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LAWS OF KENYA

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**MISCELLANEOUS FEES AND LEVIES ACT**

NO. 29 OF 2016

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**MISCELLANEOUS FEES AND LEVIES ACT**

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**NO. 29 OF 2016****MISCELLANEOUS FEES AND LEVIES ACT***[Date of assent: 31st August, 2016.]**[Date of commencement: 21st September, 2016.]***AN ACT of Parliament to provide for the imposition of duties, fees and levies on imported or exported goods and for connected purposes***[Act No. 29 of 2016, Act No. 11 of 2017.]***PART I — PRELIMINARY****1. Short title**

This Act may be cited as the Miscellaneous Fees and Levies Act, 2016.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

**"Authority"** means Kenya Revenue Authority established by the Kenya Revenue Authority Act, Cap. 469.

**"authorised officer"** means any officer appointed under section 3;

**"Cabinet Secretary"** means the Cabinet Secretary for the time being responsible for finance;

**"Commissioner"** means the Commissioner General appointed under the Kenya Revenue Authority Act, Cap. 469 or any other Commissioner to whom powers or functions have been delegated under that Act;

**"customs value"** for the purposes of ascertaining the value for charging, means—

- (a) the import declaration fee or railway development levy, the import value of goods as appraised by Customs for use as the basis for assessing the amount of import duty; or
- (b) the export levy, the export value of the goods;

**"East African Community Partner States"** means the Republics of Burundi, Rwanda, Uganda and the United Republic of Tanzania;

**"export"** means to take or cause to be taken out of Kenya to a foreign country or to an export processing zone;

**"export processing zone"** means an export processing zone designated as such under the Export Processing Zones Act, Cap. 517;

**"importer"** in relation to goods, means a person who owns the goods, or any other person who is, for the time being, in possession of or beneficially interested in the goods at the time of importation;

**"official aid funded project"** means a project funded by means of a grant or concession loan in accordance with an agreement between the Government of Kenya and any foreign government, agency, institution, foundation, organization or any other aid agency; and

**"person"** means an individual, company, partnership, association of persons, trust, estate, the Government, a foreign government or a political subdivision of the Government or foreign government.

(2) For the purpose of this Act, goods shall be classified by reference to the nomenclature set out in Annex 1 to the Protocol on the Establishment of the East African Community Customs Union and in interpreting the Annex; the general rules of interpretation set out therein shall apply.

## PART II — ADMINISTRATION

### 3. Functions and powers of the Commissioner and other officers

(1) The Commissioner shall be responsible for the control and collection of, and accounting for, duties, fees and levies paid under this Act and shall, subject to the direction and control of the Cabinet Secretary, have the superintendence of all matters relating thereto.

(2) The Commissioner shall appoint such officers as may be necessary for the administration of this Act.

(3) The Commissioner may authorize any officer appointed under this section to perform any of the functions of the Commissioner under this Act or the regulations, other than the functions under subsection (2).

(4) Every authorised officer appointed under this section shall enforce, and ensure due compliance with, the provisions of this Act and the regulations, and shall make all due inquiries in relation thereto.

(5) Every authorised officer appointed under this section shall, on demand, produce such documents establishing his or her identity as may be approved by the Commissioner.

(6) Every authorised officer shall, in carrying out the provisions of this Act, regard and deal with all documents and information relating to fees and charges and confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties as confidential.

(7) Any decision made and any notice or communication issued or signed by any authorised officer may be withdrawn or amended by the Commissioner or by the authorised officer concerned, and shall, until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner.

### 4. Authorised officers to have powers of police officers

For the purposes of carrying out the provisions of this Act, every authorised officer shall, in the performance of his or her duties, have all the powers, rights, privileges and protection of a police officer.

## PART III — IMPOSITION OF LEVIES AND FEES

### 5. Imposition of export levy

(1) There shall be paid a levy to be known as the export levy, on all goods specified in the First Schedule.

(2) The levy shall, where more than one rate is specified, be the higher of the *ad valorem* or the specific rate specified in the First Schedule and shall be paid by the exporter at the time of entering the goods for export.

(3) The *ad valorem* rate shall be based on the custom value of the goods.

(4) The Commissioner shall, by notice in the *Gazette*, adjust the specific rate of export levy annually to take into account inflation in accordance with the formula specified in Part III of the First Schedule.

**6. Exemption**

The provisions of section 5 shall not apply to goods exported to the East African Community Partner States.

**7. Import declaration fee**

(1) There shall be paid a fee to be known as the import declaration fee, on all goods imported into the country for home use.

(2) The fee shall be at the rate of two per cent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use.

(3) Despite subsection (1)—

(a) import declaration fee shall not be charged on the goods specified in Part A of the Second Schedule when imported or purchased before clearance through customs; or

(b) goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee of ten thousand shillings at the time of entering the goods for home use.

(4) An importer of goods other than goods specified in Part A of the Second Schedule shall complete the prescribed import declaration form.

(5) An importer shall present a copy of the import declaration form completed under subsection (4) to the Commissioner at the time of entering the goods for home use.

(6) Out of the fee collected under subsection (2), ten per cent shall be paid into a Fund established and managed in accordance with the Public Finance Management Act, No.18 of 2012.

(7) The monies in the Fund under subsection (6) shall be used for the payment of Kenya's contributions to the African Union and any other international organisation to which Kenya has a financial obligation.

**8. Railway development levy**

(1) There shall be paid a levy to be known as the railway development levy, on all goods imported into the country for home use.

(2) The levy shall be at the rate of one point five per cent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods into the country for home use.

(3) The purpose of the levy shall be to provide funds for the construction of a standard gauge railway network in order to facilitate the transportation of goods.

(4) The Cabinet Secretary shall, by regulations, establish a railway development levy fund into which all the proceeds of the levy shall be paid.

(5) The fund referred to in subsection (4) shall be established, managed, administered or wound up in accordance with section 24 of the Public Finance Management Act, No. 18 of 2012 and the regulations made under that Act.

(6) No levy shall be charged in respect of the goods specified in Part B of the Second Schedule when imported or purchased before clearance through customs.

**9. Application of East African Community Customs Management Act, 2004**

The provisions of the East African Community Customs Management Act, 2004, relating to the determination of value of imported goods, collection and enforcement

of the payment of duty shall apply for the purposes of assessment, collection and enforcement of the payment of import declaration fee, railway development levy and export levy.

#### 10. Formalities may be carried out by information technology

(1) Subject to such conditions as the Commissioner shall prescribe, formalities or procedures under this Act may be carried out by use of information technology in the customs computerized system.

(2) The provisions of the East African Community Customs Management Act, 2004, relating to registration of users, access and use on the customs computerized system shall apply for the purposes of carrying out formalities and procedures under this Act.

### PART IV — MISCELLANEOUS PROVISIONS

#### 11. Offence

(1) A person who contravenes the provisions of this Act commits an offence.

(2) A person convicted of an offence under this Act, where no specific penalty is provided, shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

#### 12. Regulations

The Cabinet Secretary may make regulations for the better carrying out of the provisions of this Act.

### FIRST SCHEDULE

[section 5(1)]

#### GOODS SUBJECT TO EXPORT LEVY

##### PART I

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Export Levy Rate</i>
4101.20.00	Whole hides and skins, of a weight per skin not exceeding 8 kg. when simply dried, 10 kg. when dry-salted, or 16 kg. when fresh, wet-salted or otherwise preserved.	80% or USD0.52 per kg.
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD0.52 per kg.
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other	80% or USD0.52 per kg.

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	than those excluded by Note (c) to Chapter 41.	
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles.	80% or USD0.52 per kg.
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or USD0.52 per kg.
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.	80% or USD0.52 per kg.
4104.19.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue).	80% or USD0.52 per kg.
4301 .60.00	Raw furskins of fox, whole, with or without head, tail or paws.	80% or USD0.52 per kg.
4101 .40.00	Hides and skins of equine animals.	80% or USD0.52 per kg.
4101 .50.00	Whole hides and skins, of weight exceeding 16 kg.	80% or USD0.52 per kg.
4101 .90.00	Other, including butts, bends and bellies.	80% or USD0.52 per kg.
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD0.52 per kg.
4301 .10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4301 .30.00	Raw furskins of lamb, the following: Astrkhan, broadtail, Caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb,	80% or USD 0.52 per kg.



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	whole, with or without head, tail or paws.	
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4301.90.00	Heads, tail, paws, and other pieces or cuttings, suitable for furriers' use.	80% or USD 0.52 per kg.
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink.	80% or USD 0.52 per kg.
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled.	80% or USD 0.52 per kg.
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled.	80% or USD 0.52 per kg.
4302.30.00	Whole skins and pieces or cuttings thereof, assembled.	80% or USD 0.52 per kg.
7112.30.00	Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of ash containing precious metal or precious metal compounds.	20%
7112.91.00	Other waste and scrap of precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of gold including metal clad with gold.	20%
7112.92.00	Other waste and scraps of precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of platinum, including metal clad with platinum.	20%
7112.99.00	Other waste and scrap of precious metal or metal clad with precious metal, other waste and scrap containing precious metal compounds, of a kind used principally for the recovery of precious metal.	20%
7204.10.00	Waste and scrap of cast of iron.	20%
7204.29.00	Waste and scrap of other alloy or steel.	20%

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7204.30.00	Waste and scrap of tinned iron steel.	20%
7204.41.00	Turnings, shavings, chips, milling waste, sawdust, fillings, trimmings and stampings, whether or not in bundles, or iron or steel.	20%
7204.49.00	Other waste and scrap or iron or steel	20%
7204.50.00	Remelting scrap ingots	20%
7205.10.00	Granules of pig iron, spiegeleisen, iron or steel.	20%
7902.00.00	Zinc waste and scrap.	20%
8002.00.10	Tin waste and scrap.	20%
8102.94.00	Unwrought molybdenum including bars and rods obtained simply by sintering; waste and scrap.	20%
8102.97.00	Waste and scrap of molybdenum	20%
8103.30.00	Waste and scrap of tantalum	20%
8104.20.00	Waste of scrap of magnesium	20%
8105.00.00	Bismuth and articles thereof including waste and scrap.	20%
8105.30.00	Waste and scrap of cobalt matters.	20%
8107.30.00	Waste and scrap of cadmium.	20%
8108.30.00	Waste and scrap of titanium.	20%
8109.30.00	Waste and scrap of zirconium.	20%
8110.20.20	Waste and scrap of antimony.	20%
8112.13.00	Waste and scrap of beryllium.	20%
8112.22.00	Waste and scrap of chromium.	20%
8112.52.00	Waste and scrap of thallium.	20%
8112.92.00	Unwrought waste and scrap; powders.	20%

**PART II**

Part I shall not apply to exports to Export Processing Zones.

**PART III**

[section 5(4)]

(1) The specific rates of export levy on goods specified in Part I of this schedule shall be adjusted for inflation at the beginning of every financial year in accordance with this paragraph.

(2) Each rate of export levy specified in column 3 of the table in Part I of this schedule shall be replaced by the rate of export levy computed by reference to the following formula—

$$A \times B$$

Where—

- A is the rate of export levy on the day immediately before the adjustment day; and
- B is the adjustment factor for the adjustment day calculated as one plus annual average rate of inflation of the preceding financial year.

(3) For the purpose of this Part—

**"adjustment day"** means 1st July of every year;

**"inflation"** means the average annual inflation rate in a financial year.

**"financial year"** means the period of 12 months ending on 30th June of every year.

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## SECOND SCHEDULE

### PART A

[section 7(3)(a)]

#### **GOODS EXEMPT FROM IMPORT DECLARATION FEE WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS**

The following goods are exempt from payment of import declaration fee when imported or purchased before clearance through customs—

- (i) goods destined for approved duty free shops;
- (ii) goods destined for approved Export Processing Zones enterprises;
- (iii) goods destined for approved enterprises manufacturing under bond;
- (iv) accompanied or unaccompanied used personal effects;
- (v) ammunition, weapons or implements of war imported by the Government;
- (vi) household and personal effects including motor vehicles, provided such motor vehicles qualify for exemption from duty under the Fifth Schedule to the East African Community Customs Management Act, 2004;
- (vii) posted parcels, excluding goods imported for trade;
- (viii) gifts or donations, excluding motor vehicles, by foreign residents to their relatives in Kenya for their personal use;
- (ix) samples which in the opinion of the Commissioner have no commercial value;
- (x) gifts and supplies for diplomatic and consular missions and to the United Nations Missions;
- (xi) goods destined for official aid-funded projects;
- (xii) currency notes and coins of current issues imported by the Central Bank of Kenya or by a financial institution with the approval of the Central Bank of Kenya; postage, revenue and excise stamps;
- (xiii) explosive and pyrotechnic products imported by the Government;
- (xiv) gifts by foreign Governments or international organizations to charities and foundations;
- (xv) aircraft;

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- (xvi) aircraft catering stores for use in an aircraft owned and operated by a designated airline;
- (xvii) currency notes, coins, travellers cheques and bullion;
- (xviii) rail locomotives, wagons (86.0 to 86.06) and rail containers (86.09);
- (xix) ships weighing 250 tonnes or more;
- (xx) goods from the East African Community Partner States that meets the East African Community Rules of origin; and
- (xxii) any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings.
  
- (xxi) raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa as approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for matters relating to industrialisation.

[Act No. 11 of 2017, Sch.]

**PART B**

[section 8(6)]

**GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT LEVY WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS**

The railway development levy shall not apply to goods imported or purchased before clearance through customs—

- (i) for the implementation of an official aid funded project;
- (ii) for official use by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act, Cap. 179;
- (iii) by the United Nations or its agencies;
- (iv) from the East African Community Partner States provided that they meet the East African Community Rules of origin; and
- (v) raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa as approved by the Cabinet Secretary upon recommendation of the Cabinet Secretary responsible for matters relating to industrialization.
- (iv) any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings.

[Act No. 11 of 2017, Sch.]

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