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THE TREATY FOR THE ESTABLISHMENT OF THE
EAST AFRICAN COMMUNITY ACT, 2000

No. 2 of 2000

Date of Assent: 11th July, 2000.

Date of Commencement: By Notice.

ARRANGEMENT OF SECTIONS

Clause

- 1 — Short title.
- 2 — Interpretation.
- 3 — Community to have capacity of body corporate.
- 4 — Transfer of assets and liabilities.
- 5 — Financial provisions.
- 6 — Immunities and privileges of employees.
- 7 — Status, immunities and privileges of Community.
- 8 — Acts of the Community to have force of law.
- 9 — Amendment of Treaty.

SCHEDULE

No. 2 *Treaty for the Establishment of the East African Community* 2000

An Act of Parliament for giving effect to certain provisions of the Treaty for the Establishment of the East African Community and for connected purposes

WHEREAS the Treaty for the Establishment of the East African Community (which is set out in the Schedule to this Act) was signed on the 30th November, 1999 on behalf of the Governments of the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya at Arusha, Tanzania:

AND WHEREAS it is expedient to make provisions for giving effect to certain provisions contained in the said Treaty which shall come into operation when the said Treaty comes into force:

NOW THEREFORE BE IT ENACTED by the Parliament of Kenya, as follows :-

Short title and commencement.

1. This Act may be cited as the Treaty for the Establishment of the East African Community Act, 2000 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires -

"Act of the Community" means an Act of the Community enacted in accordance with Article 62 of the Treaty;

"the Assembly" means the East African Legislative Assembly established by Article 9 of the Treaty;

"the Community" means the East African Community established by Article 2 of the Treaty;

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"Secretariat of the Tripartite Commission" means the Secretariat established pursuant to Article 6 of the Agreement for the Establishment of a Permanent Tripartite Commission for Co-operation between the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya entered into on the 30th November, 1993;

"States" means the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya which were parties to the Treaty;

"the Treaty" means the Treaty for the Establishment of the East African Community entered into by the Governments of the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya which is set out in the Schedule to this Act, as from time to time amended under any provision thereof or otherwise modified.

3.(1) The Community shall have the capacity, within Kenya, of a body corporate with perpetual succession and shall have power to acquire, hold, manage and dispose of land and other property and to sue and be sued in its own name.

Community
to have capacity
of body corporate.

(2) The Community shall have power to perform any of the functions conferred upon it by the Treaty and to do all things, including borrowing, that are necessary or desirable for the performance of those functions.

(3) Subsection (2) of this section relates only to the capacity of the Community as a body corporate and nothing in that subsection shall be construed as authorizing the disregard by the Community of any law or as affecting any power of the Community conferred by any law.

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Transfer of
assets and liabilities.

4.(1) All the property of the Secretariat of the Tripartite Commission immediately before the commencement of this Act shall, as from the date of commencement, vest in the Community and as from such commencement the Community shall have all the rights which the Secretariat of the Tripartite Commission has and be subject to all the liabilities which the Secretariat of the Tripartite Commission is subject, immediately before such commencement.

(2) On and after the commencement of this Act, every contract made by or on behalf of the Secretariat of the Tripartite Commission (whether in writing or not and whether or not of such a nature that rights and liabilities thereunder could be assigned by the Secretariat of the Tripartite Commission) shall have effect as if made by or on behalf of the Community and as if references therein to the Secretariat of the Tripartite Commission and to any officer or authority thereof were replaced, in relation to anything falling to be done on or after such commencement, by references to the Community and to the corresponding officer or authority of the Community.

(3) Without prejudice to the generality of subsections (1) and (2) of this section, the Community and any other person or authority shall have like rights, powers and remedies (including in particular, rights and powers as to instituting or defending legal proceedings) for ascertaining, perfecting or enforcing any rights or liabilities vested in or attaching to them by virtue of this section as if the rights or liabilities had at all times been rights and liabilities of the Community or of that person or authority.

(4) Any proceedings by or against the Secretariat of the Tripartite Commission pending immediately before the commencement of this Act shall be continued by or against the Community.

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5.(1) There shall be charged on and paid out of the Consolidated Fund, without further appropriation than this Act, all payments required to be made from time to time by the Government under the terms of the Treaty.

Financial
provisions.

(2) For the purpose of providing any sums required for making payments under this section, the Minister responsible for finance may, on behalf of the Government, make such arrangements as are necessary or raise loans by creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he thinks fit and the charges and expenses incurred in connection with their issue shall be charged on and issued out of the Consolidated Fund.

(3) Any moneys received by the Government under the Treaty shall be paid into and form part of the Consolidated Fund and shall be available in any manner in which the Consolidated Fund is available.

6.(1) Persons employed in the service of the Community shall -

Immunities and
privileges of
employees.

(a) be immune from civil process with respect to acts performed by them in their official capacity; and

(b) be accorded such immunities from immigration restrictions and alien registration.

(2) Experts and consultants rendering services to the Community shall be accorded such immunities and privileges as may be agreed upon by the States.

7.(1) The Community shall be accorded such status, capacity, immunities, privileges and exemptions as may be agreed upon by the States.

Status, immunities
and privileges
of the Community.

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(2) Members of the Community shall be accorded such immunities and privileges as may be agreed upon by the States.

(3) The provisions of subsections (1) and (2) of this section shall, *mutatis mutandis*, apply to the Assembly and its members.

Acts of the
Community to
have force of law.

8.(1) The provisions of any Act of the Community shall, from the date of publication of that Act in the Gazette, have the force of law in Kenya.

(2) An Act of the Community shall come into operation on the date of its publication in the Gazette or, if it is provided in that Act that some or all of its provisions shall come into operation on some other date (whether before or after the date of publication), those provisions shall come into operation on that other date.

Amendment of
Treaty.

9. If the Treaty is amended or modified, the Attorney-General shall cause a notice of the amendment or modification and of the date when the amendment or modification comes or is deemed to have come into operation, to be published in the Gazette, and a copy of the notice to be laid without delay before the National Assembly; and such amendment or modification shall, for the purposes of this Act, come or be deemed to have come into operation on such date.

SCHEDULE

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THE TREATY FOR THE EAST AFRICAN CO-OPERATION

WHEREAS the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania have enjoyed close historical, commercial, industrial, cultural and other ties for many years;

AND WHEREAS formal economic and social integration in the East African Region commenced with, among other things, the construction of the Kenya Uganda Railway 1897 - 1901, the establishment of the Customs Collection Centre 1900, the East African Currency Board 1905, the Postal Union 1905, the Court of Appeal for Eastern Africa 1909, the Customs Union 1919, the East African Governors Conference 1926, the East African Income Tax Board 1940 and the Joint Economic Council 1940;

AND WHEREAS provision was made by the East Africa (High Commission) Orders in Council 1947 - 1961, the East African Common Services Organisation Agreements 1961 - 1966, and the Treaty for East African Co-operation 1967 for the

establishment respectively, of the East Africa High Commission, the East African Common Services Organisation and the East African Community as successive joint organisations of the said countries to control and administer certain matters of common

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interest and to regulate the commercial and industrial relations and transactions between the said countries and by means of a central legislature to enact on behalf of the said countries laws relevant to the purposes of the said joint organisations;

AND WHEREAS in 1977 the Treaty for East African Co-operation establishing the East African Community was officially dissolved, the main reasons contributing to the collapse of the East African Community being lack of strong political will, lack of strong participation of the private sector and civil society in the co-operation activities, the continued disproportionate sharing of benefits of the Community among the Partner States due to their differences in their levels of development and lack of adequate policies to address this situation;

AND WHEREAS upon the dissolution of the East African Community the said countries signed on the 14th day of May, 1984, at Arusha, in Tanzania the East African Community Mediation Agreement 1984, hereinafter referred to as "the Mediation Agreement" for the division of the assets and liabilities of the former East African Community;

AND WHEREAS pursuant to Article 14:02 of the Mediation Agreement the said countries agreed to explore and identify areas for future co-operation and to make arrangements for such co-operation;

AND WHEREAS on the 30th day of November, 1993, provision was made by the Agreement for the Establishment of a Permanent Tripartite Commission for Co-operation Between the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania for the establishment of the Permanent Tripartite Commission for Co-operation hereinafter referred to as "the Tripartite Commission" to be responsible for the co-ordination of economic, social, cultural, security and political issues among the said countries and a Declaration was also made by the Heads of State of the said countries for closer East African Co-operation;

AND WHEREAS on the 26th day of November, 1994, provision was made by the Protocol on the Establishment of a Secretariat of the Permanent Tripartite Commission for Co-operation Between the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania, for the establishment of the Secretariat of the Permanent Tripartite Commission for Co-operation Between the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania to act as the Secretariat of the Tripartite Commission, hereinafter referred to as "the Secretariat of the Tripartite Commission";

AND WHEREAS on the 29th day of April 1997 at Arusha in Tanzania, the Heads of State of the said countries after reviewing the progress made by the Tripartite Commission, in the development of closer co-operation between the said countries in the fiscal, monetary, immigration, infrastructure and service fields and after approving the East African Co-operation Development Strategy for the period 1997 - 2000, directed the Tripartite Commission to embark on negotiations for the upgrading of the Agreement establishing the Tripartite Commission into a Treaty;

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AND WHEREAS the said countries, with a view to strengthening their co-operation are resolved to adhere themselves to the fundamental and operational principles that shall govern the achievement of the objectives set out herein and to the principles of international law governing relationships between sovereign states;

AND WHEREAS the said countries, with a view to realising a fast and balanced regional development are resolved to creating an enabling environment in all the Partner States in order to attract investments and allow the private sector and civil society to play a leading role in the socio-economic development activities through the development of sound macro-economic and sectoral policies and their efficient management while taking cognisance of the developments in the world economy as contained in the Marrakesh Agreement Establishing the World Trade Organisation, 1995 referred to "as the WTO Agreement" and as may be decided by the Partner States, the development of technological capacity for improved productivity;

AND WHEREAS the said countries desire to foster and to promote greater awareness of the shared interests of their people;

AND WHEREAS the said countries are resolved to act in concert to achieve the objectives set out hereinbefore;

NOW THEREFORE the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania ;

DETERMINED to strengthen their economic, social, cultural, political, technological and other ties for their fast balanced and sustainable development by the establishment of an East African Community, with an East African Customs Union and a Common Market as transitional stages to and integral parts thereof, subsequently a Monetary Union and ultimately a Political Federation;

CONVINCED that co-operation at the sub-regional and regional levels in all fields of human endeavour will raise the standards of living of African peoples, maintain and enhance the economic stability, foster close and peaceful relations among African states and accelerate the successive stages in the realisation of the proposed African Economic Community and Political Union;

AGREE AS FOLLOWS -

CHAPTER I - INTERPRETATION

Article 1 - Interpretation

1. In this Treaty, except where the context otherwise requires -

"Act of the Community" means an Act of the Community in accordance with this Treaty;

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"Audit Commission" means the Audit Commission established by Article 134 of this Treaty;

"Assembly" means the East African Legislative Assembly established by Article 9 of this Treaty;

"Bill" means a Bill of the East African Legislative Assembly;

"civil society" means a realm of organised social life that is voluntary, self generating, self-supporting, autonomous from the state, and bound by a legal set of shared rules;

"Clerk of the Assembly" means the Clerk of the East African Legislative Assembly appointed under Article 48 of this Treaty;

"common carrier" includes a person or an undertaking engaged in the business of providing services for the carriage of goods and passengers for hire and operating as such under the laws of a Partner State;

"common external tariff" means an identical rate of tariff imposed on goods imported from third countries;

"Common Market" means the Partner States' markets integrated into a single market in which there is free movement of capital, labour, goods and services;

"common standard travel document" means a passport or any other valid travel document establishing the identity of the holder, issued by or on behalf of the Partner State of which he or she is a citizen and shall also include inter-state passes;

"Community" means the East African Community established by Article 2 of this Treaty;

"Contracting Parties" means the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania;

"co-operation" includes the undertaking by the Partner States in common, jointly or in concert, of activities undertaken in furtherance of the objectives of the Community as provided for under this Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Community;

"Co-ordination Committee" means the Co-ordination Committee established by Article 9 of this Treaty;

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"Council" means the Council of Ministers of the Community established by Article 9 of this Treaty;

"Counsel to the Community" means the Counsel to the Community provided for under Article 69 of this Treaty;

"countervailing duty" means a specific duty levied for purposes of offsetting a subsidy bestowed directly or indirectly upon the manufacture, production or export of that product;

"Court" means the East African Court of Justice established by Article 9 of this Treaty;

"customs clearing agent" means a person who is licensed in any of the Partner States to provide a service at a fee, in connection with documentation and customs clearance of import and export of consignments of goods;

"designated airline" means an airline which has been designated and authorised by a competent authority of a Partner State to operate the agreed services;

"duty drawback" means a refund of all or part of any excise or import duty paid in respect of goods confirmed to have been exported or used in a manner or for a purpose prescribed as a condition for granting duty drawback.

"East African Industrial Development Strategy" means the strategy provided for under Article 80 of this Treaty;

"East African Law Reports" means the published reports of the judgements of the former Court of Appeal for East Africa and the High Courts of Uganda, Kenya and Tanzania;

"East African Trade Regime" means a trade regime provided for under Article 74 of this Treaty;

"elected member" means an elected member of the Assembly elected under Article 50 of this Treaty;

"environment" means the natural resources of air, water, soil, fauna and flora, eco-systems, land, the man-made physical features, cultural heritage, the characteristic aspects of the landscape and the socio-economic interaction between the said factors and any living and non-living organisms;

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"equitable distribution of benefits" means fair and proportionate distribution of benefits;

"financial year" means the financial year referred to under Article 132 of this Treaty;

"foreign country" means any country other than a Partner State;

"freight forwarder" means a person engaged at a fee, either as an agent for other transport operators or on his own account, in the management of transport services and related documentation;

"Gazette" means the Official Gazette of the Community;

"gender" means the role of women and men in society;

"Head of Government" means a person designated as such by a Partner State's Constitution;

"Head of State" means a person designated as such by a Partner State's Constitution;

"import" with its grammatical variations and cognate expressions means to bring or cause to be brought into the territories of the Partner States from a foreign country;

"indigenous entrepreneur" means a citizen who is a business person of a Partner State but who does not possess a foreign nationality;

"institutions of the Community" means the institutions of the Community established by Article 9 of this Treaty;

"international standards" means standards that are adopted by international standardising or standards organisations made available to the public;

"Judge" means a Judge of the East African Court of Justice and includes the President and the Vice President of the Court;

"judgment" shall where appropriate include a ruling, an opinion, an order, a directive or a decree of the Court;

"Minister" in relation to a Partner State, means a person appointed as a Minister of the Government of that Partner State and any other person, however entitled, who, in accordance with any law of that Partner State, acts as or performs the functions of a Minister in that State;

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"multimodal transport" means the transport of goods and services from one point to another by two or more modes of transport on the basis of a single contract issued by the person organising such services and while such person assumes responsibility for the execution of the whole operation and also includes any other similar equipment or facility which may hereafter be used;

"multimodal transport facilities" includes items such as heavy lift swinging devices, twin deck cranes, gantry cranes, elevators, large carriers, mechanised storage, low loaders, access facilities, low-profile straddle carriers, mobile cranes, container gantry cranes, side loaders, heavy duty forklifts, heavy duty tractors, heavy duty trailers, portable ramps, flat wagons (flats) for containers, low tare special user wagons and trucks for containers, pallets, web-slings for pre-slung cargoes for different commodities and any other similar equipment or facility which may hereafter be used."

"National Assemblies" with its grammatical variation and cognate expression means the national legislatures however designated of the Partner States;

"non-tariff barriers" means administrative and technical requirements imposed by a Partner State in the movement of goods;

"organs of the Community" means the organs of the Community established by Article 9 of this Treaty;

"other charges of equivalent effect" means any tax, surtax, levy or charge imposed on imports and not on like locally produced products but does not include fees and similar charges commensurate with the cost of services rendered;

"Partner States" means the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of this Treaty;

"person" means a natural or legal person;

"President of the Court" means the person appointed as President of the Court under Article 24 of this Treaty;

"principle of asymmetry" means the principle which addresses variances in the implementation of measures in an economic integration process for purposes of achieving a common objective;