



**KENYA INTERNATIONAL FREIGHT AND  
WAREHOUSING ASSOCIATION  
(KIFWA)**

**THE PROPOSED KENYA CUSTOMS AGENTS AND  
FREIGHT FORWARDERS BILL 2020**

**DRAFT**

**2020**



The Kenya International Freight and Warehousing Association (KIFWA) is the sole representative of custom agents, freight forwarders and warehousing operators in Kenya. It is responsible for championing common interests of its members and promoting high standards of service to clients within the freight logistics industry in Kenya. KIFWA is a member of FEAFFA in Kenya.

KIFWA partnered with FEAFFA and other industry stakeholders to draft the Kenya Customs Agents and Freight Forwarders Management bill, 2020 to regulate all the operations of customs agents and freight forwarders in the republic of Kenya. Once enacted into law, the bill will enhance professionalism in service delivery, enhance compliance to existing regulations, protect industry players, elimination of rogue agents among others. As a result, the industry will experience efficiency in cargo clearance, reduced delays at Ports, improved cargo flow, revenue collection ultimately lowering cost of doing in Kenya.



The Federation of East African Freight Forwarders Associations (FEAFFA) is a regional private sector apex body of the Customs Clearing and Freight Forwarding industry in East Africa. It aims at promoting a professional and compliant freight logistics industry for trade facilitation and regional economic growth. FEAFFA members are drawn from the national associations of customs agents and freight forwarders in the EAC region and they include: Association Burundaise des Agences en Douane et Transitaires (ABADT), Kenya International Freight & Warehousing Association (KIFWA), Rwanda Freight Forwarders Association (RWAFFA), Tanzania Freight Forwarders Association (TAFFA), Uganda Freight Forwarders Association (UFFA) and Zanzibar Freight Forwarders Bureau (ZFB).

FEAFFA strives to address the challenges experienced by its members through capacity building and other interventions which include supporting the self-regulation of customs agents and freight forwarders in East African region.

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## **FOREWORD**

Customs agents and freight forwarders form a critical link in the logistics chain as intermediaries between the Customs Authority, importers, exporters, shipping companies, warehouse operators and transporters, as they handle all goods entering or leaving an international space. They are licensed by the customs service department to provide declaration or clearing services on behalf of the Commissioner of customs to an individual or company. The freight forwarders are responsible for ensuring that goods are delivered to their destination in good condition and in good time while at the same time complying with customs and statutory requirements.

The freight forwarding industry together with other development partners have been championing for a fully professional and compliant sector through a regional capacity building (the East Africa Customs and Freight Forwarding Practicing Certificate - EACFFPC, a code of conduct, standard trading conditions and now self-regulation. Success of these efforts has been slowed by lack of an allow encompassing law. The industry together with its partners have thus invested in establishing a regulatory framework that addresses both business and professional aspects of the freight forwarding trade.

The East Africa Community (EAC) Sectoral Council on Trade, Industry, Finance and Investment recommended that Member States should develop national laws to provide a framework for accreditation and self-regulation of customs clearing and forwarding agents. The recommendation was made based on a need to promote transparency, enhance professionalism and develop the capacity of agents within the region.

Following the recommendation, the Federation of East African Freight Forwarders Associations (FEAFFA) in collaboration with development partners and with the input of East African Revenue Authorities (EARAs) and the EAC Directorate of Customs, developed the Model Customs Agents and Freight Forwarders Management Bill to guide partner states in drafting their national laws.

The drafting of the Kenya Customs Agents and Freight Forwarders Bill (KCAFFB), 2020 is Kenya's version of the regional bill. It is an important step in the journey towards attaining full accreditation and self-regulation of the customs clearing and freight forwarding industry in the Republic of Kenya. The proposed bill is not taking away any authority from government agencies but is rather making industry stakeholders accountable to all parties in the supply chain. Kenya joins efforts going on across the entire EAC region.

The KCAFFB covers important aspects including transforming KIFWA into a professional society of customs agents and freight forwarders, establishment of a Regulatory Board to oversee professional registration of customs agents and freight forwarders, introduction of technical qualification and continuing professional development for customs agents and freight forwarders, a professional code of conduct and detailed disciplinary procedures in case of default, introduction of liability management provisions for customs agents and freight forwarders among others.

FEAFFA wishes to appreciate the effort by KIFWA through the national leadership, the bill development steering committee, the various stakeholders in government and private sector that have provided enormous input into this process.

It is our hope that this proposed bill will be among the first to be enacted into law thus provide the much-desired industry professionalism.

**Fred R. Seka**

President FEAFFA

## **Word from the KIFWA National Chairman**

The Customs clearing and freight forwarding industry in Kenya is fully committed to promoting professionalism in the freight logistics sector in Kenya. KIFWA in partnership with FEAFFA, the Kenya Revenue Authority (KRA) and other industry stakeholders in Kenya and the EAC region have been equipping customs agents and freight forwarders with knowledge necessary for improved service delivery.

The Kenyan government on the other hand, through its relevant agencies and departments has undertaken various positive measures to facilitate import-export trade. The introduction of the national single window system by KenTrade, migration from Simba system to the Integrated Customs Management System (iCMS) by KRA, reduction in the number of agencies at the ports are among the key notable initiatives the government has taken to enhance the faster movement of goods to and from the ports.

However, KIFWA believes that there is need for the industry itself to clean up in order to take advantage of these developments. It is for this reason that the association with support from FEAFFA and other stakeholders are pushing for the self-regulation of customs agents and freight forwarders in Kenya. The idea is to streamline all the operations of the customs agents and freight forwarders in the country by enacting a legislation.

It is KIFWA's belief that this bill will entrench professionalism in service delivery through introduction of the Continuing Professional Development (CPD), handle member disputes, formation of a database of professionals among others. The bill also intends to protect consumers, shippers, government agencies and CFAs.

A committee was established to spearhead drafting of the bill. The committee met severally and engaged various stakeholders for their views. The leadership of KIFWA is thankful to the following government agencies that contributed to this proposed bill; The Kenya Airports Authority (KAA), Kenya Maritime Authority (KMA), Kenya Trade Network Agency (KENTRADE), Kenya Revenue Authority (KRA), Kenya Ports Authority (KPA). We particularly thank the Kenya revenue authority for its support to the process of professionalizing the industry though its initial commitment during the national consultations when the regional model customs agents and freight forwarders management bill were done. This inspired us and gave us the strength to soldier on until this moment where we are.

We wish to appreciate others private sector associations that participated in the development of this proposed bill. Key among them were

- The Kenya Private Sector Alliance (KEPSA)
- Shippers Council of East Africa (SCEA)
- Kenya Ship Agents Association (KSAA)
- Kenya School of Revenue Administration (KESRA)
- Kenya Association of Manufacturers (KAM)
- Nairobi Importers and Small Traders Association (NISTA)
- The Kenya National Chamber of Commerce and Industry (KNCCI)

We wish to also thank the FEAFFA secretariat for effectively coordinating the process and the consultant Mr. James Nombi for guiding the process.

The membership of KIFWA for embracing the concept of self-regulation. Your views during the various meetings were instrumental in shaping this document.

KIFWA will continue engaging with other government agencies, the ministries of Transport and Treasury, parliament and the general public for deliberation and passage of this bill into law.

It is our sincere hope that this bill will see the light of day for all to enjoy professional freight logistics services in this great nation of Kenya.

**Roy Francis Mwanthi**

National Chairman

KIFWA

## Acknowledgements

This document was developed by the technical steering committee members with guidance of the consultant Mr. James Nombi. The steering committee comprised of KIFWA and FEAFFA representatives as nominated by the leadership.

### The Technical Steering Committee

| Name              | Title                         | Organization |
|-------------------|-------------------------------|--------------|
| Roy F. Mwanthi    | National Chairperson          | KIFWA        |
| Elias R. Baluku   | Ag. Executive Director        | FEAFFA       |
| Fredrick Aloo     | Secretary General Nairobi     | KIFWA        |
| Christine Mukangi | Treasurer Mombasa             | KIFWA        |
| Wycliffe Wanda    | Executive Officer Nairobi     | KIFWA        |
| Andrew Onionga    | IT and Communications Officer | FEAFFA       |

### KIFWA National Board 2019/2020

| Name              | Title             |
|-------------------|-------------------|
| Roy F. Mwanthi    | Chairman          |
| Levy Kinoti       | Vice Chairman     |
| Charles Kariuki   | Secretary General |
| Christine Mukangi | Treasurer         |
| Mohamed Ramadhan  | Member            |
| Madrine Wangechi  | Member            |
| Abud Jamal        | Member            |
| Fredrick Aloo     | Member            |

*Arrangement of Clauses*

*Clause.*

**Part I—Preliminary**

1. Short Title.
2. Interpretation.
3. Objects.
4. Guiding Principles.

**Part II—Establishment and Administration**

5. Establishment of the Society.
6. Membership of the Society.
7. Governance.
8. Headquarters.
9. Functions of the Society.
10. Powers of the Society.
11. Qualifications for election as the chairperson, vice chairperson or member of the Council.
12. Disqualifications for election as a chairperson, vice chairperson or member of the Council.
13. Term of office.
14. Vacancy.
15. Removal from office.
16. Committees of the Council.
17. Meetings of the Council.
18. Secretariat.
19. Registrar.
20. Responsibilities of the Registrar.
21. Removal of the registrar from office.
22. Remuneration.
23. Annual general meeting.

**Part III—Registration and Licensing**

24. Registration Board.
25. Functions of the Board.
26. Registration.
27. Qualifications for registration as a customs agent and freight forwarder.
28. Qualification for registration as a customs agent and freight forwarder consulting firm.
29. Application for registration as a professional or consulting customs agent and freight forwarder.
30. Application for registration of a consulting firm.
31. Restrictions on registration of foreigners.
32. Effects of registration.
33. Register.
34. Removal from the register.

35. Publication of the register.
36. Practising license.
37. Renewal of a licence.
38. Suspension and cancellation of a licence.
39. Effect of removal of name, suspension or cancellation of a licence.

#### **Part IV–Disciplinary Process**

40. Disciplinary Committee.
41. Investigations.
42. Recommendations of the Disciplinary Committee.
43. Appeal to the High Court.

#### **Part V–Protection from Liability**

44. Liability of a customs agent or freight forwarder.
45. No liability for third parties.
46. Exclusion, assessment and monetary limits of liability.
47. Assessment for compensation.
48. Limitation of liability.
49. Notice of loss.
50. Discharge of liability.
51. Lien.
52. Information relating to the goods.
53. Owner's liability.

#### **Part VI–Financial Provisions**

54. Funds of the Society.
55. Annual estimates.
56. Investments of the funds.
57. Accounts and audit.
58. Financial year.

#### **Part VII–Miscellaneous Provisions**

59. Subscription.
60. Professional code of conduct.
61. Professional misconduct.
62. Conflict of interest.
63. False registration or licensing.
64. Redress.
65. Applicable law.
66. General penalty.
67. Regulations.

#### **Part VIII–Savings and Transitional Provisions.**

68. Savings and Transitional provision.
69. Kenya international freight and warehousing association.

#### **Schedules**

First Schedule– Election of the chairperson, vice chairperson and Member

Second Schedule– Conduct of Business and Affairs of the Council.

Third Schedule–Professional code of Conduct.

# Kenya Customs Agents and Freight Forwarders Bill, 2020

## A Bill for;

**AN ACT** of Parliament to provide for a framework for the coordination, training and self-regulation of customs agents and freight forwarders, to enhance professionalism, work ethics and standards in the customs and freight forwarding industry through the registration and licensing of the customs agents and freight forwarders and for other connected purposes.

**ENACTED** by the Parliament of the Republic of Kenya as follows—

### Part I—Preliminary

Short title.                    1. This Act may be cited as the Kenya Customs Agents and Freight Forwarders Act, 2020.

Interpretation.            2. In this Act, unless the context otherwise requires—

"Board" means the Customs Agents and Freight Forwarders Registration Board established under section 24;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to Treasury;

"Council" means the Kenya Customs Agents and Freight Forwarders Council established under section 7;

"chairperson" means the chairperson of the Council elected under paragraph 7(1)(a);

"customs agent" includes an individual person or firm registered under this Act, to provide services in connection with documentation, transportation and clearance of imports and exports of goods;

"freight" means goods transported either by truck, train, ship, or aircraft;

"freight forwarder" includes an individual person or firm registered under this Act to provide services relating to the carriage, consolidation, warehousing, handling, packing or distribution of goods;

"Freight forwarding services" means services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the goods for official purposes, procuring insurance of the goods and collecting or procuring payment or documents relating to the goods;

"Gazette" means the Kenya Gazette published with the authority of

the national government, or a supplement to the Kenya gazette;

"goods" includes articles, wares, merchandise, livestock, and currency, and, where any such goods are sold under this Act, the proceeds of such sale;

"industry" means the freight logistics industry comprising of various stakeholders that does custom documentation, transportation, warehousing, and delivers goods or any other related service, from the point of origin to the point of destination;

"practising license" means a licence issued by the Board under section 36 to practice as a customs agent and freight forwarder;

"licensee" means a person who has been licensed under this Act, to practice as a customs agent and freight forwarder;

"owner" in respect of—

- (a) an aircraft, ship, train or truck, includes, every person acting as agent for the owner, or who receives freight or other charges payable in respect of, or who is in possession or control of, the aircraft, ship, train or truck; or
- (b) goods, includes, any person other than an officer acting in his or her official capacity being or holding himself or herself out to be the owner, importer, exporter, consignee, agent, or the person in possession of, or beneficially interested in, or having control of, or power of disposition over the goods;

"Registrar" means the registrar of the Council appointed under section 19; and

"Society" means the society established under section 5.

Objects.

3. The object of the Act is to provide for—
  - (a) a framework for self-regulation of the freight logistics, to ensure an efficient and effective service delivery in the industry;
  - (b) the registration and licensing of customs agents and freight forwarders;
  - (c) a framework for the coordination of customs agents and freight management; and
  - (d) a professionalised customs and freight forwarding industry.

Guiding principles.

4. The Society shall observe and uphold the national values and principles of governance set out in Article 10 and the values and principles as set out in Article 232(1) of the Constitution, international best practices and for the avoidance of doubt, shall—
  - (a) strive for the highest attainable standards of professionalism and discipline;
  - (b) promote a sustainable development of the customs agents and freight forwarding industry;
  - (c) ensure reasonable access to its services in all parts of the Republic; and
  - (d) promote and practice transparency in the management of customs agency services and freight movement.

Establishment of the Society.

#### **Part II—Establishment and Administration**

5. (1) There is established the Customs Agents and Freight Forwarders Society of Kenya.
  - (2) The Society shall be a body corporate with perpetual succession and common seal, and shall in its corporate name be, capable of—
    - (a) suing and being sued;
    - (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
    - (c) entering into contracts; and
    - (d) doing or performing such things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Membership of the Society.

6. (1) The Society shall consist of the registered and the honorary members.
  - (2) A person who is registered under this Act as a customs agent and freight forwarder, shall be a member of the Society.
  - (3) Where the Council considers that a person, not being a registered member of the Society, has rendered exceptional services to the Society or the customs agent and freight forwarders' profession, the Council may, recommend the person to the Society, to become an honorary member of the Society.
  - (4) The honorary member referred to under subsection (3), may participate in the Society's activities, but shall not vote in the election of the chairperson, vice chairperson or member of the Council.

Governance.

7. (1) The Society shall be governed by a Council to be known as, the customs agents and freight forwarders' management Council, consisting of—
- (a) a chairperson elected by the registered members of the Society;
  - (b) a vice chairperson elected by the registered members of the Society;
  - (c) two persons representing the customs agents and freight forwarders who ordinarily carryout their business in Nairobi;
  - (d) two persons representing the customs agents and freight forwarders who ordinarily carryout their business in Mombasa;
  - (e) three other representatives of the general membership of the Society, representing the customs agents and freight forwarders who ordinarily carryout their business in other parts of the Republic other than in Nairobi and Mombasa; and
  - (f) the Registrar who shall be an *ex officio* member and Secretary to the Council.

(2) The chairperson, vice chairperson and members of the Council shall be elected by a simple majority of the members of the Society voting at an annual general meeting, in the manner prescribed in the First Schedule.

Headquarters.

8. The headquarter of the Society shall be in Nairobi but the Council may subject to Article 6(3) of the Constitution, ensure access to its services in other parts of the Republic.

Functions of the Society.

9. The Society shall be responsible for the—
- (a) provision of advisory services on customs agents and freight forwarding industry, to the Cabinet Secretary;
  - (b) provision of strategic direction through the formulation of policies on customs agents and freight forwarding;
  - (c) development, supervision and enforcement of the professional code of conduct;
  - (d) setting of standards for training and continuing professional development of customs agents and freight forwarders;
  - (e) determination of the minimum fees chargeable for the provision of services under this Act;

- (f) maintenance and publication of the register of practitioners;
- (g) dissemination of relevant information to customs agents and freight forwarders practitioners; and
- (h) settling of disputes involving the customs agents and freight forwarders and other stakeholders, except for tax related disputes.

Powers of the Society.

**10.** (1) The Society shall have the power necessary for the performance of its functions under this Act or any other written law.

(2) Despite the generalities of subsection (1), the Society shall have the power to—

- (a) partner with the public and private sector organization in the financing, development, operation, or maintenance of infrastructure or development projects of the Society through concession or other contractual arrangements pursuant to the provisions of the Public-Private Partnership Act;
- (b) enter into partnership with public and private bodies as it deems fit with regard to the establishment, implementation, monitoring and financing of training or employment programmes;
- (c) receive or administer funds donated or entrusted to the Society by any agency or organization for any purpose relating to the training or employment of persons;
- (d) invest any surplus or profit for the performance of its functions under this Act; and
- (e) undertake any task or enter into any transaction which, in the opinion of the Council, is necessary to ensure the proper performance of its functions under this Act.

No. 15 of 2003

Qualifications for election as the chairperson, vice chairperson or member of the Council.

**11.** (1) A person is qualified to contest for election as the chairperson or vice chairperson of the Council, if that person—

- (a) holds at least a Bachelors degree from a university recognized in Kenya;
- (b) has been an active member of the Society for at least ten years;
- (c) has had a distinguished career in the field of customs agents and freight forwarding; and
- (d) meets the requirements of Chapter Six of the Constitution and the Leadership and Integrity Act.

Cap. 182.

(2) A person is qualified to contest for election as a member of the Council, if that person—

- (a) holds at least a certificate in customs agents and freight forwarding from an institution recognised in Kenya;
- (b) has been an active member of the Society for at least five years;
- (c) has had a distinguished career in the field of customs agents and freight forwarding; and
- (d) meets the requirements of Chapter Six of the Constitution and the Leadership and Integrity Act.

Disqualifications for election as a chairperson, vice chairperson or member of the Council.

**12.** A person is disqualified from contesting for election as a chairperson, vice chairperson or member of the Council, if that person—

- (a) is a member of a governing body of a political party;
- (b) is an undischarged bankrupt;
- (c) has been convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (d) has been removed from any public office for contravening the provisions of the Constitution or any other written law;
- (e) is a member of Parliament or county Assembly; or
- (f) has not met his or her legal obligations relating to tax.

Term of office.

**13.** (1) The chairperson shall hold office for a single term of three years.

(2) The vice chairperson and member of the Council shall hold office for a term of three years and may be eligible to contest for election for a single further and final term of three years on the expiry of their term.

Vacancy.

**14.** The office of the chairperson, vice chairperson or member of the Council becomes vacant if the holder—

- (a) dies;
- (b) resigns from office;
- (c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
- (d) term of office under section 13, expires; or

- No 4 of 2015. (e) is removed from office in accordance with the Article 47 of the Constitution and the Fair Administrative Action Act.
- Removal from office. **15.** (1) The chairperson, vice chairperson or member of the Council, may be removed from office at a special or general meeting of the Society, by a vote of at least two thirds of all members present and eligible to vote on grounds of—
- (a) gross misconduct;
  - (b) inability to perform the functions of his or her office by reason of mental or physical infirmity;
  - (c) bankruptcy; or
  - (d) failure to attend at least four consecutive Council meetings, without any reasonable ground.
- (2) The removal of the chairperson, vice chairperson or member from office, shall be subject to Article 47 of the Constitution and the Fair Administrative Action Act.
- Committees of the Council. **16.** (1) The Council may, for the effective discharge of the functions of the Society under this Act, establish committees.
- (2) The Council may co-opt into the membership of a committee established under subsection (1), any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Society.
- (3) A person co-opted under subsection (2), may participate in the deliberations of the Council but shall have no right to vote at any meeting of the Council.
- Meetings of the Council. **17.** (1) The meetings of the Council shall be as prescribed in the Second Schedule to this Act.
- (2) Despite subsection (1), the Council may regulate its own procedure.
- Secretariat. **18.** (1) There shall be a Secretariat of the Council, comprising of—
- (a) the Registrar; and
  - (b) such professional, technical and administrative officers and support staff, as may be appointed by the Council for the effective discharge of its functions under this Act.
- (2) The Council shall, in the appointment of its employees, ensure—
- (a) equalization of opportunity for persons with disabilities and the youth;

- (b) that not more than two thirds of its staff are of the same gender; and
- (c) that the appointment reflect ethnic and regional diversity of the people of Kenya.

Registrar.

**19.** (1) The Council shall, through an open, transparent and competitive process, recruit a suitably qualified person to be the Registrar of the Society.

(2) The Registrar shall be appointed by the Council on such terms and conditions specified in the instrument of the appointment.

(3) A person is qualified for appointment as the Registrar of the Society, if the person—

- (a) is a citizen of Kenya;
- (b) holds a post graduate degree in Business Administration or its equivalent, from a university recognized in Kenya;
- (c) has had at least five years proven experience on customs agents and freight forwarding at a management level; and
- (d) meets the requirements of Chapter Six of the Constitution and the Leadership and Integrity Act.

(4) The Registrar shall serve on such terms and conditions as the Council may determine.

Responsibilities of the Registrar.

**20.** (1) The Registrar shall be—

- (a) the Secretary and chief executive officer of the Society;
- (b) the accounting officer of the Council; and
- (c) responsible for;
  - (i) the day-to-day administration and management of the affairs of the Society;
  - (ii) carrying into effect of the decisions of the Council;
  - (iii) the coordination and supervision of the staff of the Council;
  - (iv) maintaining the register of persons registered in accordance with this Act;
  - (v) signing, issuing, renewing and cancellation of licenses of registration and licences as may be directed by the Council;

- (vi) keeping all documents and records including records of assets of the Society;
- (vii) the preparation of documents due for gazettelement as may be directed by the Council;
- (viii) taking and keeping of minutes of the Council meetings;
- (ix) enforcing the decisions of the Council;
- (x) keeping of the seal of the Council in such custody as the Council may direct; and
- (xi) any other duty as be assigned by the Council.

(2) The Registrar shall, in the performance of the functions under this Act, be responsible to the Council.

Removal of the Registrar from office.

- 21.** (1) The Registrar may be removed from office by the Council in accordance with the terms and condition of service, for—
- (a) inability to perform functions of the office arising out of physical or mental infirmity;
  - (b) gross misconduct;
  - (c) incompetence or negligence of duty;
  - (d) violation of the Constitution, the Leadership and Integrity Act and any other written law; or
  - (e) any other grounds specified in the terms and conditions of service.

(2) Where a question for the removal of the Registrar under subsection (1) arises, the Council shall act in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution and the Fair Administrative Action Act.

Remuneration.

- 22.** (1) The chairperson, vice chairperson or member of the Council shall be paid such allowances as shall be determined by the Council with the approval of the Society.
- (2) The staff of the Council shall be paid such salary or allowances as shall be determined by the Council.

Annual general meeting.

- 23.** (1) The annual general meetings of the Society shall be convened by the Registrar in consultation with the chairperson and shall consist of at least twenty five percent of all the registered members of the Society.

Registration  
Board.

(2) Without prejudice to the generalities of subsection (1), the Registrar in consultation with the chairperson, may convene a meeting at such times and places for purposes of discussing special matters of interest affecting the Society.

### **Part III—Registration and Licensing**

**24.** (1) There is established a Board to be known as the Kenya Customs agents and freight forwarders Registration Board.

(2) The Board shall consist of—

- (a) a person nominated by the Council, who shall be the chairperson of the Board;
- (b) the Commissioner General of the Kenya Revenue Authority or a representative nominated in writing by the Commissioner General;
- (c) a person from a public entity nominated by the Principal Secretary, Ministry of Transport;
- (d) a person nominated by the Kenya National Chamber of Commerce;
- (e) a representative of the cargo owners nominated by the Cargo Owners Association; and
- (f) the Registrar who shall be an *ex officio* member and Secretary to the Board.

(3) The names of the persons under sub section (2), shall, on being nominated, be forwarded to the Cabinet Secretary, for formal appointment.

(4) The quorum of the Board meetings shall be three members.

(5) Despite subsection (4), the Council may in consultation with the Cabinet Secretary, make Regulations on the procedure for the conduct of the business and affairs of the Board.

(6) A person appointed under paragraph (2) (a), (c), (d) and (e), shall serve for a term of three years, and may be eligible for reappointment for a single further and final term of three years.

(7) The Council shall second such number of staff to the Board to assist it effectively discharge its functions under this Act.

(8) The Cabinet Secretary shall within seven days of receipt of the names of the chairperson and members of the Board appointed under sub section (2), cause the names to be published in the

Gazette.

Functions of the Board.

- 25.** The Board shall be responsible for the—
- (a) registration and issuance of a practising license to the customs agents and freight forwarders under this Act;
  - (b) conduct of a professional examination, in collaboration with the relevant state agency, to the customs agents and freight forwarders for the purposes of registration under this Act; and
  - (c) carrying out inquiries on matters pertaining to registration of customs agents and freight forwarders under this Act.

Registration.

- 26.** (1) The Registrar shall, so far as is practicable, bring every application before the Board for consideration at its meeting after receipt of the application.
- (2) Where a person has complied with the provisions of this Act and has been accepted by the Board as being eligible for registration, that person shall be registered.
- (3) The decision of the Board on an application for registration shall be communicated to the applicant by the Registrar either by a letter or email sent to the address stated in the application within twenty one days from the date of the decision of the Board.
- (4) After the name of a person is entered in the register, the Board shall issue the person with a practising license that has been sealed with the seal of the Society.
- (5) The Board may issue such other identification documents that are valid for a specified period to a person registered under this Act.

Qualifications for registration as a customs agent and freight forwarder.

- 27.** A person is qualified to practise as a customs agent and freight forwarder under this Act, if that person—
- (a) is a registered member of the Society;
  - (b) possess professional qualifications as may be recognised by the Board;
  - (c) has obtained practical experience in customs clearing and freight forwarding as may be prescribed under this Act; and
  - (d) has successfully passed a continuing professional development examination as may be conducted by the Board.

Qualification for registration as a customs agent and

- 28.** (1) A firm is qualified for registration as a customs agent and freight forwarding firm, if the firm—

freight forwarding firm.

Act no. 17 of 2015.

- (a) has a certificate of registration of a business name or a certificate of incorporation issued under the Companies Act;
- (b) has at least one Director, principal shareholder or manager who is registered by the Board as a customs agent and freight forwarder;
- (c) has at least one of its personnel, if any, who is registered by the Board as customs agents and freight forwarder; and
- (d) fulfils any other condition as may be stipulated by the Board.

(2) The Board may register a customs agent and freight forwarding firm in different categories and disciplines based on a criterion as shall be established by the Board.

Application for registration as a professional customs agent and freight forwarder.

- 29.** (1) A person who meets the requirements under section 27 of this Act, may apply to the Registrar for registration as a professional customs agent and freight forwarder.
- (2) The application referred to under subsection (1), shall be in the prescribed manner, accompanied with—
- (a) the certified copies of the licenses;
  - (b) such registration fees as may be determined by the Council; and
  - (c) any other document as may be necessary to prove qualification for registration.

Application for registration of a customs agents and freight forwarding firm.

- 30.** (1) A person who wishes to register as a customs agent and freight forwarding firm under section 28 of this Act, may apply to the Registrar in a prescribed manner and on payment of a prescribed fee, to be registered under this Act.
- (2) An application made under subsection (1) shall—
- (a) be accompanied with such documents as may be necessary to prove qualification for registration;
  - (b) provide the firm's profile of activities;
  - (c) provide curriculum vitae of partners or Directors; and
  - (d) be accompanied with a written commitment that the Board shall be allowed to verify the suitability of the firm for the purposes of registration.
- (3) The Board may require the applicant to furnish such evidence of eligibility for registration as it may consider necessary and may require the applicant to appear before it for an interview.

Restrictions on registration of foreigners.

- 31.** A foreign person or firm may be registered as a professional customs agent and freight forwarder or firm if—
- (a) in the case of a natural person;
    - (i) possesses the necessary qualifications recognized for the practice as a professional customs agent and freight forwarder under this Act;
    - (ii) holds a valid working visa or permit; and
    - (iii) is a resident of Kenya.
  - (b) in the case of a firm;
    - (i) is incorporated in Kenya in accordance to the provisions of the Companies Act; and
    - (ii) at least one of the Directors and staff possesses the necessary qualifications recognized for the practice as a professional customs agent and freight forwarder under this Act.

Effects of registration.

- 32.** Every person whose name has been entered in the register as a professional customs agents and freight forwarder, shall, for as long as his or her name remains in the register, be entitled to adopt and use the style and title ‘customs agent and freight forwarder’ or ‘consulting customs agent and freight forwarder’.

Register.

- 33.** (1) The Registrar shall keep and maintain a register of all registered persons or firms under this Act in such manner as the Council may prescribe.
- (2) The register shall show the following details against the name of a person or firm whose name is entered in the register—
- (a) date of registration;
  - (b) registration number;
  - (c) address;
  - (d) qualifications;
  - (e) category;
  - (f) nationality; and
  - (g) such other particulars as the Council may, from time to time, prescribe.
- (3) Any person may inspect the register and obtain from the Registrar a copy of or an extract of the Register, on payment of a prescribed fee.

Removal from the register.

- 34.** (1) The Registrar shall on recommendations of the Council, remove from the register, any person whose name has been fraudulently

entered, or any person—

- (a) found to be of unsound mind or a firm which has ceased to practise or has wound up by a court order;
- (b) convicted of an offence under this Act or any other law and sentenced to imprisonment for term exceeding six months;
- (c) whose name the Council has directed that it should be removed from the register for breach of the provisions of this Act;
- (d) declared bankrupt; or
- (e) who has failed to satisfy the requirements for continuing professional development programme for the time being in force.

(2) Where the Registrar establishes that an entry has been erroneously or incorrectly entered in the register, the Registrar may correct the error and notify the affected person or firm of the changes.

Publication of the register.

**35.** (1) The Registrar shall cause to be published in either electronic or print media, not later than the 30th day of April of every year, particulars of registered and validly licensed persons or firms and their categories of registration.

(2) A publication made under this section shall be *prima facie* evidence that a person or firm named therein is registered under this Act and the deletion from the register of the name of any person or firm notified by such publication, or the absence of the name of any person or firm from such publication, shall be *prima facie* evidence that such person or firm is not so registered.

Practising license.

**36.** (1) A person shall not engage in the practice as a customs clearing and freight forwarder unless, that person has been issued with a practicing license and has complied with the requirements of this Act.

(2) A person applying for a practicing license under subsection (1), shall be required to submit an application in the prescribed form accompanied by a certificate of continuing professional development issued by the Board and pay a prescribed fee.

(3) A practicing license issued under subsection (1), shall be valid for a period of one year running from the 1st of January to the 31<sup>st</sup> of December of each year and may, upon expiry, be renewed on making an application for renewal.

(4) The Registrar shall enter into the Register the date of issuance of

a practicing licence of every person licensed under this Act.

Renewal of a licence.

**37.** (1) A practicing licence holder who meets the criteria and qualifications set out in this Act may, apply to the Board for a renewal of the licence.

(2) An application made under subsection (1), shall be accompanied with—

- (a) a declaration in a prescribed form;
- (b) licence fees for the current practicing period and at the Council's discretion, any unpaid fees, including penalties as prescribed by the Council; and
- (c) proof of fulfillment of all applicable conditions for renewal of a licence.

(3) The Board may, with sufficient cause, refuse to issue or renew a licence and shall communicate the refusal and give reasons for such refusal to the applicant within twenty-one days of making the decision.

Suspension and cancellation of a licence.

**38.** (1) The Board may suspend or cancel a licence issued under this Act where—

- (a) allegations of misconduct have been investigated and proven against a licensee;
- (b) the licensee is convicted of an offence under this Act;
- (c) a false declaration was made in an application for a licence; or
- (d) a licensee has contravened any provision of this Act.

(2) The cancellation or suspension of a license under sub section (1), shall be subject to Article 47 of the Constitution and the provisions of the Fair Administrative Action Act.

Effect of removal of name, suspension or cancellation of a licence.

**39.** A person whose name has been removed from the register or whose licence issued under this Act has been suspended or cancelled, shall not engage in the practice as a professional customs agents and freight forwarder or offer professional services as a customs agents and freight forwarder during the duration of removal of name, suspension or cancellation of the licence.

#### **Part IV—Disciplinary Process**

Disciplinary committee.

**40.** (1) There is established a Disciplinary Committee of the Society, consisting of—

- (a) a chairperson appointed by the Council from amongst

members of the Council;

- (b) a person nominated by the Council from amongst the registered members of the Society;
- (c) a person nominated by the Cargo Owners Association;
- (d) a person nominated by the Kenya Maritime Authority;
- (e) a person nominated by the Law Society of Kenya; and
- (f) the Registrar who shall be the Secretary of the Disciplinary Committee and shall have no voting right.

(2) The quorum of the disciplinary committee shall be three members.

(3) Despite subsection (2), the Disciplinary Committee may, subject to this Act, regulate its own procedure.

(4) The Disciplinary Committee shall investigate and hear any complaint against a customs agents and freight forwarder licensed in accordance with this Act.

Investigations.

**41.** The Council may on receipt of a complaint against a member of the Society or on its own motion, request the Disciplinary Committee to investigate the matter, hear and make a recommendation to the Council.

Recommendations  
of the  
Disciplinary  
Committee.

**42.** (1) On the completion of an investigations under section 41, the Disciplinary Committee shall submit to the Council a report of its investigations and recommendation.

(2) The report referred to under subsection (1), may recommend that—

- (a) no further action be taken against the member;
- (b) the member be reprimanded;
- (c) the member pays such costs to the Society, not exceeding one hundred thousand shillings, as may be determined;
- (d) the member undertakes training at his or her own cost, of such nature and duration and at such institutions as may be determined;
- (e) the member discharges his or her professional obligations under any contractual arrangement subject of the alleged misconduct;

- (f) any practising license held by the member be suspended; or
- (g) the registration of the member be cancelled and that he or she, be suspended for such period as may be specified.

(3) For purposes of this section, "member" means, a registered member of the Society.

(4) Where the Disciplinary Committee, in a report makes a recommendation under subsection (2), the Council shall inform the member concerned of the action to be taken against him or her and the effect of the recommendation of the Disciplinary Committee.

(5) A member aggrieved by a determination of the Disciplinary Committee under subsection (2), may make an application for a review of that decision, to the Council within fourteen days of the communication of such decision.

(6) The Council shall on receipt of the application under subsection (5) hear the application and make a determination within thirty days from the receipt of the application.

Appeal to the High Court.

43. A person aggrieved by the decision of the Council under sub section 42(6), may appeal to the High Court against such determination within fourteen days of being notified of the determination.

**Part V–Protection from Liability**

Liability of a customs agent or freight forwarder.

44. (1) A customs agent or freight forwarder is liable for failing to exercise due care and diligence in the performance of the freight forwarding services under this Act.

(2) A customs agent or freight forwarder who fails to exercise due care and diligence, shall be liable to compensate the owner for loss of or damage to the goods as well as for direct financial loss resulting from breach of the duty of care.

No liability for third parties.

45. (1) A customs agent or freight forwarder is not liable for acts and omissions by a third party unless the customs agent or freight forwarder has failed to exercise due care and diligence in selecting, instructing or supervising such third parties.

(2) For purposes of this section, a third party may include, a transporter, carriers, port operator, warehouse owner or cargo owner.

Exclusions, assessment, and monetary limits of liability.

46. A customs agent or freight forwarder shall not be liable for the loss of goods unless—

- (a) the lost goods were declared as valuable or dangerous goods to the customs agent or freight forwarder at the time of the conclusion of the contract; or

- (b) time was an express term of the contract and the loss of goods has been as a result of the delay on the part of the customs agent or freight forwarder.
- Assessment for compensation.      **47.** The value of the goods for purposes of compensation under this Act, shall be determined according to—
- (a) the current commodity exchange price;
  - (b) the current market price, if there is no such exchange price; or
  - (c) reference to the normal value of the goods of the same kind and quality.
- Limitation of liability.      **48.** If the customs agent or freight forwarder is liable in respect of loss following from delay, such liability shall be limited to an amount not exceeding the remuneration relating to the service giving rise to the delay.
- Notice of loss.      **49.** (1) Unless notice of loss of or damage to the goods, specifying the general nature of such loss or damage, is given in writing to the customs agent or freight forwarder by the person entitled to receive the goods when they are handed over, such handing over is *prima facie* evidence of the delivery of the goods in good order and condition.
- (2) Where such loss or damage is not apparent, the same *prima facie* effect shall apply if notice in writing is not given within six consecutive days after the day when the goods were handed over to the person entitled to receive them.
- Discharge of liability.      **50.** (1) A customs agent and freight forwarder shall, unless otherwise expressly agreed, be discharged of all liability arising under this Act after three months, unless a suit is brought after the delivery of the goods, or the date when the goods should have been delivered, or the date when failure to deliver the goods would give the consignee the right to treat the goods as lost.
- (2) Despite sub section (1), the three months period, with respect to other loss than loss of or damage to the goods, shall be counted from the time when the failure of the customs agent or freight forwarder giving right to the claim occurred.
- Lien.      **51.** A customs agent or freight forwarder shall, to the extent permitted by the applicable law, have a general lien on the goods and any documents relating thereto for any amount due at any time to the customs agent and freight forwarder from the owner including storage fees and the cost of recovering the same, and may enforce such lien in any reasonable manner which the freight forwarder may

deem fit.

Information relating to the goods.

52. The owner shall be deemed to have guaranteed to the customs agent or freight forwarder the accuracy, at the time the goods were taken in charge by the customs agent or freight forwarder, of all particulars relating to the general nature of the goods, their marks, number, weight, volume, quantity and, if applicable, to the dangerous character of the goods, as furnished by the owner.

Owners liability

53. The owner shall be liable wholly to the customs agent or freight forwarder for all loss or damage, costs, expenses and official charges resulting from the owner's inaccurate, concealment, under declaration, or incomplete information or instructions or the handing over by the owner or any person acting on the owner's behalf to the customs agent or freight forwarder, or to any other person to whom the customs agent and freight forwarder may become liable, of goods having caused death or personal injury, damage to property, environmental damage or any other type of loss.

#### **Part VI—Financial Provisions**

Funds of the Society.

54. (1) The funds of the Society shall comprise of monies—  
(a) as may accrue to or vest in the Society in the course of the exercise of its powers or the performance of its functions under this Act; or  
(b) from any other source provided for, donated or lent to the Society; or  
(c) any other funds from legitimate sources, partnerships, channeled for specific projects, contracts and advisories.

(2) All the funds donated, lent or issued to the Society under this Act shall be accounted for and appropriated in accordance with the international accounting standards and other relevant written laws.

Annual estimates.

55. (1) The Council shall within three months before the commencement of the financial year, cause to be prepared estimates of its revenue and expenditure for that financial year.

(2) The annual estimates shall make provisions for all the estimated expenditure of the Society for the financial year concerned and in particular shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Council;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Society;

- (c) the proper maintenance of buildings and grounds of the Society;
- (d) the funding of training, research and development activities of the Society;
- (e) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Society;
- (f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Council may deem appropriate.

Investments of the funds.

**56.** The Council may invest any of the Society's funds in securities in which for the time being trustees may by law invest funds or in any other securities which the Society may from time to time approve for that purpose.

Accounts and audit.

**57.** (1) The Council shall cause to be kept all proper books and records of accounts of Society's income, expenditure, assets and liabilities.

(2) Within three months from the end of the financial year, the Council shall submit to the members of the Society at an annual general meeting or special general meeting convened for that purpose, the audited accounts of the Society together with—

- (a) a statement of the income and expenditure of the Society on the last day of that year; and
- (b) a statement of the assets and liabilities of the Society on the last day of that year.

(3) The accounts of the Society shall be audited by an auditor duly appointed at the Society's annual general or special meeting.

Financial year.

**58.** The financial year of the Society shall be—

- (a) the period commencing on the day on which this Act comes into operation and ending on the 31st December next following; or
- (b) the period of twelve months commencing on the 1st of January and ending on the 31st of December of the subsequent year.

#### **Part VII—Miscellaneous Provisions**

Subscription.

**59.** (1) Subject to the provisions of this Act, every registered member of the Society shall pay the Society such annual subscription fee as may be prescribed from time to time by the Council.

(2) A honorary member shall not be liable to pay subscription fee referred to under subsection (1).

Professional code of conduct.

**60.** (1) The professional code of conduct for the customs agents and freight forwarders shall be as prescribed in the Third schedule to this Act.

(2) The code referred to under subsection (1) of the Act, shall come into operation on such date as the Council, may in the Gazette, appoint.

Professional misconduct.

**61.** A professional customs agent and freight forwarder or consulting customs agent and freight forwarder who—

(a) deliberately fails to follow the standards of conduct and practice of the customs agents and freight forwarding profession as prescribed under this Act or set by the Council;

(b) commits gross negligence in the conduct of his or her professional duties; and

(c) allows another person to practise in his or her name, where that person—

(i) is not a holder of a valid practicing licence;

(ii) is not in partnership with him or her;

(iii) takes advantage of a client by abusing a position of trust, expertise or authority;

(iv) lacks regard or concern for client's needs or rights; or

(v) shows incompetence or inability to render professional customs agents and freight forwarding services or works,

commits professional misconduct.

Conflict of interest.

**62.** (1) If any person is present at a meeting of the Council, Board or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting declare such interest and shall not, unless the Council, Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question connected to such matter.

(2) The disclosure of interest shall be recorded in the minutes of the

meeting at which it is made.

(3) The chairperson, vice chair person, member, or staff of the Council shall not transact any business or trade with the Council.

(4) A person who contravenes this section commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

False registration or licensing.

**63.** (1) A person who willingly procures or attempts to procure registration or licensing under the provisions of this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either orally or in writing, commits an offence and is liable on conviction to a fine of five hundred thousand shillings or to imprisonment for a term not exceeding two years.

(2) Where an offence under this section is committed by a legal person, that legal person shall be liable on conviction to a fine of one million shillings.

Redress.

**64.** A person aggrieved by a decision of the Council in the performance of its functions under this Act, may, within thirty days from the date of the Council's decision, make an application to the High Court.

Applicable law.

**65.** The law applicable to the mutual rights and obligations of the customs agents and freight forwarders and the owner, arising from their contractual agreement is the law chosen by them and, in the absence of a choice of law, the law governing the customs agents and freight forwarder.

General penalty.

**66.** A person who contravenes any provision of this Act to which no penalty has been prescribed commits an offence and shall on conviction, be liable to a fine not exceeding one million Shillings for an individual or two million Shillings for a legal person or imprisonment for a term not exceeding one year or to both.

Regulations.

**67.** (1) The Council may, make Regulations generally for the better carrying into effect the provisions of this Act.

(2) Despite the generality of subsection (1), the Council may, make Regulations on—

- (a) the fees payable for registration and licensing as a customs agent and freight forwarder;
- (b) minimum standard charges for custom agents and freight forwarding services;
- (c) the conduct of the business of the registry;

- (d) procedure for the registration and licensing as a customs agent and freight forwarder; and
- (e) training and continuing professional development.

**Part VIII— Savings and Transitional Provisions**

Savings and Transitional provision.

**68.** (1) The Customs agents and freight forwarders licensed under the East African Community Customs Management Act, 2004, shall, for purposes of this Act, be deemed to have been registered and licensed as members of the Society under this Act.

(2) Despite subsection (1), the customs agents and freight forwarders registered and licensed under the East African Community Customs Management Act, 2004, shall within one year after the commencement of this Act, formalise their registration with the Board.

Kenya international freight warehousing association and

**69.** (1) The Kenya international freight and warehousing association registered under the Societies Act, shall on the commencement of this Act, assume the functions of the Society established under section 5 of this Act.

Cap. 108.

(2) The officials serving under the association referred to under subsection (1), shall continue to hold office for the remainder of their term of office until the new officials of the Society are elected as prescribed under this Act.

**First Schedule**

**Election of the Chairperson, Vice chairperson and Member**

- |   |        |  |
|---|--------|--|
| Election chairperson and member.                    | of and | 1. The chairperson, vice chairperson or member shall whenever a vacancy occurs, be elected at an annual general meeting of the Society.  |
| Election.   |        | 2. (1) Whenever a vacancy occurs in the Council, the Registrar shall send out a notice within thirty days of the occurrence of such vacancy, to the members of the Society for the expression of interest in an election.<br><br>(2) On receipt of the names under subsection (1), the Registrar shall at an annual general meeting of the Society, subject the names to a secret vote.<br><br>(3) A person who receives majority of the votes under sub paragraph (2), shall pursuant to section 7 of this Act, be deemed to have been elected. |
| Temporary chairperson                               |        | 3. Despite paragraph 1, the vice chairperson, may act as a temporary chairperson, during—<br>(a) a vacancy in the office of the chairperson; or<br><br>(b) any period when the chairperson is for any reason unable to exercise and perform, the function of his or her office.  |
| Vacancy in the office of the temporary chairperson. |        | 4. The vice chairperson shall ceases to act as a chairperson on the election of another chairperson.   |
| Meetings of the Society.                            |        | 5. (1) The Society may hold an annual or special general meeting.<br><br>(2) The annual general meeting of the Society shall be held within three months at the end of each financial year.<br><br>(3) Despite paragraph 1, the Society may hold a special general meeting at anytime, on a written request made to the Council and signed by not less than one hundred members of the Society.  |
| Convening of the meeting of the Society.            |        | 6. (1) A meeting of the Society shall be convened by the Registrar in consultation with the chairperson by giving to every member of the Society, at least a fourteen day written notice—<br>(a) stating the place and time of the meeting; and<br><br>(b) indicating the business which it is proposed to transact at the meeting, which may include—<br>(i) a report by the Council covering the past year;  |

- (ii) financial statements and the auditor's report;
- (iii) election of the chairperson, vice chairperson and Council members; and
- (iv) the appointment of the auditor.

(2) The chairperson shall preside at all meetings of the Society.

(3) At a meeting of the Society at which the chairperson is not present, vice chairperson or any member appointed by the Council, may preside.

**Second Schedule**

**Conduct of Business and Affairs of the Council**

Meetings.

**1.** (1) The Council shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Registrar in consultation with the chairperson, may, on requisition in writing by at least five members, convene a special meeting of the Council at any time for the transaction of the business of the Council.

(3) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(4) The chairperson shall preside at every meeting of the Council at which he or she is present but in his or her absence, the vice chairperson or a member duly elected for that purpose, shall preside and shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(5) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or a person presiding shall have a casting vote.

Quorum.

**2.** The quorum at a meeting of the Council shall be half of the members or a greater number determined by the Council, in respect of an important matter.

Common Seal.

**3. (1)** The affixing of the common seal of the Council shall be authenticated by the signature of the chairperson and the Registrar:

(2) Despite sub paragraph (1), the chairperson or Registrar may in their absence, nominate one member to authenticate the seal of the Council on behalf of either the chairperson or the Registrar.

Contracts and instruments.

**4.** Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council for that purpose.

**Third Schedule**  
**Professional Code of Conduct**

- |                  |  |
|------------------|--|
| Citation.        | 1. This code may be cited as the Kenya Customs Agents and Freight Forwarders Professional Code of Conduct.   |
| Objectives.      | 2. The objective of this code of conduct is to provide a framework through which members shall conduct themselves in an ethical manner.  |
| Core values.     | 3. The Core values for the professional customs agents and freight forwarders registered under this Act shall be— <ul style="list-style-type: none"><li>(a) professionalism;</li><li>(b) integrity;</li><li>(c) accountability;</li><li>(d) commitment;</li><li>(e) fairness;</li><li>(f) transparency;</li><li>(g) respect; and</li><li>(h) honesty.</li></ul>  |
| Code of Conduct. | 4. In the discharge of his or her functions under this Act, each professional customs agent and freight forwarder shall— <ul style="list-style-type: none"><li>(a) offer services in the areas of their competence and experience affording full disclosure of their qualifications;</li><li>(b) act in accordance with all applicable laws and regulations governing the practice of customs agency and freight forwarders;</li><li>(c) be honest, truthful, ethical, and fair in presenting information reflecting on colleagues' professional matters and their professional role;</li><li>(d) engage in professional relationships without bias or prejudice based on race, religion, gender, age, ethnicity, national origin, sexual orientation, marital status, socio-economic status, political affiliation, or disability;</li><li>(e) act in a professional manner for each employer or client as faithful agents or trustees by not disclosing without consent, or taking improper advantage of, anything of a proprietary or confidential nature concerning the business affairs or processes of any present or former client or employer;</li></ul> |

- (f) disclose to affected parties known or potential conflicts of interest or other circumstances which might influence or appear to influence judgment or impair the fairness or quality of their performance;
- (g) be responsible for enhancing their professional competence throughout their careers, for promoting others to advance their learning and competence, and not falsely obtaining competency credentials through misrepresentation of experience or misconduct;
- (h) accept responsibility for their actions and be ready and willing to institute corrective actions to ensure professional and satisfactory discharge of their obligations and responsibilities;
- (i) desist from accepting any business and taking any act that may lead to violation of law, regulation, and code of professional conduct and accordingly advise the client, employer and or subordinate the likely adverse effects inherent in the proposed business or act;
- (j) at all times conduct himself or herself in a manner that promotes the best profile and image of the profession;
- (k) avoid any unfair trade practices that have the likely impact of undermining competitiveness of the profession;
- (l) ensure all properties of the client and employer, in your custody for purposes of facilitating performance of professional services, are used solely for the purposes intended;
- (m) report any professional misconduct by fellow practitioners to the Council and in doing so, shall not be malicious or vindictive; and
- (n) not offer or accept bribes or facilitate payments, either directly or indirectly, not only in compliance with anti-bribery laws but also in maintenance of high professional and ethical standards.

Noncompliance.

5. The Council shall in accordance to the provisions of this Act, impose such penalties against any person who fails to abide by the code of conduct as prescribed in this Schedule.

## MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for a framework for the coordination, training and self-regulation of customs agents and freight forwarders, to enhance professionalism, work ethics and standards in the customs and freight forwarding industry through the registration and licensing of the customs agents and freight forwarders.

**Part I** of the Bill provides for the preliminary matters such as the short title, interpretation, objects and the guiding principles. Clause 2 defines the various terminologies used in the Bill, such as, the term customs agent and freight forwarder. The Bill defines a customs agents, as an individual person or firm registered under the Act, to provide services in connection with documentation, transportation and clearance of imports and exports of goods, a freight forwarder on the other hand, is defined as an individual person or firm registered under the Act to provide services relating to the carriage, consolidation, warehousing, handling, packing or distribution of goods. These definition adopts the acceptable internationally best practices and principles as set out by the International Federation of Freight Forwarders Association.

Clause 3 sets out the objects of the Bill to include, the provision of a framework for self-regulation of the freight logistics, to ensure an efficient and effective service delivery in the industry and the registration and licensing of customs agents and freight forwarders. The Bill adopts the principle that a professional organization cannot discipline its members if it is not able to register and license such members.

**Part II** of the Bill establishes a Society to be known as the Customs Agents and Freight Forwarders Society of Kenya, as a body corporate with perpetual succession and common seal. The Society consists of both registered and honorary members, and is managed by a Council comprising of a chairperson, vice chairperson and the members representing the customs agents and freight forwarders practising in Nairobi, Mombasa and the other parts of the Republic, respectively, elected by the registered members of the Society at its annual general meeting. Clause 8 provides that the headquarters of the Society shall be in Nairobi but the Society shall ensure access to services in other parts of the Republic in accordance with Article 6(3) of the Constitution.

Clause 9 provides for the functions of the Society which *inter alia* include, the provision of advisory services on the customs agents and freight forwarding industry, to the Cabinet Secretary; provision of strategic direction through the formulation of policies on customs agents and freight forwarding; development, supervision and enforcement of the professional code of conduct; setting of standards for training and continuing professional development of customs agents and freight forwarders; and the determination of the minimum fees chargeable for the provision of services under the Act.

Clause 11 and 12 is on the qualifications and disqualifications for appointment as a chairperson, vice chairperson and member of the Society. The set qualifications and disqualifications are measures aimed at ensuring a professionalized customs agents and freight forwarding industry. Clause 15 provides for the grounds under which the chairperson, vice-chairperson or member may be removed from office, such grounds includes gross misconduct; inability to perform the functions of the office by reason of mental or physical infirmity; bankruptcy; or failure to attend at least four consecutive Council meetings, without any reasonable ground. The removal from office however, is subject to Article 47 of the Constitution and the Fair Administrative Actions Act.

Clause 18 establishes a secretariat consisting of a Registrar appointed by the Council and such professional, technical and administrative officers and support staff, as may be appointed by the Council for the effective discharge of its functions under the Act. Clause 23 provides for an annual general meeting where members could address any issue affecting the management of the Society. It provides that the annual general meetings of the Society shall be convened by the Registrar in consultation with the chairperson and shall consist of at least twenty five percent of all the registered members of the Society.

**Part III** of the Bill provides for the registration and licensing of the customs agents and freight forwarders. The key objective of this part, is to enhance professionalism in the customs agents and freight forwarding industry in Kenya through registration, training and continuing professional development as condition precedent for the issuance of an annual practising license.

The registration and licensing under this part, envisions a customs agents and freight forwarding industry where the licensing as regards the collection and assessment of revenue remains the sole mandate of the government as is presently, while licensing as to the scope of activities that a customs agent and freight forwarder may engage in, remains a function of the Society. This is line with the World Customs Organization Brokers Guidelines, 2018.

The principle adopted here is that, a business licence issued by the state is not enough to undertake actual operations. By obtaining a licence through a specified process, Customs agents and freight forwarders are allowed to practise while enabling Customs administrations, or relevant licensing government agencies, to have a complete list of brokers with verified credentials.

Clause 24 establishes a registration Board as the link between the government and the practitioners, for the proper management of the customs agents and freight forwarding industry. The Board shall be responsible for the registration and issuance of a practising license to the customs agents and freight forwarders under the Act.

The architecture and design of this institutional arrangement is that of limited government control but with clear division of responsibility amongst stakeholders, that is, the government

does not control everything, but delegates a clear role and authority to the Society through the Board and the institution responsible for training of agents.

A well coordinated logistics industry, shows that the government understands the importance of coordination hence an affective and well coordinated logistic service industry cannot be realised without limited government involvement.

The Bill recognises the registration of both an individual and a company as customs agents and freight forwarders. The requirement to register either as an individual or company is to ensure equal opportunities for everyone, and also to have a wider availability of brokers. Clause 27 provides for the qualifications for a person to be registered as a customs agent and freight forwarder. These include, being a registered member of the Society; possession of a professional qualifications as may be recognised by the Board; attainment of the practical experience in customs clearing and freight forwarding as may be prescribed under the Act; and successfully passed a continuing professional development examination as may be conducted by the Board.

Clause 28 on the other hand, provides that a firm/ company qualifies to be registered as a customs agent and freight forwarding firm, if the firm has a license of registration of a business name or a license of incorporation issued under the Companies Act; has at least one Director or principal shareholder who is registered by the Board as a customs agent and freight forwarder; has at least one of its personnel, if any, who is registered by the Board as customs agents and freight forwarder; and fulfils any other condition as may be stipulated by the Board.

Although, entry of foreign operators in the logistics service industry can be a chance for economic development of a country, local operators may be exposed to the risk of losing their business. In order to avoid the infiltration of the industry by the foreigners, Clause 31 proposes to restrict the registration of foreign customs agents and freight forwarders by providing that the person must possess the necessary qualifications recognized for the practice as a professional customs agent and freight forwarder under the Act; holds a valid working visa or permit; is a resident of Kenya, is incorporated in Kenya in accordance with the provisions of the Companies Act; and at least one of the Directors and staff possesses the necessary qualifications recognized for the practice as a professional customs agent and freight forwarder under the Act.

Clause 36 provides that, a person shall not engage in the practice as a customs agent and freight forwarder unless, that person has been issued with a practicing license and has complied with the requirements of the Act. The proposal as adopted under clause 36 is in line with the East African community mandatory requirements for the clearing and Freight forwarders in the East African Countries to possess the East Africa Customs Freight Forwarding Practicing Certificate (EACFFPC). One of the requirements under the Act is the attainment of the continuing professional development examination points as a condition precedent for the issuance or renewal of a practicing license.

An examination whether oral or written, as part of licensing requirements of a Customs broker is a useful process to test the knowledge of the applicants. This examination can act as an initial screener of Customs brokers, which could increase compliance rates because of the level of knowledge of Customs and other related laws and procedures required to pass the examination. One option could consist of Customs administrations, Customs brokers associations, and other relevant government agencies working together to produce a comprehensive examination system that would evaluate the knowledge of the applicants on all applicable laws concerning Customs clearance, declaration, and requirements as well as those of other relevant agencies. Clause 25(2) mandates the Board to conduct, in collaboration with the relevant state agency, professional examinations to the customs agents and freight forwarders for the purposes of registration under the Act.

Clause 38 addresses the effect of the removal of the name of a customs agent and freight forwarder from the register either through cancellation or suspension, and it provides that, a person whose name has been removed from the register or whose licence issued under the Act has been suspended or cancelled, shall not engage in the practice as a professional customs agents and freight forwarder or offer professional services as a customs agents and freight forwarder during the duration of removal of name, suspension or cancellation of the licence.

**Part IV** is on the disciplinary process. It establishes a Committee whose sole mandate is to investigate and hear any complaint against a customs agents and freight forwarder licensed in accordance with the Act. The principle envisioned under this part is that, the Society cannot discipline its members if it's not able to register and licence them.

Clause 42 provides for the various recommendations that the Committee may make on conclusion of the investigations and hearing. These may include, a recommendation that, no further action be taken against the member; the member be reprimanded; the member pays such costs to the Society, not exceeding one hundred thousand shillings, as may be determined; the member undertakes training at his or her own cost, of such nature and duration and at such institutions as may be determined; the member discharges his or her professional obligations under any contractual arrangement subject of the alleged misconduct; any practising license held by the member be suspended; or the registration of the member be cancelled and that he or she, be suspended for such period as may be specified. These measures are aimed at ensuring a professionalized customs agents and freight forwarding industry.

**Part V** of the Bill is on the protection of the customs agents and freight forwarders from liability. It is noteworthy, that in freight forwarding business, it is extremely important to clarify the contractual liability, duty, responsibility and accountability of the customs agents and freight forwarders. Without definite liability in contracts, customs agents and freight forwarders will be exposed to higher risks in operations. Clause 44 provides that, a customs agent or freight forwarder is only liable for failure to exercise due care and diligence in the performance of the freight forwarding services under this Act.

Clause 50 on the other hand provides that, a customs agent and freight forwarder shall, unless otherwise expressly agreed, be discharged of all liability arising under this Act after three months, unless a suit is brought after the delivery of the goods, or the date when the goods should have been delivered, or the date when failure to deliver the goods would give the consignee the right to treat the goods as lost.

Similarly, Clause 51 entitles a customs agent and freight forwarder the right to retain such goods in his or her possession until full payment is made. It provides that a customs agent or freight forwarder shall, to the extent permitted by the applicable law, have a general lien on the goods and any documents relating thereto for any amount due at any time to the customs agent and freight forwarder from the owner including storage fees and the cost of recovering the same, and may enforce such lien in any reasonable manner which the freight forwarder may deem fit. The right to lien is generally an acceptable principle in international commercial transactions, that entitles a person to retain another person's property in his or her lawful possession until the owner of the goods fulfils such obligations as set out in the contractual agreement, this may include the payment of fees owed.

Clause 53 however, provides that the owner shall be liable wholly to the customs agent or freight forwarder for all loss or damage, costs, expenses and official charges resulting from the owner's inaccurate, concealment, under declaration, or incomplete information or instructions or the handing over by the owner or any person acting on the owner's behalf to the customs agent or freight forwarder, or to any other person to whom the customs agent and freight forwarder may become liable, of goods having caused death or personal injury, damage to property, environmental damage or any other type of loss.

**Part VI** is on the financial provisions. Clause 54 provides that the sources of funds of the Society includes money as may accrue to or vest in the Society in the course of the exercise of its powers or the performance of its functions under this Act; or from any other source provided for, donated or lent to the Society; or any other funds from legitimate sources, partnerships, channeled for specific projects, contracts and advisories. On the investment of the funds of the Society, the Bill provides that such investments may only take place with the approval of the members at its annual general meeting. Clause 56 provides that, the Council may invest any of the Society's funds in securities in which for the time being trustees may by law invest funds or in any other securities which the Society may from time to time approve for that purpose.

**Part VII** of the Bill provides for the miscellaneous provisions such as subscriptions by the members, professional code of conduct, conflict of interest, false registration, redress, applicable law, general penalty and the power to make Regulations. Clause 60 anchors a code of conduct that provides ethical guidelines and their relationships with clients, government authorities and other trade chain partners. Customs brokers operate in an environment where expectations from both their clients and the Customs Administration must be met in a complementary manner. It is, therefore, critical that they operate transparently and with integrity.

The code of conduct shall however, come into force on such date as the Cabinet Secretary in consultation with the Society, determine. The purpose of the code is to provide members and other interested persons with guidelines for making ethical choices in the conduct of their work as a measure towards professionalization of the industry.

In terms of the applicable law, the Bill acknowledges the fact that freight forwarding services are generally cross-cutting due to diversity of jurisdictions. The applicable law in case diversity of jurisdictions, shall be the law chosen by the parties or the relevant legal provisions in Civil Rules, Contract Laws and Maritime Laws. Clause 65 provides that the law applicable to the mutual rights and obligations of the customs agents and freight forwarders and the owner, arising from their contractual agreement is the law chosen by them and, in the absence of a choice of law, the law governing the customs agents and freight forwarders.

Clause 67 of the Bill on the other hand, mandates the Council of the Society to make Regulations for the better carrying into effect the provisions of the Act. The power to make Regulations is usually a delegated power vested in either state officer or person, to address procedural issues such as, how the registration, licensing, training, fee and continuing professional development, is to be undertaken. This clause basically aims to ensure standardization in the customs agents and freight forwarding industry. The end result is to avoid unfair practices that may undermine the integrity of the profession.

**Part VIII** provides for the savings and transitional provisions. Its main objective is to ensure a smooth flow of business on commencement of the Act. Clause 68 of the Bill provides that the Customs agents and freight forwarders registered under the East African Community Customs Management Act, 2004, shall, for purposes of this Act, be deemed to have been registered and licensed as members of the Society under this Act. However, these Customs agents and freight forwarders, are required to regularize their registration with the Society within a period of one year.

Clause 69 on the hand seeks to transition the Kenya international freight and warehousing association into as Society, to be known as the Customs Agents and Freight Forwarders Society of Kenya, hence, on the commencement of this Act, the Association will assume the functions of the Society established under section 5 of this Bill. The justification for this is that the Kenya international freight and warehousing association as presently constituted does not have an enforcement mechanism, hence cannot reign in on its rogue members and impose sanctions.

This is not a money Bill within the meaning of Article 114 of the Constitution, its enactment also, shall not occasion any additional expenditure on the exchequer.

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