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THE TEA (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Tea Act to provide for direct sales of tea, the payment of tea proceeds, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Tea (Amendment) Act, 2023.

Short title.

2. Section 2 of the Tea Act, in this Act referred to as “the principal Act”, is amended—

Amendment of section 2. of No. 23 of 2020.

(a) by deleting the definition of the word “export” and substituting therefor the following new definition—

“export” means to take tea or cause tea to be taken out of Kenya into a foreign country, a Special Economic Zone or an Export Processing Zone;

(b) by deleting the definition of the word “import” and substituting therefor the following new definition—

“import” means to bring tea or cause tea to be brought into Kenya from a foreign country, a Special Economic Zone Enterprise or an Export Processing Zone;

(c) in the definition of the word “tea” by deleting the word “tea” appearing immediately after the words “whether green” and substituting therefor the word “leaf”;

(d) in the definition of the word “value addition” by inserting the words “into a packet or a container holding not more than ten kilograms” appearing immediately after the word “branding”;

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

“direct sales” means a contractual arrangement between a factory and an overseas buyer or local buyer for the sale of made tea based on mutually accepted terms and conditions enforceable in law;

“direct sales overseas” means bulk tea sales exported directly by a tea factory to an export market;

“direct settlement system” means a banking facility provided by a commercial bank regulated by the Central Bank of Kenya for the clearing and settlement of tea sales proceeds;

“green leaf” means leaf detached from tea plants but not dried or processed in any way and includes purple leaf”; and

“tea factory limited company” means a tea factory collectively owned through shares by small scale tea growers.

3. The principal Act is amended in section 7 by –

(a) deleting subsection (2) and substituting therefor the following new subsection –

(2) The Cabinet Secretary shall appoint the members under subsection (1)(e), (f), (g) and (h) by notice in the *Gazette*.

(b) deleting subsection (3) and substituting therefor the following new subsection –

(3) The appointment of the chairperson or members of the Board under subsection (1)(a), (e), (f), (g) and (h) shall take into account the gender, regional and other diversities of the people of Kenya.

Amendment of
section 7 of No. 23
of 2020

4. The principal Act is amended in section 8 by –

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

(1) The persons appointed under section 7(1)(a), (e), (f), (g), and (h), shall serve for a term of three years’ renewable once on account of good performance.

(b) deleting subsection (2) and substituting therefor the following new subsection –

(2) The persons appointed under section 7(1)(a), (e), (f), (g), and (h) shall be appointed at different times so that their respective expiry of terms of office shall fall at

Amendment of
section 8 of No.
23 of 2020

different times but not more than six months shall lapse between one appointment and another.

5. Section 22 of the principal Act is amended in subsection (4) by inserting the word “factory” immediately after the words “their duties the”.

Amendment of section 22 of No. 23 of 2020

6. Section 31 of the principal Act is amended by inserting the following new subsection immediately after subsection (1) —

Amendment of Section 31 of no. 23 of 2020

(1A) All tea brought into a Special Economic Zone Enterprise or an Export Processing Zone shall be declared to the Board in the prescribed form.

7. Section 32 of the principal Act is amended in subsection (4) by deleting the words “limited company” appearing immediately after the words “a tea factory”

Amendment of Section 32 of no. 23 of 2020

8. Section 34 of the principal Act is amended in -

Amendment of Section 34 of no. 23 of 2020

- (a) subsection (2) by deleting the words “limited company” appearing immediately after the words “each tea factory”;
- (b) subsection (7) by inserting the words “limited company” immediately after the words “A tea factory”,
- (c) subsection (8) by inserting the words “limited company” immediately after the words “tea factory”;
- (d) subsection (9) by inserting the words “limited company” immediately after the words “tea factory”; and
- (e) subsection (10) by inserting the words “limited company” immediately after the words “tea factory”.

9. The principal Act is amended by inserting the following new sections immediately after section 34—

Insertion of new section 34A in No. 23 of 2020

Tea sales.

34A. (1) Kenyan tea shall be traded through —

- (a) the auction; or

(b) direct sales.

(2) All tea processed and manufactured in Kenya for the export market shall be registered with the Board prior to exportation.

10. Section 36 of the principal Act is amended –

Amendment of
Section 36 of no.
23 of 2020

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

(1) Tea processed and manufactured in Kenya for the export market may be offered for sale at the tea auction floor.

(b) in subsection (2) by deleting subsection (1) and substituting therefor the following new subsection –

(2) A tea factory intending to participate in a tea auction shall—

(a) register with the Board and the auction organiser; and

(b) participate in the auction directly and not through a management agent.

(c) by deleting subsection (5)

(d) by deleting subsection (6)

(e) by inserting the following new subsection immediately after subsection (7) –

(8) The Cabinet Secretary shall, in consultation with the county governments prescribe regulations for the procedure for auction sales of tea and for the establishment of auction centres in the tea growing counties.

11. The principal Act is amended by inserting the following new sections immediately after section 36 –

Insertion of new
section 36A in No.
23 of 2020.

Direct sales of tea.

36A. (1) A licensed factory or any other entity representing growers may undertake direct sales.

Insertion of new
section 36B in No.
23 of 2020.

(2) The prices offered at the direct sales shall be competitive and shall be sold at a price above the prevailing reserve price at the auction.

(3) If the tea fetches a higher price at the auction than the direct sales price offered, then the prospective direct sale buyer shall have pre-emptive rights to purchase the tea at the auction price failing which the tea will be sold to the highest bidder.

(4) The Cabinet Secretary shall, in consultation with county governments, prescribe regulations for the procedure of direct sales of tea.

Tea proceeds.

36B (1) The proceeds from the sale of tea whether through an auction or through a direct sale shall be deposited in a Direct Settlement System.

(2) The Direct Settlement System provider shall remit tea sales proceeds to the tea growers and settle statutory charges, service provider's fees and other liabilities within five working days from the receipt of the proceeds of sale of tea.

(3) The Cabinet Secretary shall make regulations to providing for the operation of a Direct Settlement System and requirements to be met by commercial banks which express an interest in the establishment of a Direct Settlement System.

12. Section 37 of the principal Act is amended in subsection (1) by deleting the word “Board” appearing immediately after the words “register with the” and substituting therefor the words “respective county government”.

Amendment of
Section 37 (1) of
no. 23 of 2020

13. Section 53 of the principal Act is amended by —

(a) deleting subsection (2) and substituting therefor the following new subsection —

(2) The levy imposed under subsection (1) shall be collected by the Board at a rate not exceeding three shillings, eighty-five cents per kilo of made tea exported in bulk; and at such times, being not earlier than one month

Amendment of
Section 53 of no.
23 of 2020

after the date of publication of the notice, in such a manner, as is specified in the notice.

(b) inserting the following new subsection immediately after subsection (2)—

(2A) Specialty tea and value added tea packed into packets or containers holding not more than ten kilograms” shall be exempted from tea levy.

(c) deleting subsection (5) and substituting therefor the following new subsection—

(5) The tea levy collected under subsection (2) shall be apportioned as follows —

(a) forty per centum shall be applied by the Board for income or price stabilization;

(b) thirty per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;

(c) twenty per centum shall be remitted directly to the Tea Research Foundation; and

(d) ten per centum shall be applied for infrastructure development in the tea sub-sector on a pro rata basis.

14. Section 74 of the principal Act is amended in subsection (1) by deleting the word “if” appearing immediately after the words “carrying out” and replacing with the word “of”.

Amendment of
Section 74 of no.
23 of 2020

15. Section 76 of the principal Act is amended by –

(a) numbering the existing provision as subsection (1); and

Amendment of
Section 76 of no.
23 of 2020

(b) inserting the following new subsection (2)—

(2) All immovable assets of the former Tea Board of Kenya and the former Tea Research Foundation of Kenya which were vested in the Agriculture and Food Authority and Kenya Agricultural and Livestock Research Organization upon the commencement of the Crops Act and the Kenya Agricultural and Livestock Research Organization Act shall by virtue of this paragraph vest in the Board and the Foundation respectively.”

No. 16 of 2013

No. 17 of 2013

MEMORANDUM OF OBJECTS AND REASONS

The principle object of the Bill is to amend certain provisions in the Tea Act, 2020 to protect the tea growers' proceeds from mismanagement by factories. The Bill also aims to incentivise value addition of tea by exempting value added tea from payment of the tea levy. The Bill further seeks to liberalize the tea industry. This will be done through direct sales of tea overseas.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the Cabinet Secretary but does not limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

Agriculture plays a vital role in the economy of most county governments. It is the leading industrial crop in terms of its contribution to the country's GDP. It is therefore important that the tea industry is regulated and supported in terms of policy and law.

This Bill therefore affects the economic growth of tea producing counties and the country as a whole and as such, it is a Bill concerning county governments.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 24th November, 2022.

HILLARY K. SIGEI,
Senator.

Section 2 of No. 23 of 2020 which it is proposed to amend—

Interpretation

In this Act —

"auction" means a physical or electronic system where potential buyers place competitive bids for tea;

"auction organizer" means a person, company or firm established for the purpose of organizing tea auctions in Kenya;

"blending" means the art of mixing of teas of different types and grades to affect the flavour and characteristics of the tea for the purposes of packing and sale;

"Board" means the Tea Board of Kenya established under section 3;

"broker" means a person or company or firm established for the purpose of negotiating the purchase or sale of tea between tea growers or tea factories and buyers for a fee;

"buyer" means a person, company or a firm engaged in acquiring made tea for sale in the local or export market, including export of imported tea;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

"commercial green leaf transporter" means a person, a firm or a corporate body contracted by a tea factory to provide green leaf transport services from the farm or leaf collection centre to the tea factory at a fee;

"commercial tea nursery" means a person or firm who maintains not less than five hundred tea seedlings or tea planting material for sale;

"county government" has the meaning assigned to it under Article 176 of the Constitution;

"crops inspector" means a person appointed as an inspector in accordance with section 49 of the Act;

"export" means to take tea or cause tea to be taken out of the Kenya customs territory or out of an Export Processing Zone;

"exporter" means a person, a firm, or a corporate body engaged in the business of blending, packaging and exporting of tea in bulk or in value added form;

"Foundation" means the Tea Research Foundation established under section 55;"

"Fund" means the Tea Fund established under section 54;

"grower" means any person who is cultivating tea in an area;

"green leaf agreement" means an agreement between a tea grower and a tea factory relating to the delivery of green leaf;

"import" means to bring tea into or cause to be brought into the Kenya customs territory or into an Export Processing Zone;

"importer" means a person, a firm, or a corporate body engaged in the business of importing tea into Kenya;

"large scale tea grower" means a person cultivating tea in a parcel of land above fifty acres;

"levy" means the levy imposed by the Cabinet Secretary on tea exports and imports in accordance with section 53;

"licensee" means a person who holds a manufacturing licence issued under the Act;

"made tea" means the derivative from tea leaf through a manufacturing process;

"management agent" means any person that is appointed by a tea factory through a specific management contract or agreement to perform or offer professional services other than company secretary services;

"manufacture" means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products and includes the packaging, labelling, distribution of tea and tea products for sale;

"manufacturing licence" means a licence issued under section 25;

"medium scale tea grower" means a person cultivating tea in a parcel of land of between ten and fifty acres;

"person" includes a firm, a company, an association, cooperative society or a corporate body;

"small scale tea grower" means a grower cultivating tea in a parcel of land of less than ten acres;

"specialty teas" means premium teas manufactured whole leaf, semiaerated or non-aerated and includes green, purple, white, oolong and orthodox but does not include black curl tear and cut teas;

"tea" means the plant botanically known as *camellia sinensis* and includes its seed, tea plants and the leaf, whether on the plant or detached therefrom, and in the latter case, whether green tea or manufactured tea;

"tea block" means a block set out in the Third Schedule within which tea is grown;

"tea dealer" includes a warehouse operator, buyer, exporter, importer, broker, packer, manufacturer, management agent, and auction organizer;

"tea factory" means a factory that processes and manufactures tea leaf into made tea;

"tea grower" means a person who grows tea or cultivates tea in Kenya;

"tea packer" any person who blends, brands and packs tea into packets or containers holding not more than ten kilograms of tea intended for sale locally or for export;

"value addition" means improvements on made tea through packaging, blending, flavouring, tea extracts, tea aroma and branding;

"warehouse" means a premise used for the storage of made tea and specialty tea by a warehouse operator; and

"warehouse operator" means a company registered in Kenya which is in the business of storing tea.

Section 7 of No. 23 of 2020 which it is proposed to amend—

Membership of Board

(1) The management of the Board shall vest in a Board of Directors consisting of —

- (a) a chairperson appointed by the President by notice in the *Gazette*;
- (b) the Principal Secretary responsible for agriculture or a representative nominated by the Principal Secretary in writing;
- (c) the Principal Secretary responsible for trade or a representative nominated by the Principal Secretary in writing;
- (d) the Principal Secretary responsible for National Treasury or a representative nominated by the Principal Secretary in writing;
- (e) one person of either gender, who shall have knowledge and experience in the tea sector and be from either the East and West tea blocks, nominated alternately by the Council of Governors;
- (f) four persons, two of either gender, representing and elected by small scale and medium scale tea growers from the East and West of the tea blocks; Provided that two persons shall be from each of the tea blocks;

- (g) one person elected and representing large scale tea growers;
- (h) one person elected and representing tea traders;
- (i) a chief executive officer appointed in accordance with section 13 who shall be an ex-officio member of the Board.

(2) The Cabinet Secretary shall appoint the members under subsection (1) (d), (e), (f) and (g) by notice in the *Gazette*.

(3) The appointment of the chairperson or members of the Board under subsection (1) (a), (d), (e), (f) and (g) and shall take into account the gender, regional and other diversities of the people of Kenya.

(4) A person shall not be appointed to be a chairperson of the Board of Directors unless that person holds at least a degree or its equivalent in any discipline from an institution recognized in Kenya and has relevant experience in the tea sector.

Section 8 of No. 23 of 2020 which it is proposed to amend—

Term of appointment

(1) The persons appointed under section 7 (1) (a), (d), (e), (f), and (g) shall serve for a term of three years renewable for one further term.

(2) The persons appointed under section 7(1) (a), (d), (e), (f) and (g) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times but not more than six months shall lapse between one appointment and another.

Section 22 of No. 23 of 2020 which it is proposed to amend—

Board of directors of tea factory limited companies

(1) The Board of Directors of tea factory limited companies shall be a maximum of five members.

(2) The Board shall put in place mechanisms to ensure that not more than two-thirds of the Board of Directors of tea factory limited companies elected or appointed are of the same gender.

(3) The Board of Directors of tea factory limited companies shall be elected through a democratic system of one grower, one vote.

(4) Where a Board member for tea factory limited company is temporarily unable to perform their duties, the Board may appoint another person from the respective block to act in their place during the period of absence.

Section 31 of No. 23 of 2020 which it is proposed to amend—

Tea imports

- (1) A person who imports tea into Kenya shall prior to importation —
- (a) provide evidence that the teas they intend to import are not available in the local market or at the tea auction;
 - (b) provide a sample of the teas to be imported and pre-import verification certificate from the country of origin; and
 - (c) obtain pre-import approval from the Board.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Section 32 of No. 23 of 2020 which it is proposed to amend—

Registration of a tea broker

(1) Every tea broker shall register with the Board.

(2) A person shall not negotiate the purchase or sale of tea unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for —

- (a) the procedure for registration of a tea broker and the appeal process in case of refusal or denial of registration;
- (b) the maximum number of tea factories that shall be served by a tea broker.

(4) The remuneration paid to a tea broker by a tea factory limited company and a tea buyer or exporter for services rendered shall not exceed zero point seven five per centum of the gross sales by the broker.

(5) A person who contravenes subsections (2) and (4) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Section 34 of No. 23 of 2020 which it is proposed to amend—

Management agent agreement

(1) A person who intends to manufacture or deal in tea may engage the services of a management agent upon such terms and conditions as may be agreed in the management agreement between them.

(2) A management agent shall sign a management agreement with each tea factory limited company that they intend to offer management agent services to.

(3) A management agreement between a management agent and a tea factory, shall be —

(a) submitted to the Board for review and approval before execution by parties; and

(b) for a period of five years, and may be renewed upon expiry at the discretion of the tea factory.

(4) The remuneration for services rendered by a management agent to a tea factory limited company shall not exceed one point five per centum of the net sales value of the tea sold per year.

(5) The staff costs for personnel seconded to the tea factory limited company by a management agent shall be borne by the management agent.

(6) Company Secretarial services shall be excluded from services to be offered by a management agent to a tea factory limited company.

(7) A tea factory shall recruit its own in-house Company Secretary or outsource the service.

(8) Despite subsection (7), a tea factory may enter into an arrangement with one or more tea factories to have a joint in-house Company Secretary.

(9) A director of a tea factory shall not serve as a director in another company having a direct or indirect commercial relationship with the tea factory where the person is serving as a director.

(10) Where the provisions of subsection (9) apply, a director of a tea factory shall forthwith relinquish his or her position.

Section 36 of No. 23 of 2020 which it is proposed to amend—

Auction process

(1) All teas processed and manufactured in Kenya for the export market with the exception of orthodox and specialty teas shall be offered for sale exclusively at the tea auction floor.

(2) All tea factory limited companies shall register with the Board and the auction organizer to participate in the tea auction directly and not through management agents.

(3) An auction organizer shall establish an electronic trading platform for the auction of tea that will be usable and accessible to all players in the value chain.

(4) A buyer shall pay in full the value of the tea bids they have won at the auction before collecting or taking custody of the tea.

(5) Tea brokers, buyers and the auction organizers shall ensure that the proceeds from the sale of tea are remitted to the tea factories accounts within fourteen days from the date of the auction.

(6) A tea factory shall within thirty days of receipt of the proceeds of the sale of tea, pay tea growers—

- (a) at least fifty per centum of payment due for green leaf delivered every month;
- (b) the balance due to the tea grower within three months from the end of financial year.

(7) An auction organizer shall develop trading rules to govern its operations and the trading rules shall be submitted to the Board for approval.

Section 37 of No. 23 of 2020 which it is proposed to amend—

Registration of commercial green leaf transporters

(1) A person who intends to carry on the business of commercial green leaf transporter shall register with the Board.

(2) A person shall not carry on the business of commercial green leaf transporter unless the person is registered in accordance with this Act.

(3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of commercial green leaf transporters and the appeal process in case of refusal or denial of registration.

(4) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Section 53 of No. 23 of 2020 which it is proposed to amend—

Establishment of Tea Levy

(1) The Cabinet Secretary may, by notice in the Gazette, impose a levy to be levied on tea exports and imports, to be known as the tea levy.

(2) The levy imposed through a notice under subsection (1) shall be collected by the Board at a rate not exceeding one per centum of the auction value for teas sold through the auction and at such times, being not

earlier than one after the date of publication of the notice, in such a manner, as is specified in the notice.

(3) The levy on tea imports shall be charged at a rate of one hundred per centum of the value of the imported teas.

(4) The levy imposed under this section shall be levied and collected in such manner as the Cabinet Secretary may prescribe through regulations.

(5) The tea levy collected under subsection (2) shall be apportioned as follows

- (a) fifty per centum shall be applied by the Board for income or price stabilization for tea growers;
- (b) fifteen per centum shall be applied by the Board in the furtherance or exercise of any function or power of the Board;
- (c) twenty per centum shall be remitted directly to the Tea Research Foundation;
- (d) fifteen per centum shall be applied for infrastructure development in the tea subsector on a pro rata basis.

(6) A person who fails to pay the tea levy imposed under this Act commits an offence.

Section 74 of No. 23 of 2020 which it is proposed to amend—

74. Regulations

(1) The Cabinet Secretary may, in consultation with the Board, make Regulations for the better carrying out of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for —

- (a) the regulation of the production, processing, importation and exportation of tea;
- (b) 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 organizers, warehouse operators, commercial tea nurseries;
- (c) the procedure of licensing of tea manufacturers;
- (d) the forms to be used in the application for registration, licensing, contracts and related activities;

- (e) the prescribed areas for planting tea;
 - (f) the appeal process in case of refusal or denial of a licence;
 - (g) monitoring of the entire value chain in the tea sub-sector;
 - (h) regulation of the conduct of tea auction including the volumes of tea to be sold through auction or through direct sales;
 - (i) the promotion of fair and proper governance structures in institutions along the tea value chain in the interest of tea growers;
 - (j) rules to avoid conflict of interest in the ownership and dealings between tea growers, tea factories and tea dealers;
 - (k) the criteria for the pricing of green leaf;
 - (l) maximum fees charged by players along the value chain;
 - (m) the tenure of board members for tea factory;
 - (n) procedures for ensuring internal democracy in tea growers' institutions and organizations;
 - (o) value addition of tea exports and imports;
 - (p) control of pests and diseases;
 - (q) any fee charged under this Act;
 - (r) the regulation of contracts between growers, tea factories and other players in the tea industry;
 - (s) tea safety including transportation, processing and market standards of tea;
 - (t) submission of returns and reports by the holders of licences and registrations under this Act;
 - (u) regulation and controlling the method of blending, packaging and labelling of tea for purposes of traceability;
 - (v) standards, and the manner of grading and classification of made tea products under this Act; and
anything required to be prescribed under this Act
- (3) For the purposes of Article 94(6) of the Constitution —
- (a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfilment of the objectives of this Act;

- (b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act, 2013 (No. 23 of 2013)

Section 76 of No. 23 of 2020 which it is proposed to amend—

Transfer of assets and liabilities

All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Tea Directorate of the Agriculture and Food Authority and the Tea Research Institute of the Kenya Agricultural and Livestock Research Organization, shall, on the date of commencement of this Act, vest in the Board and the Foundation, respectively, subject to all interests, liabilities, charges, obligations and trusts affecting that property.

