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THE TEA (AMENDMENT) ACT

No. 4 of 2011

Date of Assent: 21st March, 2011

Date of Commencement: 22nd March, 2011

AN ACT of Parliament to amend the Tea Act in order to enhance regulation of tea trade, review the composition, powers, functions and financing of the Tea Board of Kenya and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Tea (Amendment) Act, 2010.

title.

2. The long title to the Tea Act (in this Act referred to as “the principal Act”) is amended by deleting the words “export of” and substituting therefor the words “trade in”.

Amendment of the long title to Cap. 343.

3. Section 2 of the principal Act is amended —

Amendment of section 2 of Cap. 343.

(a) by inserting the following new definitions in proper alphabetical sequence—

“Agriculture Secretary” means the Agriculture Secretary in the Ministry for the time being responsible for agriculture and includes any person authorized to carry out the duties of the Agriculture Secretary under this Act;

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

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

“certificate of origin” means a document issued in a customs territory by a competent authority confirming the origin of a tea product;

Cap. 490.

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

“customs territory” means the geographical area of the Republic of Kenya or of any other country in relation to which the expression is used;

“export” means to take tea out of Kenya to any place outside Kenya;

“exporter” means a person, a firm, or a corporate body engaged in the business of exporting tea;

“import” means to bring tea into Kenya from any place outside Kenya;

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

“person dealing in tea” includes a management agent, a broker, a buyer, an exporter, a packer, a blender, a warehouseman, an auction organizer or an importer;

“planting licence” means a planting licence issued under section 8;

“transit tea” means a consignment of tea transiting through Kenya’s customs territory, which is destined for another customs territory;

“warehouseman” means a company registered in Kenya which is in the business of storing tea intended for sale from a producer, a buyer, or a packer;

(b) by deleting the definitions of the words

“buyer” and “producer” and substituting therefor the following new definitions-

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

“producer” means a processor of tea and includes a smallholder or a plantation tea producer or their representatives;

(c) by deleting the definition of the word “Director”.

4. Section 3 of the principal Act is amended-

(a) in subsection (1), by deleting paragraphs (a) to (f) and substituting therefor the following new paragraphs -

(a) a chairman, who shall be elected by the members of the Board from amongst the members referred to in paragraph (e) (i), (ii), (iii) or (iv);

(b) the Permanent Secretary in the Ministry responsible for agriculture or a representative nominated by the Permanent Secretary in writing;

(c) the Permanent Secretary to the Treasury or a representative nominated by the Permanent Secretary in writing;

(d) the Permanent Secretary in the Ministry responsible for trade or a representative nominated by the Permanent Secretary in writing;

Amendment of section 3
of
Cap. 343.

- (e) seven members appointed by the Minister as follows-
- (i) two persons nominated by factory organizations to represent smallholder tea producers;
 - (ii) one person nominated by plantation tea producer organizations to represent plantation tea producers;
 - (iii) one person nominated by registered auction organizers to represent the interest of tea traders;
 - (iv) one person nominated by registered tea packers organizations to represent the interest of tea packers;
 - (v) two persons, one a man and a woman, appointed by the Minister from amongst producers and trade unionists and who possess such knowledge and experience as the Minister considers beneficial to the Board;
 - (vi) two persons nominated by the Minister who

possess such
knowledge and
experience as the
Minister considers
beneficial to the Board;

(f) the Managing Director who shall be an *ex officio* member of the Board.

(b) in subsection (4), by deleting the words "deputy chairman annually" and substituting therefor the words vice-chairperson".

5. Section 3A of the principal Act is amended by inserting the following new subsection immediately after subsection (5) –

Amendment of section
3A of
Cap. 343.

(6) Where a vacancy occurs in the office of a member appointed under section 3(1)(e), the Minister shall appoint another person nominated in accordance with that section to fill the vacancy.

6. Section 4 of the principal Act is amended in subsection (2)–

Amendment of section 4
of
Cap. 343.

(a) 'by deleting paragraph (d) and substituting therefor the following new paragraph–

(d) the taking of measures for the control of pests and diseases;

(b) by deleting paragraph (e) and substituting therefor the following new paragraph–

(e) the regulation of all aspects of tea trade;

(c) by inserting the following new paragraphs immediately after paragraph (f)–

(g) the registration of persons dealing in tea;

- (h) the promotion and monitoring of tea trade in Kenya;
- (i) the issuing, refusal, revocation, cancellation, suspension or variation, with or without conditions, of any licences and registration certificates under this Act; and
- (j) the taking of measures to ensure compliance with this Act.

Amendment of section
4A of
Cap. 343.

7. Section 4A of the principal Act is amended-

- (a) by deleting subsection (1) and substituting therefor the following new subsection-

(1) There shall be a Managing Director of the Board who shall be competitively recruited by the Board and appointed by the Minister.

- (b) by inserting a new section immediately after subsection (1) as follows -

(1A) A person shall not qualify for appointment as the Managing Director unless such person -

- (i) holds at least a first degree from any university recognized in Kenya; and
- (ii) has such relevant experience as may be determined by the Board.

- (c) in subsection (2), by inserting the words "to the Board" immediately after the word "responsible".

Amendment of section 6
of
Cap. 343.

8. Section 6 of the principal Act is amended in subsection (4) by deleting the word "eight" and substituting therefor the word "seven".

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9. The principal Act is amended by repealing section 12A.

Repeal of section 12A of
Cap. 343.

10. Section 13A of the principal Act is amended in subsection (1)-

Amendment of section
13A of Cap. 343.

(a) by inserting the following new subparagraph immediately after subparagraph (b) (i) -

(ii) is from a tea grower not registered with the factory or contracted to supply green leaf to it;

(b) by deleting the words "five hundred thousand" and "ten years" and substituting therefor the words "one million" and "two years" respectively.

11. Section 14A of the principal Act is amended in subsection (1) by deleting the word "Director" and substituting therefor the words "Agriculture Secretary".

Amendment of section
14A of Cap. 343.

12. The principal Act is amended by inserting the following new section immediately after section 17-

Insertion of new section
17A in Cap. 343.

Registration of dealers.

17A. (1) A person shall not deal in tea unless such person is registered by the Board.

(2) A person who deals in tea in contravention of subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding two years, or to both."

13. The principal Act is amended by deleting section 18 and substituting therefor the following new section-

Amendment of section
18 of
Cap. 343.

(1) The Minister may, from time to time, on the recommendation of the Board, by notice in the Gazette,

impose an *ad valorem* levy on all made tea at the point of import or export.

(2) An *ad valorem* levy imposed through a notice under subsection (1) shall be collected by the Board at a rate not exceeding two percent of the gross sales and at such times (being not earlier than one month after the date of publication of the notice) and in such manner, as are specified in the notice, and shall be recoverable by the Board as a civil debt due to it from the person by whom it is payable.

(3) The *ad valorem* levy collected under subsection (2) shall be apportioned as follows -

- (a) fifty percent shall be applied by the Board in the manner provided in section 19;
- (b) forty percent shall be remitted directly to the Tea Research Foundation of Kenya; and
- (c) ten percent shall be used for the development of infrastructure for the Tea Industry.

Amendment of section
19 of
Cap. 343.

14. Section 19 of the principal Act is amended -

- (a) by deleting the words "The proceeds of any cess imposed under section 18" and

substituting therefor the words "The proceeds of the *ad valorem* levy under section 18(3)(a)"; and

(b) by deleting paragraph (j).

15. Section 21 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection -

Amendment of section
21 of
Cap. 343.

(2) The accounts of the Board shall be audited and reported upon by the Controller and Auditor-General in accordance with the provisions of the Public Audit Act, 2003..

No.12 of 2003.

16. Section 23 of the principal Act is amended by deleting the words "two thousand" and "three months" and substituting therefor the words "five hundred thousand" and "two years" respectively.

Amendment of section
23 of
Cap. 343.

17. Section 25(2) of the principal Act is amended -

Amendment of section
25 of
Cap. 343.

(a) in paragraph (c), by deleting the word "Director" and substituting therefor the words "Agriculture Secretary";

(b) in paragraph (e), by inserting the words "and registration certificates" after the word "licences";

(c) by deleting paragraph (k) and substituting therefor the following new subparagraph-

(k) regulating all aspects of tea trade.

18. Section 26 of the principal Act is amended by deleting the word "permit" and substituting therefor the words "registration certificate".

Amendment of section
26 of Cap.343.