tea from unregistered growers is provided for under Section 21(7), (8) and (9) of the Tea Act and Regulation 7 (1) and 8 (3) of the Tea Registration and Licensing Regulations.

7.4 Assessment of Adequacy of Stakeholder Participation

The Ministry conducted various stakeholder consultation meetings and stakeholder public participation forums, which allowed it to receive various comments, especially from farmers, which would help in developing and improving the draff Regulations.

The public participation workshops took place across 4 counties in the Republic of Kenya. The consultations covered participants from 20 counties including Kericho, Nairobi, Mombasa, Nyamira, Kisii, Nandi, Nyeri, Narok, Vihiga, Trans Nzoia, Lamu, Tana River, Bomet, Nakuru, Kirinyaga, Muranga, Kiambu, Tharaka Nithi, Meru and Kakamega counties. The records show that the Ministry proactively mapped out and sent invitations to various stakeholders from different regions.

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From the records, the Consultant established that attendees of the public participation workshops raised their issues and gave their comments, and the Board was able to respond to them. Additionally, the attendance lists revealed that the attendees were a good representation of the stakeholders who are likely to be affected by the proposed regulations in accordance with the law.

The records from the public forums show extensive deliberations on the issues that arose from the proposed Regulations. Stakeholders were allowed to read and analyze the Regulations and share their views with the Ministry. There was evidence to show that the Ministry collated, reviewed, and incorporated the issues raised and comments received from the workshops into the proposed regulations.

Overall, the formulation of the draft Regulations was substantially compliant with the law relating to public participation and stakeholder engagement in Kenya. The Consultant, therefore, believes that there is still room to improve the level of stakeholder engagement and consult more stakeholders, especially those from academia and general members of the public, before and during the national validation workshop.

8.0 ENFORCEMENT AND COMPLIANCE

The following regulatory tools have been proposed to support compliance with the regulations: registration, certification, verification, licensing, publication, inspection, record-keeping, submission of returns and reports, declarations, fees and charges, and criminal sanctions, including fines and imprisonment for the contravening party.

The following compliance and enforcement tools are provided in the draft Regulations:

1. The respective County Government shall issue a certificate of registration to applicants who seek to establish a commercial tea nursery under Regulation 4.
2. Regulations 5, 6,7, and 8 require tea growers to register with their respective tea factories. The respective tea factories are equally mandated to issue certificates of registration to successful applicants.
3. The Board shall register and issue a certificate of registration to successful applicants who seek to operate as commercial green leaf transporters.
4. Under Regulation 10 (6), a registered commercial green leaf transporter must pay an annual registration fee.
5. The Board shall register and issue a certificate of registration to an applicant who seeks to operate as a management agent under Regulation 14.
6. Under Regulation 14 (4), the management agents are required to submit annual returns to the Board.
7. The Board shall register and issue certificates of registration to successful applicants who seek to operate as tea packers under Regulation 17.
8. Under Regulation 17 (6), the tea packers are required to submit their monthly statistical returns to the Board and the respective County Government.
9. Under Regulation 32, tea exporters and importers will be required to declare information on all tea exports and imports to the Board.
10. Regulation 33(1) mandates the Board to verify the customs documentation on exports and imports of any tea consignment to ensure that it meets the requirements of the Act.
11. Under Regulation 33 (2), the Board may cancel an export or import order or pre-import approval if an exporter or importer contravenes the requirements under the Act.
12. The Board shall register and issue a certificate or registration to the successful applicants who seek to operate as tea brokers under Regulation 34.
13. The Board shall inspect the documents on the transit of goods to be maintained by the exporters and importers to confirm compliance with the relevant customs laws as prescribed under Regulation 37.
14. The Board may appoint crop inspectors to enforce compliance with the Act under Regulation 39.
15. The Board and/or the respective County Government shall maintain a register of persons registered or licensed under Regulation 47.
16. The Board and/or County Government may publish the registers of persons registered or licensed under the Regulations as prescribed under Regulation 47.

17. The Board shall approve any fees, commissions, and charges payable to a tea broker, tea auction organizer, or management agent under Regulation 49.
18. Criminal sanctions which include the imposition of fines and imprisonment against the contravening party as per section 71 of the Tea Act under Regulations 13(5), 17(7), 25(2), 29(2), 31(7), 32(4), 37(3), 38(2) and 50.

9.0 REVIEW, MONITORING, EVALUATION AND LEARNING

Monitoring, evaluation and Learning (MEL) of the regulations is important in determining its effectiveness, efficiency and adequacy in achieving its intended objectives and purpose. It informs the government and players in the sector whether the regulations are working. Proper use of M&E mechanisms constitutes a major change in the operational style and working culture of regulatory authorities that enables them to set up a process of continuous learning through experience and evidence. A well-functioning system of M&E would directly influence the ability of the regulations to foster competitiveness and economic growth in the sector. A review of regulations will ensure it is consistent and effective in regulating the activities in the sector.

It is expected that the Regulations will be a subject of great interest to all stakeholders, particularly because of their potential to ensure the quality of Kenyan tea, enhance the export of Kenyan tea and register and license tea growers, manufacturers, brokers, agents and importers and exporters. There is a need for increased markets and consumption of Kenyan tea as production has increased exponentially in Kenya over the last decade. Registration and licensing would ensure quality assurance of Kenyan tea to the local and export markets.

The Tea Board of Kenya has established the following mechanisms to enhance the monitoring and evaluation of the draft regulations.

i. Section 49 of the Tea Act empowers the board to appoint crop inspectors to enforce compliance with the Tea Act. The inspectors have the power of entry and inspection, which will ensure quality assurance of the tea grown, manufactured, and brokered.
ii. Under Regulation 43 of the proposed Regulations, the Board is empowered to conduct quality analyses of made tea and tea products as needed. This helps ensure that manufactured tea meets high-quality standards in line with relevant national, regional, and international benchmarks.
iii. The Board is empowered under Regulation 44 of the proposed Regulations to conduct regular surveillance inspections on the production, processing, marketing, grading, storage, collection, transportation, and warehousing of tea. These inspections ensure compliance with the proposed Regulations, national tea standards, applicable international standards, and other relevant laws. This will help ensure that only registered and licensed persons are involved in the tea trade and related activities, maintaining high standards in the industry...
iv. The Board requires a person wishing to renew their management agent license, manufacturing license, specialty manufacturing license and tea broker license to submit their annual audited financial statements for the previous two years as provided under the terms and conditions of the respective forms under the proposed Regulations. This will ensure that there is transparency in the affairs of the persons applying for a license or renewal of their license with the Board.

v. The Board can revoke, alter, suspend or vary a registration certificate if the holder of the certificate does not comply with the Act or commits an offence under any other law. The power to revoke or alter a license is granted under section 42 of the Act and reiterated under regulation 19(3) of the proposed Regulations. This would ensure that persons registered under the Regulations comply with national standards, international standards and the law while engaging in tea trade.

vi. The Board maintains a register of tea importers and exporters. This register accurately monitors the persons carrying out tea export and import activities and ensures that they have a valid license to do so. Under the proposed regulations, those carrying out the business without a valid license would be penalized.

vii. The Board publishes information in the Kenya Gazette regarding the grant of the permit at the point of export and import. This would provide the public with adequate information on the registered and licenced importers and exporters.

viii. The Board ensures that tea exporters, importers, manufacturers, growers and brokers have a valid license issued by the Board before carrying out the activity. This ensures the quality of the tea exported, imported, grown and manufactured meets the required standards. It also deters unbridled importation of cheap but low-quality teas that do not meet the tea standards and guidelines.

ix. The Board has sufficient capacity to ensure that tea growers, manufacturers, management agents, importers and exporters are licensed and take the necessary action under the law where there is a breach.

x. The Board shall collaborate with other government agencies, such as the Kenya Ports Authority and Kenya Trade Network Agency, when necessary to ensure quality assurance of the tea being traded, exported, and imported and ensure that only licensed persons are involved in the tea trade.

10.0 CONCLUSION AND RECOMMENDATIONS

The chapter provides concluding observations regarding the proposed Regulations and makes a specific recommendation on whether they should be adopted and implemented. It also provides other laws and policies that could complement the proposed Regulations.

10.1 Conclusion

The RIA has examined the history of tea registration and licensing in Kenya. If approved and effectively implemented, the proposed regulations will transfer the mandate of registration, licensing, and quality control of tea activities from the Agriculture and Food Authority to the Board. They will also ensure formal controls in the Tea industry and establish the necessary structures and environment, including compliance enforcement structures, for the benefit of tea traders and growers.

The RIA has stated the justifications for allowing registration and licensing laws in the sector and analyzed the effects of the proposed regulatory interventions, including fees and levies on the private and public sectors. In addition, the RIA has examined the economic, social, and environmental costs and benefits of the proposed regulations and the viability of the alternative options.

10.2 Recommendation

The RIA recommends a further public participation phase before and during the national validation workshop to collect final public views and consider the comments on the proposed regulations before gazetting and implementing them in the country's tea industry.

10.3 Linking the Draft Regulations to Other Laws and Regulations

The RIA certifies that the Tea (Registration and Licensing) Regulations, 2024 will be complemented by other statutes and policies with overlapping/complementary objectives including:

i. Agriculture Sector Transformation and Growth Strategy (ASTGS), 2019-2029
ii. Agricultural Finance Corporation Act, Cap 323
iii. Agricultural Produce (Export) Act, Cap 319
iv. Agricultural Policy 2021
v. Auctioneers Act, Cap 526
vi. Co-operative Societies Act, Chapter 490
vii. County Governments Act, 2012
viii. Crops Act, 2013
ix. Data Protection Act, 2019
x. Disposal of Uncollected Goods Act, 1987

xi. East African Community Agriculture and Rural Development Policy provided under Article 105 of the Treaty for the Establishment of the East African Community
xii. Environmental Management and Coordination Act, 1999 (Act No. 8 of 1999) revised in 2015.
xiii. Food, Drugs & Chemical Substances Act, Cap 254
xiv. Insurance Act Cap 487
xv. Kenya Climate-Smart Agriculture Strategy 2017 – 2026
xvi. Kenya Vision 2030
xvii. Micro- and Small Enterprises Act, No. 55 of 2012
xviii. Moveable Property Security Rights Act, 2017
xix. National Agricultural Research Systems Policy, 2012
xx. National Agricultural Sector Extension Policy, 2012
xxi. National Cereals & Produce Board Act, Cap 338
xxii. National Environment Policy, 2013
xxiii. National Environmental Management Authority (NEMA) Regulations, 2006
xxiv. National Food and Nutritional Security Policy, 2012
xxv. National Food Safety Policy, 2013
xxvi. National Trade Policy, 2009
xxvii. Pest Control Products Act, Cap 348
xxviii. Plant Protection Act, Cap 324
xxix. Public Audit Act, 2015
xxx. Public Finance Management Act, 2012
xxxi. Public Health Act, Cap 242
xxxii. Public Officers Ethics Act, 2003
xxxiii. Relevant County Policies and Legislation
xxxiv. Sale of Goods Act (Cap 31)
xxxv. Science, Technology and Innovation Act, No. 28 of 2013
xxxvi. Seed & Plant Varieties' Act, Cap 326
xxxvii. Sessional Paper Number 6 of 1999 on Environment and Development Policy
xxxviii. Standards Act, Cap 496
xxxix. Statutory Instruments Act, 2013
xl. The Constitution of Kenya, 2010
xli. The Kenya Agricultural and Livestock Research Act, 2013 (No. 17 of 2013)
xlii. Trade Description Act, Cap 513
xliii. United Declaration of Human Rights
xliv. Warehouse Receipts System Act, 2019
xlv. Weights and Measures Act, Cap 513

11.0 PERTINENT ISSUES

The Consultant raised the following pertinent issues relating to the proposed Regulations, which may be considered when finalizing them.

11.1 Gaps in Drafting the Regulations

The Consultant noted the following structural gaps in the drafting of the regulations:

1. The Regulations do not have a table of contents. The Board should include one in the draft Regulations.
2. The use of capital letters under definitions. Some words are in small letters.
3. The use of abbreviations that have not been defined. For example, the definition section refers to black CTC tea without clarifying what CTC stands for in full. The use of abbreviations is discouraged in legislative drafting.
4. Alignment of the marginal notes and the substantive regulations. For example, in Regulation 16, the marginal note refers to the Registration of a warehouse, whereas Regulation 16(1) refers to the registration of a management agent.
5. Regulation 10 (3) refers to a tea factory company limited. This does not read right. The correct word is tea factory, which is defined in the Act.
6. Some regulations, such as Regulation 8, have poor drafting. The Board should consider changing paragraph (1) of regulation 8 to: A tea grower may change the factory where they deliver green leaf by giving a notice of not less than thirty days. Paragraph 3 also needs rephrasing.
7. Regulation 29 provides a duty on imported or transit tea packed for the local market. This provision also talks about the payment of value-added tax. The provisions on value-added tax should be removed since they are already covered under the Value-Added Tax Act. The duty imposed under this provision should be clearly provided for in a schedule specifying the amount to be paid and when it is to be paid.
8. Regulation 37 does not specify to whom the monthly returns for the buyers, exporters, importers, and brokers are to be made.
9. There are several issues relating to the forms as shown below:
    a) Regulation 4(2) provides for Commercial Tea Factory while Form TBK/CG/A provides for Commercial Tea Nursery. This is an issue with a wrong cross-referencing between the regulation and form.
    b) Form TBK/TB/E2 specifies the regulation to be Regulation 10(2) rather than broadly referring to Regulation 10.
    c) Some Forms cross reference the wrong regulations such as:
        i. Form TBK/TB/F which references Regulation 18 (2) instead of Regulation 21 (2);
        ii. Form TBK/TB/B2 is referenced in Regulation 5(7) but the form has not been provided in the First Schedule as indicated;
        iii. Form TBK/TB/F1 which references Regulation 18 (3) instead of Regulation 21 (3);

iv. Form TBK/TB/F2 which references Regulation 19 (5) (a) instead of Regulation 21 (5) (a);
v. Form TBK/TB/F3 which references Regulation 18 (5) (b) instead of Regulation 21(5)(b);
vi. Form TBK/TB/G which references Regulation 22 (1) instead of Regulation 25(1)(a);
vii. Form TBK/TB/G1 which references Regulation 22 (1) (b) instead of Regulation 25(1)(b);
viii. Form TBK/TB/J1 which references Regulation 23 (3) instead of Regulation 27 (3) (a);
ix. Form TBK/TB/K which references Regulation 24 (2) instead of Regulation 28 (2);
x. Form TBK/TB/K1 which references Regulation 23 (2) instead of Regulation 28 (3) (a);
xi. Form TBK/TB/L which references Regulation 26 (2) instead of Regulation 30 (2) (a). This is not the application form as set out in the regulations;
xii. Form TBK/TB/L1 which references Regulation 26 (3) instead of Regulation 30 (3) (a). This is not the approval form as provided for in the regulations;
xiii. Form TBK/TB/W which references Regulation 28 (3) instead of Regulation 32 (3). The form is an import declaration form as opposed to an export declaration form;
xiv. Form TBK/TB/N which references Regulation 30 (2) instead of Regulation 34 (2);
xv. Form TBK/TB/N1 which references Regulation 30 (2) instead of Regulation 34 (3) (a); and
xvi. Form TBK/TB/O which references Regulation 32 (1) instead of Regulation 37 (1).

d) Some of the Forms are provided for within the regulations but are not within the schedule such as Form TBK/CG/A2 under Regulation 4 (4) (c), Form TBK/TB/B2 under Regulation 5 (7) and Form TBK/TB/J under Regulation 27(2).

10. The interpretation section of the regulations does not define some words and standards, such as the Tea Industry Code of Practice KS: 2128.
11. Some regulations, such as Regulations 4 (2), 5 (2), and 6 (2), do not indicate whether an application fee is payable upon registration of a commercial tea nursery or small-scale, medium-scale, or large-scale tea growers.

11.2 Operation of the Crops (Tea Industry) Regulations, 2020

The Crops (Tea Industry) Regulations of 2020, which guide the development, promotion, and regulation of the tea industry for the benefit of the tea growers and other stakeholders in the tea industry, are still operational. These regulations contain registration and licensing provisions as well as quality assurance provisions. They have, however, not been revoked by the draft regulations. Private and public tea actors may use the Crops (Tea Industry) Regulations in carrying out their activities, if the revocation is not well outlined within the draft regulations.

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