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Act—

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The Finance Act, 20131051

THE FINANCE ACT, 2013**No. 38 of 2103***Date of Assent: 24th October, 2013**Date of Commencement: See Section 1*

AN ACT of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title and
commencement.

1. This Act may be cited as the Finance Act, 2013, and shall come into operation, or be deemed to have come into operation, as follows—

- (a) sections 2, 3, 5 and 7 on the 18th June, 2013;
- (b) section 6 on the 1st July, 2013;
- (c) section 8 on the 1st February, 2013;
- (d) all other sections on the 1st January, 2014.

PART II—CUSTOMS AND EXCISE

Amendment of
section 2 of Cap. 472.

2. Section 2 of the Customs and Excise Act is amended by inserting the following new definition in its proper alphabetical sequence—

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to finance.

Amendment of
section 91 of
Cap.472.

3. Section 91 of the Customs and Excise Act is amended in subsection (1) by deleting the words “without assigning any reason” and adding the words “and shall furnish the applicant with the reasons for such refusal” at the end of the subsection.

Amendment of
section 91A of
Cap. 472.

4. Section 91A of the Customs and Excise Act is amended in subsection (1A) by inserting the words “or wooden or metallic containers” immediately after the word “bottles”.

Amendment of
section 92 of
Cap. 472.

5. Section 92 of the Customs and Excise Act is amended in subsection (1) by deleting the words “without assigning any reason” and adding the words “and shall furnish the applicant with the reasons for such refusal” at the end of the subsection.

Insertion of new
section 117A in
Cap. 472.

6. The Customs and Excise Act is amended by inserting the following new section immediately after section 117—

Railway
development
levy.

117A. (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 1.5 percent 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) The purpose of the levy shall be to provide funds for construction of a standard gauge railway network in order to facilitate the transportation of goods.

(4) The Cabinet Secretary shall, in regulations, establish a railway development levy fund with 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 Financial Management Act, 2012 and the regulations made under that Act.

Amendment to
Part III of the
Fifth Schedule
to Cap. 472.

7. The Fifth Schedule to the Customs and Excise Act is amended in Part III—

(a) by deleting the words “financial service providers” appearing in item 7 and substituting therefor the words “financial institutions”;

(b) by inserting the following new paragraph immediately after paragraph 8—

9. For the purposes of items 7 and 8—

“financial institutions” means —

(a) a person licensed under—

- Cap 488. (i) the Banking Act;
- Cap 487. (ii) the Insurance Act;
- Cap 491. (iii) the Central Bank of Kenya Act,
or
- (iv) the Micro Finance Act; 2006;

No.14/2008 (b) a Sacco society registered under the Sacco Societies Act, 2008; or

Cap. 493B (c) the Kenya Post Office Savings Bank established under the Kenya Post Office Savings Bank Act.

“other fees” includes any fees, charges or commissions charged by financial institutions, but does not include interest.

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Amendment of
section 137 of Cap.
472.

8. Section 137 of the Customs and Excise Act is amended by —

- (a) deleting the proviso to subsection (1);
- (b) inserting the following new subsections immediately after subsection (2)—

“(3) The duty on money transfer services shall be charged at the rate in force when the service is provided and shall be collected and paid by the cellular phone service providers, banks, money transfer agencies and other financial institutions.

(4) The duty on other fees charged by financial institutions shall be charged at the rate in force when the fee is being charged and shall be collected and paid by the financial institutions.

(5) The Commissioner may permit the payment of tax under subsections (1), (2), (3) and (4) to be deferred to a date not later than the twentieth day of the month following that on which then it becomes due”;

- (c) renumbering subsection (3) as subsection (6).

PART III—INCOME TAX

Amendment to
section 2 of Cap 470.

9. Section 2 of the Income Tax Act is amended in subsection (1)—

- (a) by inserting the words “or an agreement for the exchange of tax information under section 41A” at the end of the definition of “specified arrangement”;
- (b) by inserting the following new definitions in proper alphabetical sequence—

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“oil company” means a petroleum company within the meaning of the Ninth Schedule;

Cap. 131.

“winnings” has the meaning assigned to it in the Betting, Lotteries and Gaming Act.

10. Section 5 of the Income Tax Act is amended in subsection (2) by deleting paragraph (f) and substituting therefor the following new paragraph -

Amendment to section 5 of Cap 470.

- (f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants:

Provided that this paragraph shall not apply where such an amount is paid -

- (i) to a registered or unregistered pension scheme, pension fund, or individual retirement fund; or
- (ii) for group life policy cover, unless such a cover confers a benefit to the employee or any of his dependants.

11. Section 10 of the Income Tax Act is amended by inserting the following new paragraph immediately after paragraph (f) -

Amendment to section 10 of Cap 470.

“(g) winnings from betting and gaming”.

12. Section 19A of the Income Tax Act is amended in subsection (1) by deleting the expression “section 86” appearing and substituting therefor with the expression “section 92”.

Amendment to section 19A of Cap 470.

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Amendment to
section 25 of Cap
470.

13. Section 25 of the Income Tax Act is amended—

- (a) in subsection (1) by deleting the word “nineteen” appearing in paragraph (ii) of the proviso and substituting therefor the word “eighteen”;
- (b) in subsection (7) by deleting the word “nineteen” appearing in paragraph (a) and substituting therefor the word “eighteen”.

Amendment to
section 34 of Cap
470.

14. Section 34 of the Income Tax Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (h) –

“(i) winnings from betting and gaming”.

Amendment to
section 35 of Cap
470.

15. Section 35 of the Income Tax Act is amended –

- (a) in subsection (1), by inserting the following new paragraph immediately after paragraph (i) –

“(j) winnings from betting and gaming”.

- (b) in subsection (3), by inserting the following new paragraph immediately after paragraph (h) –

“(i) winnings from betting and gaming”.

Amendment to
section 84 of Cap
470.

16. Section 84 of the Income Tax Act is amended by deleting subsection (3) and substituting therefor the following new subsections—

(3) A person aggrieved by the refusal of the Commissioner to admit a notice of objection under subsection (2) may, on paying to the Commissioner that part of the amount of tax assessed that is not in dispute and thirty percent of the tax in dispute, and on paying any interest due under section 94, appeal against the refusal to a local committee whose decision shall be final.

(3A) An appeal under subsection (3) shall be determined within six months from the date the appeal is lodged.

(3B) If an appeal under subsection (3) is determined in favour of a taxpayer, the thirty percent of the tax in dispute paid under subsection (3) shall be refunded to the taxpayer within ninety days from the date of determination of the appeal.

17. Section 114 of the Income Tax Act is amended—

Amendment of
section 114 of Cap
470.

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

(1) The Commissioner may, where he is satisfied that a person has committed an offence under this Act, other than an offence under section 126 of this Act, in respect of which a penalty of a fine is provided, or in respect of which anything is liable to forfeiture, compound the offence and may order that person to pay such sum of money, not exceeding the amount of the fine to which he would have been liable if he had been prosecuted and convicted of the offence, as he may deem fit;

Provided that the Commissioner shall not exercise his powers under this section unless the person admits in writing that he has committed the offence and requests the Commissioner to deal with the offence under this section.

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

(2A) For the purposes of subsection (1), the Commissioner shall constitute a committee of not less than three officers to consider applications for the compounding of offences.

Amendment of
section 116 of Cap
470.

18. Section 116 of the Income Tax Act is amended by renumbering the existing section as subsection (1) and inserting the following new subsection —

(2) A person convicted of an offence under subsection (1) may be ordered by the court to make payment to the Commissioner of the whole or such part as remains unpaid of the tax assessed by the Commissioner either in addition to, or in substitution of, any other penalty.

Amendment of
section 119 of Cap
470.

19. Section 119 of the Income Tax Act is amended by—

(a) deleting the operational part and substituting therefor the following—

“(1) For the purpose of inquiring into the affairs of a person under this Act, the Commissioner or an authorized officer may, with warrant exercise all or any of the following powers, where the person has or is reasonably suspected of committing an offence under this Act-”;

(b) inserting the following new section immediately after subsection (1)—

“(1A) Notwithstanding subsection (1), the Commissioner or an authorized officer may, prior to obtaining a warrant, secure the premises for a maximum period of four days for purposes of ascertaining whether this Act is being complied with”.

Amendment of
section 124 of Cap
470.

20. Section 124 of the Income Tax Act is amended by deleting the expression “sections 114 and 123” and substituting therefor the expression “section 123”.

21. Section 125 of the Income Tax Act, is amended in subsection (4) by inserting the words "or for the exchange of information relating to income tax or taxes of a similar character", immediately after the words "tax in Kenya".

Amendment of
section 125 of Cap
470.

22. The First Schedule to the Income Tax Act is amended in paragraph 26 by deleting subparagraph (a).

Amendment to the
First Schedule to
Cap. 470.

23. Head B of the Third Schedule to the Income Tax Act is amended —

Amendment to the
Third Schedule to
Cap. 470.

(a) in paragraph 3 by inserting the following new subparagraph immediately after subparagraph (l) —

(m) in respect of winnings from betting and gaming, twenty percent;

(b) in paragraph 5 —

(i), by inserting the following new subparagraph immediately after subparagraph (i) —

(j) in respect of winnings from betting and gaming, twenty percent:

Provided that the tax so deducted shall be final.

(ii) by inserting the words "except in the case of oil companies, in respect of assignment of rights", at the end of the proviso to paragraph (k).

PART IV—MISCELLANEOUS

24. The Retirement Benefits Act is amended by inserting a new section immediately after section 5A as follows—

Insertion of a new
section 5A and 5B i
Cap. 197.

Assistance in
investigation.

5A. (1) The Authority may, where it receives a request from a regulatory body, whether established within or outside Kenya, for assistance in investigating a person specified by the regulatory body who has contravened or is contravening any legal or regulatory requirements which –

(a) are enforced or administered by that regulatory body, or

(b) relate to transactions regulated by that regulatory body,

and where it is of the opinion that the request meets the requirements of subsection (3), provide the assistance requested by exercising any of its powers under this Act or by providing such other assistance as the Authority may consider necessary.

(2) For the purposes of subsection (1), the provisions of this Act shall, with such modifications as may be necessary, apply and have effect as if the contravention of the legal or regulatory requirement referred to in subsection (1) were an offence under this Act.

(3) A regulatory body which requests for assistance under subsection (1) shall demonstrate that –

(a) it is desirable or expedient that the assistance requested should be provided in the interest of the public; or

(b) the assistance shall assist the regulatory body in the discharge and performance of its functions.

(4) The Authority shall, in determining whether the a requirements of subsection (3) have been satisfied in any particular case, take into account whether the regulatory body shall–

(a) pay the Authority any of the costs and expenses incurred in providing the assistance; and

(b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a similar request for assistance from Kenya.

(5) Nothing in this section shall be construed as limiting the powers of the Authority to co-operate or co-ordinate with any other regulatory body in the exercise of its powers under this Act, in so far as any such co-operation or co-ordination is not contrary to the objectives of this Act.

5B. (1) Where the Authority has reasonable cause to believe, either on its own motion or as a result of a complaint received from any person, that—

Authority may investigate.

(a) an offence has been committed under this Act; or

(b) a manager, custodian, trustee or an administrator may have engaged in embezzlement, fraud, misfeasance or other misconduct in connection with its regulated activity; or

(c) the manner in which a manager, custodian, trustee or an administrator has engaged or is engaging in the regulated activity is not in the interest of the person's clients or in the public interest,

the Authority shall in writing depute a suitably qualified person to conduct investigations into the matter on behalf of the Authority.

(2) An investigator appointed under subsection (1) shall require any person whom the investigator reasonably believes or suspects to be in possession or in control of any record or document which contains, or which is likely to contain, information relevant to an investigation under this section—

- (a) to produce to the investigator, within such time and at such place as the investigator may require in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation, and which is in the possession or under the control of that person;
- (b) to give an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) to attend before the investigator at the time and place specified in writing by the investigator, and to use the best of his ability under oath or affirmation answer any question relating to the matters under investigation as the investigator may put to him, and
- (d) to assist the investigator with the investigation to the best of the person's ability.

(3) A person who contravenes the provisions of subsection (2) commits an offence.

25. The Retirement Benefits Act is amended by inserting a new section immediately after section 22 as follows—

22A (1) The Authority shall, in determining whether a person is suitable to act as a trustee, manager, custodian or an administrator under this Act, consider the –

- (a) financial status or solvency of the person;
- (b) educational or other qualifications or experience of the person, having regard to the nature of the functions which, if the application is granted, the person shall perform;
- (c) status of any other licence or approval granted to the person by any financial sector regulator;
- (d) ability of the person to carry on the regulated activity competently, honestly and fairly; and
- (e) reputation, character, financial integrity and reliability –
 - (i) in the case of a natural person, of that individual; or
 - (ii) in the case of a company, of the company, its chairperson, directors, chief executive, management and all other personnel including all duly appointed agents, and any substantial shareholder of the company, if the chairperson, director, chief executive, management or the personnel are shareholders of the company.

(2) Without prejudice to the generality of subsection (1), the Authority may, in considering whether a person is fit and proper—

(a) take into account whether the person—

- (i) has contravened the provision of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty, incompetence, or malpractice by persons engaged in transacting with marketable securities;
- (ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
- (iii) has taken part in any business practice which, in the opinion of the Authority, was fraudulent prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the person's methods of conducting business; or
- (iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that person; or
- (v) has acted in such a manner as to cast doubt on the person's competence and soundness of judgment;

- (b) take into account any information in the possession of the Authority, whether provided by the applicant or not, relating to—
 - (i) any person who is to be employed by, associated with, or who shall be acting for or on behalf of, the applicant for the purposes of a regulated activity, including an agent;
 - (ii) where the applicant is a company in a group of companies—
 - (A) any other company in the same group of companies; or
 - (B) any substantial shareholder or key personnel of the company or any company referred to in subparagraph (a);
- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and
- (d) have regard to the state of affairs of any other business which the person carries on or purports to carry on.

(3) The Authority shall give a person an opportunity to be heard before determining whether a person is fit and proper for the purposes of this Act.

(4) For the purposes of this section, "group of companies" means any two or more companies one of which is the holding company of the others.

Amendment to section 59 of Cap.197. **26.** Section 59 of the Retirement Benefits Act is amended in the proviso by inserting the words "payment of retirement benefits" immediately after the words "in respect of".

Amendment to section 2 of Cap.488. **27.** Section 2 of the Banking Act is amended in subsection (1) –

(a) by inserting the words "or sub-contracted by such entity" immediately after the words "approved by the Central Bank" appearing in the definition of the word "agency";

(b) by deleting the words "in Kenya" appearing in the definition of the expression "place of business";

(c) by inserting the words "or outside" immediately before the word "Kenya" appearing in the definition of the words "total deposit liabilities".

Amendment Section 31 of Cap. 488. **28.** Section 31 of the Banking Act is amended by deleting subsection (5) and substituting therefor the following new subsection–

(5) No duty to which the Central Bank, Kenya Deposit Insurance Corporation, a credit reference bureau, an institution licensed under this Act, or the Microfinance Act or their respective officers may be subject, shall be breached by reason of the disclosure, in good faith, of any information under subsection (2), to or by, as the case may be –

- (a) the Central Bank;
- (b) the Kenya Deposit Insurance Corporation;
- (c) an institution licensed under this Act or the Microfinance Act;
- (d) a credit reference bureau established under subsection (4);
- (e) any person carrying out an inspection under section 32; or
- (f) any person, authority, agency or entity referred to in subsection (3)(a) or any other person or authority which may be authorized under any written law or otherwise to share information,

in the course of the performance of their duties and no action shall lie against the Central Bank, the Kenya Deposit Insurance Corporation, a credit reference bureau, an institution licensed under this Act or the Microfinance Act, 2006 or any of their respective officers on account of such disclosure.

29. The Banking Act is amended by repealing section 55 and replacing it with the following new section –

Repeal and
replacement section
55 of Cap. 488.

Regulations.

55. (1) The Central Bank may make regulations generally for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Central Bank may, in regulations, prescribe penalties to be paid by institutions, credit reference bureaus (or any other person) that fail or refuse to comply with any directions of the Central Bank under this Act or Prudential Guidelines, which shall not exceed five million Kenya shillings in the case of an institution or credit reference bureau, or two hundred thousand shillings in the case of a natural person, and may prescribe additional penalties not exceeding twenty thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

Amendment to
Schedule of
Cap 493A.

30. The Schedule to the East African Development Bank Act is amended—

(a) in Article 24, by inserting the following new paragraph immediately after paragraph 4 –

(5) The Bank shall be accorded, in the territories of the Member States, a creditor status no less than that accorded to the International Monetary Fund, the International Bank of Reconstruction and Development, the International Development Association, the African Development Bank and the African Development Fund.

(b) by deleting Article 25 and renumbering –

- (i) Articles 43 to 50 as Articles 42 to 49 respectively; and
- (ii) Article 52 as Article 51.

(c) in the renumbered Article 44, by deleting paragraph (1) and substituting therefor the following new paragraph—

(1) The Bank shall enjoy immunity from every form of legal process except in any case where it has expressly waived its immunity in writing, when it may be sued in a court of competent jurisdiction in a Member State in which the Bank has an office, and has appointed an agent for the purpose of accepting service or notice of process. It is however understood that no waiver of immunity shall be implied or extend to any measure of execution.

(d) in the renumbered Article 45—

(i) by inserting the word “nationalization or execution” immediately after the word “expropriation” appearing in paragraph 1;

(ii) by inserting the following new paragraph immediately after paragraph 2 -

3. For the purpose of this Charter, the terms “property and assets of the Bank” shall include property and assets owned or held by the Bank, the Bank’s premises, and deposits and funds entrusted to the Bank in the ordinary course of fulfilling its mandate.

31. The Local Authorities Transfer Fund Act, 1998 is repealed.

Repeal of No. 8 of 1998.

32. Section 31 of the Alcoholic Drinks Control Act, 2010 is amended in subsection (2)(b) by inserting the words “or metallic containers” immediately after the word “bottles”.

Amendment to section 31 of No. 4 of 2010.

33. The Prevention of Terrorism Act, 2012 is amended by repealing section 5 and replacing it with the following new section—

Repeal and replacement of section 5 of No. 30 of 2012.

Collection or
provision of
property and
services for
commission
of terrorist
acts.

5. (1) A person who, directly or indirectly, collects, attempts to collect, provides, attempts to provide or invites a person to provide or make available any property, funds or a service intending, knowing or having reasonable grounds to believe that such property, funds or service shall be used –

(a) for the commission of, or facilitating the commission of a terrorist act or any other act which constitutes an offence within the scope of, and as defined in any of the treaties listed in the annex to the 1999 International Convention for the Suppression of the Financing of Terrorism;

(b) by a terrorist group for any purpose;

(c) by any natural person, for any purpose, who –

(i) commits, or attempts to commit, by any means, directly or indirectly, unlawfully and willfully, acts within the scope of paragraph (a);

(ii) participates as an accomplice in acts within the scope of paragraph (a);

(iii) organizes or directs others to commit acts within the scope of paragraph (a); or

- (iv) contributes to the commission of acts within the scope of paragraph (a) by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the commission of acts within the scope of paragraph (a), or with the knowledge of the intention of the group to commit acts within the scope of paragraph (a),

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

(2) The offences under this section shall be deemed to be committed irrespective of any occurrence of a terrorist act or other act referred to in subsection(1)(a) or whether the funds have actually been used to commit such act.