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THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE SPECIAL ECONOMIC ZONES BILL, 2015

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DIRECTORATE OF COMMITTEE SERVICES,  
PARLIAMENT BUILDINGS,  
NAIROBI

JUNE, 2015

*Paper Land*  
*By the chairperson of*  
*the committee on Finance, Planning*  
*and Trade, Hon Benjamin Kang'at*  
*on Tuesday*  
*30/6/2015*

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## ABBREVIATIONS

BDS	-	Business Development Services
EAC	-	East African Community
EPZ	-	Export Processing Zones
EPZA	-	Export Processing Zones Authority
FDI	-	Foreign Direct Investments
KIE	-	Kenya Industrial Estimates
KRA	-	Kenya Revenue Authority
MUB	-	Manufacturing Under Bond
SEZ	-	Special Economic Zone
SMEs	-	Small and Medium Enterprises
TREO	-	Tax Remission Zones
UAE	-	United Arab Emirates

## 1.0 PREFACE

It is my pleasure to present the Report of the Departmental Committee on Finance, Planning & Trade on its consideration of the Special Economic Zones Bill, 2015. The Bill was committed to the Committee on 4<sup>th</sup> March, 2015 and it is on the basis of this that the Committee makes this Report pursuant to Standing Order 154.

## 1.1 Mandate of the Committee

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) **study and review all legislation referred to it;**
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

## 1.2 Membership

The Committee was constituted by the House on Thursday 16<sup>th</sup> May, 2013 and comprise of the following members:

1. The Hon. Benjamin Langat, MP (**Chairman**)
2. The Hon. Nelson Gaichuhie, MP (**Vice Chairman**)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King'ola, MP

10. The Hon. Abdullswamad Sheriff, MP
11. The Hon. Sumra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

### **1.3 Committee meetings**

On 17<sup>th</sup> February 2015, the Special Economic Zones, 2015 was published and read a first time on 4<sup>th</sup> March, 2015. Thereafter it was committed to the Committee for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on 5<sup>th</sup> March, 2015 pursuant to Article 118 of the Constitution. The Committee received presentations from the Kenya Private Sector Alliance (KEPSA), the Ministry of Industrialization and the National Treasury.

From their presentations, it emerged that Special Economic Zones (SEZs) will be beneficial to the country by addressing key factors that reduce Kenya's competitiveness as an investment destination through infrastructure provision, simplification of business regulations, value chain integration and clustering, expanded market access for SEZ goods and services, and reduced taxation. In addition, the SEZs will leverage key strengths the country already possesses in the areas of human resource development, agriculture development and the recent developments in the port of Mombasa.

The Committee, arising from the presentations of the stakeholders and its analysis of the Bill identified the following pertinent issues to be addressed through amendments:-

- (a) The exact fiscal incentives to be enjoyed by firms operating with the SEZs, as provided in clause 35, should be made specific and subject to the existing tax laws
- (b) The definitions within the bill should mirror the definitions within the EAC legislative framework (East African Community Customs Management Act).
- (c) The KRA should be involved in licensing of firms operating within the Zones to ensure that all customs concerns, if any are catered for particularly in areas of office accommodation and control points/fencecs/gates etc
- (d) The economic impact to the country arising from a plethora of fiscal incentives that will be enjoyed by firms operating with the Zones
- (e) criteria of designating areas as Special Economic Zones that will ensure equal distribution across the country
- (f) the Bill makes reference to some legislations that had been repealed a long time ago especially in clause 35

The Committee will introduce appropriate amendments during the Committee Stage of the Bill to address the above issues.

#### **1.4 Acknowledgement**

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

**Mr. Speaker, Sir,**

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its report in the House on the consideration of the Special Economic Zones Bill, 2015 for consideration Pursuant to Standing Order 127

Signed Benjamin Langat Date 25-06-2015

**(HON. BENJAMIN LANGAT, MP)**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING &  
TRADE**

## **2.0 CONSIDERATION OF THE SPECIAL ECONOMIC ZONES BILL, 2015**

### **2.1 BACKGROUND INFORMATION**

#### **(2.1.1) Vision 2030 and the Second Medium Term Plan**

The Government of Kenya is committed to undertaking bold and strategic economic reforms needed to promote faster economic growth and sustainable development. Kenya faces serious socio-economic challenges, including high unemployment, unequal distribution of wealth, high levels of poverty and insecurity. Other challenges include production inefficiencies, poor infrastructure, multiple and inhibitive legislation, high cost of production, land use conflicts and environmental degradation among others. There has been need for a radical paradigm shift to fundamentally transform the economic and business operations in the country.

The Kenya Vision 2030 targeted an economic annual growth rate of 10%, creation of 3.5 million additional jobs and reduction in the prevalence of poverty from 46% to 28% by 2012. These targets have not yet been met. The manufacturing sector is expected to increase its contribution to the Gross Domestic Product (GDP) by at least 10% per annum and help in meeting the above Kenya Vision 2030 targets as well as propel Kenya into becoming Africa's industrial hub. The government will therefore continue to lay strong emphasis on industrialization. The Second First Medium Term Plan 2013-2017, in line with Kenya Vision 2030, has identified development of Special Economic Zones (SEZs) focusing on agro-processing industrial parks, ICT Parks and Small and Medium Enterprise (SME) parks as a flagship project.

#### **(2.1.2) Definition of a special Economic Zone (SEZ) and its benefits**

A Special Economic Zone SEZ is a designated geographical area with liberal economic policies and where integrated land use and infrastructure are provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where any goods introduced and specified services provided are regarded, in so far as import duties and taxes are concerned, as being outside the customs territory. The SEZ program provides general and specific incentives for a range of activities operating in a variety of SEZ schemes. They include; procedural incentives, fiscal incentives and infrastructural incentives.

The SEZs will address key factors that reduce Kenya's competitiveness as an investment destination through infrastructure provision, simplification of business regulations, value chain integration and clustering, expanded market access for SEZ goods and services, and reduced taxation. In addition, the SEZs will leverage key strengths the country already possesses in the areas of human resource development, agriculture development and the recent developments in the port of Mombasa.

### **(2.1.3) Implementation of the Special Economic Zones**

In order to implement the SEZs, there is need for a policy and legal framework. The policy provides a framework for the establishment and management of SEZs in Kenya. Specifically, the policy provides guidelines, management structures, incentives and action plan for the implementation of SEZ programme in the country. The policy is backed by comprehensive legal framework that establishes an enabling environment for the development of SEZ including the establishment of an autonomous state agency to administer its implementation. The agency shall develop SEZ approval guidelines, management structures and procedures to avail the incentives provided to developers, operators and enterprises in the programme.

## **3.0 SITUATION ANALYSIS**

### **3.1 kenyan case**

The SEZ programme has not been implemented in Kenya. However, programmes with elements commonly found in SEZs have been implemented in the country. These include Export Processing Zones, Manufacturing Under Bond (MUB), Tax Remission for Exports Office (TREO) Scheme and EAC Duty Remission Scheme all of which supported manufacturing for exports, and Kenya Industrial Estates (KIE) for promotion of SMEs.

#### **3.1.1 Export Processing Zones (EPZs)**

The **Export Processing Zones programme** was established in 1990 through the enactment of the EPZ Act, Cap 517 of the laws of Kenya. The programme aims at promoting export-oriented industrial investment within designated areas. Attractive fiscal incentives and simplified operating procedures and superior business and industrial infrastructure are provided to EPZ investors. The programme is managed by the Export Processing Zones Authority (EPZA).

At the end of 2011, there were 44 gazetted zones under the EPZ programme, with 79 operating firms. 42 of the zones were privately owned and operated. The Zones are located in several towns including: Nairobi, Athi River, Mombasa, Voi, Malindi, Kilifi, Isinya, Eldoret, Kerio Valley, Nandi Hills, Sagana, Thika, Timau and Rumuruti. The EPZ companies employed 32,043 Kenyans and exports totaled Ksh 39.1 billion in 2011.

EPZs have played a key role in increasing exports of textile and garments. In 2013, Kenya took the first position as sub-Saharan Africa's largest apparel exporter to the USA under African Growth and Opportunity Act (AGOA) having exported 83 million pieces valued at US\$ 336 million. Similarly, according to the Economic Survey of 2014, EPZ employment stood at 40,204 workers in 2013 with the employment for Kenya citizens accounting for 98.8 per cent of the total.

The performance of the EPZ program has been hampered by lack of a deliberate policy on developing industrial clusters. In addition, with the formation of the East African Community Customs Union and Common Market, the classification of former exports markets within the EAC as domestic markets has hampered additional EPZ investment. Other challenges include, low domestic content of final output; limited backward linkages; minimal local participation; little or no technology transfer; and dependence on a narrow product base for export activity.



The on-going EPZ scheme will continue to operate unabated as established by Law under the Export Processing Zone Act Cap 517 and as per the current EAC EPZ Regulations. However, Kenya needs to continue to pressurise the EAC Council of Ministers to enhance the 20% threshold of goods from EPZA going into the EAC market.

### **3.1.2 Manufacturing Under Bond (MUB)**

This programme provides for manufacture of goods for export under bond. Raw materials, plant and machinery under this scheme are imported duty and Value Added Tax (VAT) free. The goods imported or produced under this scheme are held under customs control. The whole factory is bonded. The MUB program is provided for under the EAC Customs Management Act. The MUB scheme was very important during the early 1990s when various raw materials, plant and machinery attracted import duty. With the progressive reduction of import duty on raw material, plant and machinery over the years, the MUB scheme has become less attractive reducing from 60 firms in 1999 to only six (6) operating companies in 2009.

### **3.1.3 Tax Remission for Export Office (TREO)**

This programme was started in 2002. It replaced the Export Promotion Programme Office scheme (EPPO) which was started in early 1990s. The purpose of EPPO was to promote manufacturing of goods for export by giving remission of duty and VAT on raw materials for production of goods for export. The difference between MUB and EPPO was that in EPPO the manufacturer executed a bond only on duty and VAT remitted on imported raw materials. This bond was cancelled only after proof of export of the goods. The EPPO scheme was scrapped in 2002 because import duty on most raw materials was removed and VAT on these materials is claimable as input tax in respect of exported goods.

The TREO scheme, which incorporated the Essential Goods Support Program (EGSP), was established by Legal Notice No. 129 of 2002, in order to address the cash flow problem arising from time lapse between import of raw materials and the time VAT is claimed after exports. The TREO scheme was replaced with the EAC Duty Remission Scheme in 2008. Both the Duty Remission Scheme and the VAT Act provide remission of duty and VAT on raw material for production of essential goods such as pharmaceuticals, for either domestic or export markets. The scheme serves 400 beneficiaries scattered across the country and is aimed at reducing the cost of production on goods produced for export, thus increasing their competitiveness in regional or international markets.

### **3.1.4 Kenya Industrial Estates (KIE)**

This programme was established in 1967 to promote small and medium industrial enterprises through development of industrial infrastructural facilities, incubation, financing and providing business development services (BDS). Since its inception, KIE has constructed twenty eight (28) Industrial Estates providing working sheds. These sheds were to serve as industrial incubators. By 2008, KIE had sixty three (63) sheds and thirty four (34) hectares of undeveloped land.

The performance of KIE has been adversely affected by privatization of working sheds, inadequate financial resources, and lack of a comprehensive SME incentive policy framework.

## **3.2 International comparisons**

Countries such as China, Singapore, India, UAE, Egypt, Mauritius and Philippines initiated their SEZ's at different times and the zones have had positive impact on their economies. Countries formulate different SEZ incentives or regulations depending on the particular focus of their programmes. This is because a country may establish an SEZ programme to address specific economic and social challenges facing the country at a particular stage of development

### **3.2.1 China**

China initiated her SEZ program in 1980. In 2003, fifty three (53) national high-tech zones accounted for half of China's industrial output estimated at about US\$ 208 billion. Shenzhen SEZ alone accounted for about fourteen (14) percent of total national exports.

Most of the SEZs in China are located in coastal ports and cities. Incentives include, exemptions on corporate tax, income tax exemptions on foreign workers and zero custom duties on imported equipment's and machinery and goods for re-exports. It's estimated that SEZ contribute 46% of Foreign Direct Investments (FDIs) to china, 60% of exports and employ over 30 Million workers.

China's SEZ strategy proved very successful as the country became the world's largest exporter of manufactured items and the leading destination for FDI in the developing world. By 2011 the country had over 200 Zones. The ability to use the Chinese vast pool of low cost labor is a powerful incentive to locate in SEZs. Foreign firms have also the right to hire and fire labor, which was different from the then prevailing Chinese, lifetime system of public or collective firms.

### **3.2.2 India**

India Enacted the Special Economic Zones Act of 2005 that repealed the failed export processing zone concept which was in place since 1969. The SEZ policy was incorporated in order to promote local investors at large. To this far, the SEZ policy has helped in creating a favorable investment scenario for developers. SEZ has continued to contribute positively to the Indian economy through, increased employment, more FDI and improvement in general infrastructure.

The passing of the SEZ Act in 2005 and full law and rules on SEZ, effected in February 2006, created a single window for administrative and regulatory procedures. The law provides for incentives to enterprises operating in SEZ that includes;100% income tax exemption for 5 years, which declines to 50% in 5 years and further by 50% on reinvested profits; exemption from sales tax and service tax.

An important feature of SEZ administration in India is the single window clearance for matters relating to central as well as state governments which has greatly increased efficiency in setting up special economic zones.

### **3.2.3 United Arab Emirates (UAE)**

The UAE has established strategic frameworks for increasing the number of small- and medium-sized businesses in Special Economic Zones (SEZs). The Industrial City of Abu Dhabi and Khalifa Port are part of the Abu Dhabi SEZs while many more others are in Dubai. There are more than 20,000

companies operating in the SEZs and the Free Trade Zones (FTZs) within the UAE. Some of the benefits these firms enjoy include:-

- 100 per cent foreign ownership of the enterprise
- 100 per cent import and export tax exemptions
- 100 per cent repatriation of capital and profits
- No corporate taxes for 15 years, renewable for an additional 15 years
- No personal income taxes
- Less documentation, mostly in English; and
- Assistance with labour recruitment, and additional support services such as sponsorship and housing.

#### 4.0 ANALYSIS OF PERTINENT ISSUES

- 4.1 **Declaration of SEZs:** As drafted, the Bill leaves the declaration of the SEZ area to the Authority and the Cabinet Secretary. Uniform distribution of the SEZs within the country has not been set as one of the criteria to be observed whenever zones are being considered for designation as SEZ area. The set criteria should seek to ensure even-spread of the zones across the country/counties.
- 4.2 **Establishment of SEZ Authority (SEZA) in clause 10:** How this authority will work alongside the already existing Export processing zones authority is not clear considering that the mandates of both are almost similar. The EPZ and SEZ models are in a manner similar and the repealing of the EPZ Act (CAP 517) need to have been provided for in the Bill. This is to curtail the overlap of the duties if these two authorities are to exist as provided for in the Bill.
- 4.3 Clause 34(b) gives an SEZ enterprise full protection of its rights including the right to fully repatriate all capital and profits without any foreign exchange impediments. However, it would be essential to align regulations on capital movements with the CBK, Capital Markets Authorities, and Centre for financial regulations on capital flows.
- 4.4 Clause 33(h) gives rights to a special economic developer to enter into a contract with private third parties for development and operational matters. This might encourage global linkages rather than domestic linkages since they have the freedom to subcontract abroad.
- 4.5 Clause 35 (1) exempts SEZs firms from all existing taxes and duties payable on all special economic zones transactions. These tax concessions are handsome and may lead to a huge downward impact on revenue to the country and may cannibalize other domestic industries.
- 4.6 **Employment of foreigners within the SEZs.** Clause 35(3) provides for entitlement of up to twenty percent of their full time employees. This may deny the country the benefits of employment creation and most importantly the knowledge in form of technology transfer that could happen through forward and backward linkages. However, reasonable it may be for a

SEZ enterprise to hire foreign workers, this need only to happen where the required skills are lacking in Kenya.

- 4.7 It gives an SEZ enterprise the right “to export and sell in the customs territory all classes or kinds of goods and services in accordance with the custom laws of East African Community. Owing to cost and price differences, this will likely constitute to dumping, if the goods are imported without duties into the SEZ and then sold to the customs territory. Further, limitations need to be made to reduce the impact of dumping in the customs territory or the local economy.
- 4.8 The monitoring of movement of goods within and outside the customs territory role has not been expressly provided in the Bill. Though reading clause 11(o) on the mandate of the SEZ authority seems to allocate that role to the authority, it is common practice that this function is normally performed by the Customs Authority or at worst in collaboration with the Special Economic Zones Authority.
- 4.9 The Bill should highlight on what will happen to the rest of Kenya (Customs Territory), i.e. the industries in the customs territory will tend to migrate to SEZ due to the favourable incentives available in the zones.
- 4.10 The exemption of the SEZ from certain Acts like the Alcoholic Drinks Control Act,2010; Statistics Act ;Filming license e.t.c will contravene/negate such laws.

## **5.0 COMMITTEE RECOMMENDATIONS**

Having listened to the stakeholders and from its own analysis, the Committee is considering the following amendments for possible introduction into the Bill during the Committee Stage of the Bill:

### **CLAUSE 2**

**THAT** clause 2 be amended—

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

“Agricultural Zones” means a Special Economic Zone declared as such under Section 5 to facilitate the agricultural sector, its services and associated activities;

*(Provide the definition –it is mentioned in the proposed first schedule)*

- (b) by deleting the definition of the term “ customs territory” and replacing therefor the following new definition—

"Customs Territory" means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the Community under Article 3 of the Treaty for the Establishment of the East African Community but does not include a Special Economic Zone;

*(The definition of the term “customs territory” is not consistent with the definition of the term in Annex VIII to the EAC customs union protocol. Article 39(2) of the EAC customs union protocol is very explicit*

*that the Customs laws of the Community (including the said protocol and its definitions) shall apply uniformly in the customs union except as otherwise provided for in the protocol)*

- (c) by deleting the definition of the term “duty and substituting therefor the following new definition—

“duty” means duty as defined under the East Africa Community Customs Management Act;

*(To be in line with the definition of duty under the East Africa Community Customs Management Act)*

- (d) in the definition of “Freeport Zone” by deleting the words “special economic zone or”;

*(The definition as it is provides the authority (special economic zone authority) as the entity responsible for the Freeport Zone. Under the laws of Kenya, the Kenya Ports Authority Act provides for Kenya Ports Authority to be the entity responsible for free ports)*

- (e) in the definition of “Fund” by deleting the word “ General”;

*(The word “general” is superfluous and implies the establishment of other specific funds by the Authority)*

- (f) in the definition of “ import” by inserting the words “customs territory or a”;

*(The definition of export should be the opposite of the definition of import. This amendment ensures consistency with the definition of export)*

- (g) by deleting the definition of “ regional headquarters”;

*(Regional headquarters for companies are not established in the special economic zones but in customs territories, outside the zones. The zones are supposed to be left for business enterprises which intend to make profits and enjoy tax holidays and exemptions obtainable in the zones and not shell entities whose main objective would be to provide inter company management and consultancy services to affiliate companies in order to avoid paying taxes that they would otherwise pay if they are established outside the zones.)*

- (h) by deleting the definitions of ‘free trade zone’ “industrial park” “information communication technology park” “science and technology park” and “tourist and recreational centre”;

*(The authority to create special economic zones or other special economic arrangements is vested in the EAC council of Ministers. So far only a Freeport has been created by the Council as a special economic zone. Enacting the above definitions in the special economics Act will contravene the customs laws of the community which overrides the national laws (section 253 of the EACCMA). The zones should be approved by the Council before they are legislated on.)*

#### **CLAUSE 4**

**THAT** clause 4 be amended—

- by deleting subsection (1) and replacing therefor the following new subsection(1)—
 

“(1) The Cabinet Secretary shall, on the recommendation of the Authority, and in consultation with the Cabinet Secretary responsible for matters relating to finance declare, by notice in the Gazette, any area as a Special Economic Zone as set out in the First Schedule.”  
*(inclusion of the “first schedule”-it is the one that sets the SEZ)*
- in subsection (3) by—
  - deleting the word “public” wherever it appears and substituting therefor the word “national”; and
  - deleting the word “recommended” and substituting therefor the word “recommendation”.  
*(editorial)*

### **CLAUSE 5**

**THAT** clause 5 of the Bill be amended in paragraph (k) by deleting the words “by the Authority” and substituting therefor the words “in the Regulations”.

*(The other criteria should be prescribed by the Cabinet Secretary as provided for under clause 39 (2) (a) of the Bill.)*

### **CLAUSE 6**

**THAT** clause 6 of the Bill be amended by deleting the words “unless otherwise provided under this Act, or any other written law”;

*(These words imply that the tax treatment of goods and services referred to in clause 6 can be amended by this Bill. The Bill cannot legally provide any tax treatments other than the ones provided under the tax laws. This would be ultra vires. In any case the EAC customs management Act which provides for tax (duty) treatment of goods in the special economic zone take precedence over our national laws regards the tax (duty) treatment of goods.)*

### **CLAUSE 7**

**THAT** clause 7 of the Bill be amended by inserting the words “and subject to any conditions as may be imposed” in subparagraph (iii).

*(This subparagraph puts controls)*

### **CLAUSE 8**

**THAT** clause 8 of the Bill be amended—

- in subclause (1) by inserting the words “of the East African Community” immediately after the words “applicable customs laws”;

*(The term “customs laws” is not defined in the Bill, it could be misleading, hence the need to replace it with the words “Customs laws of the community”)*

- in sub-clause (2) by inserting the words “ and the Customs laws of the Community” immediately after the words “Subject to this Act”;

*(The clause should, in addition, be subjected to the Customs laws of the Community. The customs laws of the Community and in particular the EAC customs Management Act prohibits the importation of certain goods. Allowing the use of goods of any description to be imported by licensed special economic zone enterprises would contravene the EAC customs management Act which may take precedence over national laws.)*

#### **CLAUSE 11**

**THAT** clause 11 of the Bill be amended by inserting a new paragraph immediately after paragraph (p)—

“(q) any other functions as may be directed by the Board”

*(To provide for any other functions that may have not been foreseen by the Board)*

#### **CLAUSE 12**

**THAT** clause 12 be amended by deleting paragraph (f) and replacing therefor the following new paragraph (f) —

“(f) four other directors appointed by the Cabinet Secretary, from the private sector or any other public institution being persons who have distinguished service, relevant experience, and expertise.”

*(restricts the number of nominees to four and don't have to be from private sector alone. They can come from academia as well or R and D institutions without necessarily limiting their professional background)*

#### **CLAUSE 13**

**THAT** clause 13 be amended by deleting the words “ the Schedule” and substituting therefor the words “Second Schedule”.

*(To make it specific)*

#### **CLAUSE 16**

**THAT** clause 16 (1) of the Bill be amended by deleting the words “on such terms and conditions of service as may be specified in the instrument of appointment”.

*(Terms and conditions of service of CEOs of State Corporations are determined by the Blue Book (guidelines on terms and conditions of service for CEOs)*

### **CLAUSE 21**

THAT clause 21 be amended in subsection (1) by deleting the word “General” appearing immediately after the words “be known as the”.

### **CLAUSE 25**

THAT clause 25 of the Bill be amended by deleting the words “Board may invest the funds of the Authority in securities” and substituting therefor with the words “Authority may invest its funds in government securities”

*(All public funds should only be invested in government securities. This clause leaves it open to investing in to other forms of securities. It also makes it clear that it is the authority that will be investing in the funds and not the Board)*

### **CLAUSE 27**

THAT clause 27 be amended-

(a) in subclause (4) by deleting the words “a reasonable period of time” and substituting therefor the words “one month”.

*(Reasonable period of time for licensing needs to be specified.)*

(b) by inserting the following new subclause immediately after subclause (6)—

(7) The Cabinet Secretary shall—

(a) publish in the Kenya Gazette all approved applications to establish a special economic zone; and

(b) within hundred and eighty (180) days of the coming into force of this Act, publish regulations on the application, issuance, suspension, revocation and appeal process on licensing of special economic zones.

*(This will promote and encourage transparency and accountability ill decision- making and ensure access to information in line with Article 35 of the Constitution)*

### **CLAUSE 28**

THAT clause 28 of the Bill be amended in sub clause (c) by inserting the words “to be enacted within hundred and eighty (180) days of the coming into force of this Act.

*(The Special Economic Zones (Land Use) Regulations are not in place and are necessary for an effective implementation of this provision. Hence the need for a specific timeline for their enactment.)*

### **CLAUSE 31**

THAT clause 31 of the Bill be amended-

(a) in suclause1 by inserting the words “, subject to Section 5,”immediately after the words “Authority shall”.



*(The clause empowers the special economic zone authority to give notice to the KRA after the Special economic zone developer, operator or enterprises has been licensed. This is inappropriate considering that the KRA would need to carry out its own evaluation and assessment before the license is issued. Therefore it should be subjected to section 5 of the Bill)*

- (b) in the marginal note by deleting the words “Authority to give notice to the Kenya Revenue Authority” and substituting therefor the words “Activities permitted within a Special Economic Zone”.

*(To be consistent with the contents of this clause-editorial)*

### **CLAUSE 33**

**THAT** clause 33 of the Bill be amended—

- by renumbering the clause appearing immediately after clause 33 as “34” (editorial)
- in subclause (1) by deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) enjoy benefits on duty and value added tax on free material and equipment used in the development and management of the zones;”

*(A special economic zone developer can only enjoy duty and VAT free material and equipment. Extending such benefits to include income taxes would not be appropriate considering that such developers and operators would be undertaking activities similar to what would be carried out by similar firms in the customs territory.)*

- in subclause (2) by inserting a new paragraph immediately after paragraph (f)—

“(g) provide adequate customs facilities including office block, customs warehouse, verification bay, weighing equipment and a suitable enclosure to separate the special economic zones from the customs territory.”

*(To introduce a paragraph to commit the special economic zone developer or enterprise or operator to provide custom facilities as explained in the paragraph.)*

### **CLAUSE 35**

**THAT** clause 35 of the Bill be amended –

- (a) In subclause (1) by deleting the words “all existing taxes and duties payable under the Customs and Excise Act, Income Tax Act, East African Community Customs management Act and Value Added Tax Act, on special economic zone transactions” and substituting therefor the words “duties and taxes in accordance with the existing tax laws”.

*(Articles 209 and 210 of the Constitution require that the national taxes be enacted in their respective Acts and not in other Acts of parliament such as this Bill.)*

(b) in the marginal note by inserting the words “developers and operators” immediately after the word “enterprises”; and  
*(to reflect the contents within clause 35)*

(c) in subsection(2) by deleting paragraphs (g), (h) and (i).  
*(these laws have been repealed hence no need of mentioning them)*

**CLAUSE 37**

That clause 37 of the Bill be amended by inserting the words “within thirty days” immediately after the word “settlement”.

*(There is need for timely determination under S. 37 (1) subject to which the dispute is submitted to arbitration under Clause 37 (2))*

**CLAUSE 39**

**THAT** clause 39 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (h)—

(i) determine the fees to be levied under this Act.

*(It is important that the fees applicable SEZ are published for certainty and transparency to guide decisions on investment)*

**INSERTION OF A NEW SCHEDULE**

**THAT** the following new Schedule be inserted immediately after clause 39—

**FIRST SCHEDULE**

**(S.4(1))**

**TYPES OF SPECIAL ECONOMIC ZONES**

1. The Authority shall permit multiple sector or single sector Special Economic Zones including but not limited to the following—

- (a) Free Trade Zones (FTZ)
- (b) Industrial Parks
- (c) Free Ports
- (d) Information Communication and Technology Parks (ICT Parks)
- (e) Science and Technology Parks
- (f) Agricultural Zones
- (g) Tourist and Recreational Zones
- (h) Business Service Parks**

## 6.0 ANNEXES

### 6.1 PROPOSED AMENDMENTS FROM THE NATIONAL TREASURY

#### CLAUSE 2

THAT clause 2 be amended—

- by deleting the definition of the term “ customs territory” and replacing therefor the following new definition—

"Customs Territory" means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the Community under Article 3 of the Treaty for the Establishment of the East African Community but does not include a Special Economic Zone;

*(The definition of the term “customs territory” is not consistent with the definition of the term in Annex VIII to the EAC customs union protocol. Article 39(2) of the EAC customs union protocol is very explicit that the Customs laws of the Community (including the said protocol and its definitions) shall apply uniformly in the customs union except as otherwise provided for in the protocol)*

- by deleting the definition of the term “duty and substituting therefor the following new definition—

“duty” means duty as defined under the East Africa Community Customs Management Act;

*(To be in line with the definition of duty under the East Africa Community Customs Management Act)*

- in the definition of “Freeport Zone” by deleting the words “special economic zone or”;

*(The definition as it is provides the authority (special economic zone authority) as the entity responsible for the Freeport Zone. Under the laws of Kenya, the Kenya Ports Authority Act provides for Kenya Ports Authority to be the entity responsible for free ports)*

- in the definition of “Fund” by deleting the word “ General”;
- (The word “general” is superfluous and implies the establishment of other specific funds by the Authority)*

- in the definition of “ import” by inserting the words “customs territory or a”;
- (The definition of export should be the opposite of the definition of export. This amendment ensures consistency with the definition of export)*

- by deleting the definition of “ regional headquarters”;
- (Regional headquarters for companies are not established in the special economic zones but in customs territories, outside the zones. The zones are supposed to be left for business enterprises which intend to make profits and enjoy tax holidays and exemptions obtainable in the zones and not shell entities whose main objective would be to provide inter company management and*

*consultancy services to affiliate companies in order to avoid paying taxes that they would otherwise pay if they are established outside the zones.)*

- by deleting the definitions of ‘free trade zone’ ‘industrial park’ ‘information communication technology park’ ‘science and technology park’ and ‘tourist and recreational centre’;  
*(The authority to create special economic zones or other special economic arrangements is vested in the EAC council of Ministers. So far only a Freeport has been created by the Council as a special economic zone. Enacting the above definitions in the special economics Act will contravene the customs laws of the community which overrides the national laws (section 253 of the EACCMA). The zones should be approved by the Council before they are legislated on.)*

#### **CLAUSE 5**

**THAT** clause 5 of the Bill be amended in paragraph (k) by deleting the words “by the Authority” and substituting therefor the words “in the Regulations”.

*(The other criteria should be prescribed by the Cabinet Secretary as provided for under clause 39 (2) (a) of the Bill.)*

#### **CLAUSE 6**

**THAT** clause 6 of the Bill be amended by deleting the words “unless otherwise provided under this Act, or any other written law”;

*(These words imply that the tax treatment of goods and services referred to in clause 6 can be amended by this Bill. The Bill cannot legally provide any tax treatments other than the ones provided under the tax laws. This would be ultra vires. In any case the EAC customs management Act which provides for tax (duty) treatment of goods in the special economic zone take precedence over our national laws regards the tax (duty) treatment of goods.)*

#### **CLAUSE 7**

**THAT** clause 7 of the Bill be amended by inserting the words “and subject to any conditions as may be imposed” in subparagraph (iii).

*(This subparagraph should be conditional)*

#### **CLAUSE 8**

**THAT** clause 8 of the Bill be amended—

- in subclause (1) by inserting the words “of the community” immediately after the words “applicable customs laws”;

*(The term “customs laws” is not defined in the Bill, it could be misleading, hence the need to replace it with the words “Customs laws of the community”)*

- in sub-clause (2) by inserting the words “ and the Customs laws of the Community” immediately after the words “Subject to this Act”;

*(The clause should, in addition, be subjected to the Customs laws of the Community. The customs laws of the Community and in particular the EAC customs Management Act prohibits the importation of certain goods. Allowing the use of goods of any description to be imported by licensed special economic zone enterprises would contravene the EAC customs management Act which may take precedence over national laws.)*

#### **CLAUSE 11**

**THAT** clause 11 of the Bill be amended by inserting a new paragraph immediately after paragraph (p)—

“(q) any other functions as may be directed by the Board”

*(To provide for any other functions that may have not been foreseen by the Board)*

#### **CLAUSE 16**

**THAT** clause 16 (1) of the Bill be amended by deleting the words “on such terms and conditions of service as may be specified in the instrument of appointment”.

*(Terms and conditions of service of CEOs of State Corporations are determined by the Blue Book (guidelines on terms and conditions of service for CEOs)*

#### **CLAUSE 25**

**THAT** clause 25 of the Bill be amended by inserting the word “government” immediately after the words “funds of the Authority in”.

*(All public funds should only be invested in government securities. This clause leaves it open to investing in to other forms of securities)*

#### **CLAUSE 27**

**THAT** clause 27 be amended—

- (a) in subclause (2) by deleting the word “may” and substituting therefor the word “shall”;  
*(KRA Customs must be involved in the licensing process for special economic zone developers, enterprises and operators to ensure that all customs concerns, if any are catered for particularly in areas of office accommodation and control points/ fence/gates etc.)*

(b) in subclause (4) by deleting the words “a reasonable period of time” and substituting therefor the words “one month”.

*(Reasonable period of time for licensing needs to be specified.)*

### **CLAUSE 31**

**THAT** clause 31 of the Bill be amended by inserting the words “, subject to subsection 5,” immediately after the words “Authority shall”.

*(The clause empowers the special economic zone authority to give notice to the KRA after the Special economic zone developer, operator or enterprises has been licensed. This is inappropriate considering that the KRA would need to carry out its own evaluation and assessment before the license is issued. Therefore it should be subjected to section 5 of the Bill)*

### **CLAUSE 33**

**THAT** clause 33 of the Bill be amended—

- in subclause (1) by deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) enjoy benefits on duty and value added tax on free material and equipment used in the development and management of the zones;”

*(A special economic zone developer can only enjoy duty and VAT free material and equipment. Extending such benefits to include income taxes would not be appropriate considering that such developers and operators would be undertaking activities similar to what would be carried out by similar firms in the customs territory.)*

- in subclause (2) by inserting a new paragraph immediately after paragraph (f)—

“(g) provide adequate customs facilities including office block, customs warehouse, verification bay, weighing equipment and a suitable enclosure to separate the special economic zones from the customs territory.”

*(To introduce a paragraph to commit the special economic zone developer or enterprise or operator to provide custom facilities as explained in the paragraph.)*

### **CLAUSE 35**

**THAT** clause 35 of the Bill be amended by deleting the words “all existing taxes and duties payable under the Customs and Excise Act, Income Tax Act, East African Community Customs management Act and Value Added Tax Act, on special economic zone transactions” and substituting therefor the words “duties and taxes in accordance with the existing tax laws”.

*(Articles 209 and 210 of the Constitution require that the national taxes be enacted in their respective Acts and not in other Acts of parliament such as this Bill.)*

## 6.2 PROPOSED AMENDMENTS FROM THE MINISTRY OF INDUSTRIALIZATION & ENTERPRISE DEVELOPMENT

### CLAUSE 2

THAT clause 2 be amended—

- by deleting the definition of the term “ customs territory” and replacing therefor the following new definition—

"Customs Territory" means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the Community under Article 3 of the Treaty for the Establishment of the East African Community but does not include a Special Economic Zone;

*(adopt the definition of the EAC customs union)*

- by inserting the following new definitions in proper alphabetical sequence—  
“Agricultural Zones” means a Special Economic Zone declared as such under Section 5 to facilitate the agricultural sector, its services and associated activities;  
*(Provide the definition –it is mentioned in the proposed first schedule)*

### CLAUSE 4

THAT clause 4 be amended—

- by deleting subsection (1) and replacing therefor the following new subsection(1)—

“(1) The Cabinet Secretary shall, on the recommendation of the Authority, and in consultation with the Cabinet Secretary responsible for matters relating to finance declare, by notice in the Gazette, any area as a Special Economic Zone as set out in the First Schedule.”

*(inclusion of the “first schedule” -it is the one that sets the SEZ)*

- in subsection (3) by—
  - deleting the word “public” wherever it appears and substituting therefor the word “national”; and
  - deleting the word “recommended” and substituting therefor the word “recommendation”.  
*(editorial)*

### CLAUSE 5

THAT clause 5 be amended in paragraph (k) by deleting the words “by the Authority” and substituting therefor the words “in the Regulations”.

*(regulations to prescribe more criteria for designating SEZs as and when need arises)*

**CLAUSE 7**

**THAT** clause 7 of the Bill be amended in paragraph (b) by inserting the words “and shall in addition include a label indicating “manufactured in SEZ Kenya” ” immediately after the words “country where such goods were manufactured”

**CLAUSE 12**

**THAT** clause 12 be amended by deleting paragraph (f) and replacing therefor the following new paragraph (f) —

“(f) not more than five other directors appointed by the Cabinet Secretary, from the private sector being persons who have distinguished service, relevant experience, and expertise.”

**CLAUSE 13**

**THAT** clause 13 be amended by deleting the words “ the Schedule” and substituting therefor the words “Second Schedule”.

*(To make it specific)*

**CLAUSE 21**

**THAT** clause 21 be amended in subsection (1) by deleting the word “General” appearing immediately after the words “be known as the”.

**CLAUSE 25**

**THAT** clause 25 be amended by deleting the word “Board” and substituting therefor the word “Authority”.

*(Editorial-nowhere in the bill has the board been provided for)*

**CLAUSE 31**

**THAT** clause 31 be amended in the marginal note by deleting the words “Authority to give notice to the Kenya Revenue Authority” and substituting therefor the words “Activities permitted within a Special Economic Zone”.

*(To be consistent with the contents of this part)*

**CLAUSE 33**

**THAT** Clause 33 be amended by renumbering the clause appearing immediately after clause 33 as “34”.

*(Editorial)*

**CLAUSE 35**

**THAT** clause 35 be amended—

(a) in the marginal note by inserting the words “developers and operators” immediately after the word “enterprises”; and



*(to reflect the contents within clause 35)*

- (b) in subsection(2) by deleting paragraphs (g), (h) and (i).  
*(these laws have been repealed hence no need of mentioning them)*

#### **INSERTION OF A NEW SCHEDULE**

**THAT** the following new Schedule be inserted immediately after clause 39—

#### **FIRST SCHEDULE**

**(S.4(1))**

#### **TYPES OF SPECIAL ECONOMIC ZONES**

2. The Authority shall permit multiple sector or single sector Special Economic Zones including but not limited to the following—

- (i) Free Trade Zones (FTZ)
- (j) Industrial Parks
- (k) Free Ports
- (l) Information Communication and Technology Parks (ICT Parks)
- (m) Science and Technology Parks
- (n) Agricultural Zones
- (o) Tourist and Recreational Zones
- (p) Business Service Parks

#### **6.3 PROPOSED AMENDMENTS FROM THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA)**

##### **CLAUSE 2**

**THAT** clause 2 be amended—

- by deleting the definition of the term “ customs territory” and replacing therefor the following new definition—

"Customs Territory" means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the Community under Article 3 of the Treaty for the Establishment of the East African Community but does not include a Special Economic Zone;

*(This will ensure consistency with existing legislation within the EAC namely, the EAC Protocol on the Establishment of the Customs Union.)*

- by inserting the following new definitions in proper alphabetical sequence—

“Agricultural Zones” means a Special Economic Zone declared as such under Section 5 to facilitate the agricultural sector, its services and associated activities;

*(To provide for the definition –it will be mentioned in the proposed first schedule)*

#### **CLAUSE 4**

**THAT** clause 4 be amended—

- by deleting subsection (1) and replacing therefor the following new subsection(1)—

“(1) The Cabinet Secretary shall, on the recommendation of the Authority, and in consultation with the Cabinet Secretary responsible for matters relating to finance declare, by notice in the Gazette, any area as a Special Economic Zone as set out in the First Schedule.”

- in subsection (3) by—

(a) deleting the word “public” wherever it appears and substituting therefor the word “national”; and

*(The term “public interest” is too generic. The term “national interest” is much more specific and better aligned to the objects and purpose of this Act)*

(b) deleting the word “recommended” and substituting therefor the word “recommendation”.

*(This is editorial)*

#### **CLAUSE 5**

**THAT** clause 5 be amended in paragraph (k) by deleting the words “by the Authority” and substituting therefor the words “in the Regulations”.

*(Provides opportunity for a more accountable process of developing the eligibility criteria since regulations would be developed in consultation with stakeholders)*

#### **CLAUSE 7**

**THAT** clause 7 of the Bill be amended in paragraph (b) by inserting the words “and shall in addition include a label indicating “manufactured in SEZ Kenya” ” immediately after the words “country where such goods were manufactured”

*(This amendment will enable the Kenya Revenue Authority to consider specific levies on imports from SEZs in order to protect and provide safeguards for local industry manufacturing similar goods or products)*

### **CLAUSE 12**

**THAT** clause 12 of the Bill be amended in subclause (1) by deleting the words “from the private sector” appearing immediately after the words “ Cabinet Secretary” in paragraph (f) and substituting therefor the words “and being nominees of a private sector organisation”.

*(It is necessary to have requisite Private Sector representation determined by the Sector through submission of names to the Cabinet Secretary)*

### **CLAUSE 27**

**THAT** clause 27 of the Bill be amended by inserting the following new subclause immediately after subclause (6)—

(7) The Cabinet Secretary shall—

(a) publish in the Kenya Gazette all approved applications to establish a special economic zone; and

(b) within ninety days of the coming into force of this Act, publish regulations on the application, issuance, suspension, revocation and appeal process on licensing of special economic zones.

*(This will promote and encourage transparency and accountability in decision-making and ensure access to information in line with Article 35 of the Constitution)*

### **CLAUSE 28**

**THAT** clause 28 of the Bill be amended in clause (c) by inserting the words “to be enacted within ninety days of the coming into force of this Act.

*(The Special Economic Zones (Land Use) Regulations are not in place and are necessary for an effective implementation of this provision. Hence the need for a specific timeline for their enactment.)*

### **CLAUSE 35**

**THAT** clause 35 of the Bill be amended by deleting paragraphs (g), (h) and (i).

*(These laws have already been repealed and are no longer Acts of Parliament)*

### **CLAUSE 37**

That clause 37 of the Bill be amended by inserting the words “within thirty days” immediately after the word “settlement”.

*(There is need for timely determination under S. 37 (1) subject to which the dispute is submitted to arbitration under Clause 37 (2))*

### **CLAUSE 39**

**THAT** clause 39 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (h)—

(i) determine the fees to be levied under this Act.

*(It is important that the fees applicable SEZ are published for certainty and transparency to guide decisions on investment)*

## **6.4 MINUTES**

### **MINUTES OF THE 42<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON THURSDAY 25<sup>TH</sup> JUNE, 2015 IN CONTINENTAL HOUSE, 5<sup>TH</sup> FLOOR, PARLIAMENT BUILDINGS, AT 10.00AM**

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#### **Present**

1. Hon. Benjamin Langat, MP - **Chairperson**
2. Hon. Nelson Gaichuhie, MP - **Vice-Chairperson**
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Mary Emase, MP
5. Hon. Anyanga Andrew Toboso, MP
6. Hon. Timothy Bosire, MP
7. Hon. Ogendo Rose Nyamunga, MP
8. Hon. Ronald Tonui, MP
9. Hon. Kirwa Stephen Bitok, MP
10. Hon. Joseph Limo, MP
11. Hon. Jones Mlolwa, MP
12. Hon. Patrick Makau King'ola, MP
13. Hon. Sumra Irshadali, MP
14. Hon. Sakwa John Bunyasi, MP
15. Hon. Dr. Oburu Oginga, MP
16. Hon. Sammy Mwaita, MP
17. Hon. Abdullswamad Shariff, MP
18. Hon. Shakeel Shabbir, MP

#### **Absent with Apologies**

1. Hon. Tiras Ngahu, MP
2. Hon. Joash Olum, MP
3. Hon. Sammy Koech, MP
4. Hon. Eng. Shadrack Manga, MP
5. Hon. Jimmy Nuru Angwenyi, MP
6. Hon. Alfred Sambu, MP
7. Hon. Dennis Waweru, MP
8. Hon. Iringo Cyprian Kubai, MP

9. Hon. Sakaja Johnson, MP
10. Hon. Lati Lelelit, MP
11. Hon. Daniel Epuyo Nanok, MP

#### **IN ATTENDANCE**

- |                         |   |                       |
|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda      | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno  | - | Legal Counsel         |
| 4. Mr. Eric Ososi       | - | Research Officer      |

#### **MIN.NO. DCF/185/2015 PRELIMINARIES**

The Chairperson called the meeting to order at 11. 00 a.m. followed by a word prayer from the Vice Chairperson Hon. Timothy Bosire, MP.

#### **MIN.NO. DCF/186/2015: CONSIDERATION AND ADOPTION OF THE AMENDMENTS TO THE SPECIAL ECONOMIC ZONES BILL, 2015**

The Committee deliberated on all the proposed amendments to the Special Economic Zones, 2015 by the National Treasury, the Ministry of Industrialization and Enterprise Development and the Kenya Private Sector Alliance (KEPSA) and adopted the following amendments:

#### **CLAUSE 2**

**THAT** clause 2 be amended—

- by inserting the following new definitions in proper alphabetical sequence—  
 “Agricultural Zones” means a Special Economic Zone declared as such under Section 5 to facilitate the agricultural sector, its services and associated activities;  
*(Provide the definition –it is mentioned in the proposed first schedule)*
- by deleting the definition of the term “ customs territory” and replacing therefor the following new definition—  
 "Customs Territory" means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the Community under Article 3 of the Treaty for the Establishment of the East African Community but does not include a Special Economic Zone;

*(The definition of the term “customs territory” is not consistent with the definition of the term in Annex VIII to the EAC customs union protocol. Article 39(2) of the EAC customs union protocol is very explicit that the Customs laws of the Community (including the said protocol and its definitions) shall apply uniformly in the customs union except as otherwise provided for in the protocol)*

- by deleting the definition of the term “duty and substituting therefor the following new definition—  
     “duty” means duty as defined under the East Africa Community Customs Management Act;  
     *(To be in line with the definition of duty under the East Africa Community Customs Management Act)*
- in the definition of “ import” by inserting the words “customs territory or a”;  
     *(The definition of export should be the opposite of the definition of import. This amendment ensures consistency with the definition of export)*

#### **CLAUSE 4**

**THAT** clause 4 be amended—

- by deleting subsection (1) and replacing therefor the following new subsection(1)—  
     “(1) The Cabinet Secretary shall, on the recommendation of the Authority, and in consultation with the Cabinet Secretary responsible for matters relating to finance declare, by notice in the Gazette, any area as a Special Economic Zone as set out in the First Schedule.”  
     *(inclusion of the “first schedule”-it is the one that sets the SEZ)*
- in subsection (3) by—
  - deleting the word “recommended” and substituting therefor the word “recommendation”.  
     *(editorial)*

#### **CLAUSE 5**

**THAT** clause 5 of the Bill be amended in paragraph (k) by deleting the words “by the Authority” and substituting therefor the words “in the Regulations”.

*(The other criteria should be prescribed by the Cabinet Secretary as provided for under clause 39 (2) (a) of the Bill.)*

#### **CLAUSE 6**

**THAT** clause 6 of the Bill be amended by deleting the words “unless otherwise provided under this Act, or any other written law”;

*(These words imply that the tax treatment of goods and services referred to in clause 6 can be amended by this Bill. The Bill cannot legally provide any tax treatments other than the ones provided under the tax laws. This would be ultra vires. In any case the EAC customs management Act which provides for tax (duty) treatment of goods in the special economic zone take precedence over our national laws regards the tax (duty) treatment of goods.)*

## **CLAUSE 7**

THAT clause 7 of the Bill be amended by inserting the words “and subject to any conditions as may be imposed” in subparagraph (iii).

*(This subparagraph puts controls)*

## **CLAUSE 8**

THAT clause 8 of the Bill be amended—

- in subclause (1) by inserting the words “of the East African Community” immediately after the words “applicable customs laws”;

*(The term “customs laws” is not defined in the Bill, it could be misleading, hence the need to replace it with the words “Customs laws of the community”)*

- in sub-clause (2) by inserting the words “ and the Customs laws of the Community” immediately after the words “Subject to this Act”;

*(The clause should, in addition, be subjected to the Customs laws of the Community. The customs laws of the Community and in particular the EAC customs Management Act prohibits the importation of certain goods. Allowing the use of goods of any description to be imported by licensed special economic zone enterprises would contravene the EAC customs management Act which may take precedence over national laws.)*

## **CLAUSE 11**

THAT clause 11 of the Bill be amended by inserting a new paragraph immediately after paragraph (p)—

“(q) any other functions as may be directed by the Board”

*(To provide for any other functions that may have not been foreseen by the Board)*

## **CLAUSE 12**

THAT clause 12 be amended by deleting paragraph (f) and replacing therefor the following new paragraph (f) —

“(f) four other directors appointed by the Cabinet Secretary, from the private sector or any other public institution being persons who have distinguished service, relevant experience, and expertise.”

*(restricts the number of nominees to four and don't have to be from private sector alone. They can come from academia as well or R and D institutions without necessarily limiting their professional background)*

## **CLAUSE 13**

**THAT** clause 13 be amended by deleting the words “ the Schedule” and substituting therefor the words “Second Schedule”.

*(To make it specific)*

#### **CLAUSE 16**

**THAT** clause 16 (1) of the Bill be amended by deleting the words “on such terms and conditions of service as may be specified in the instrument of appointment”.

*(Terms and conditions of service of CEOs of State Corporations are determined by the Blue Book (guidelines on terms and conditions of service for CEOs)*

#### **CLAUSE 25**

**THAT** clause 25 of the Bill be amended by deleting the words “Board may invest the funds of the Authority in securities” and substituting therefor with the words “Authority may invest its funds in government securities”

*(All public funds should only be invested in government securities. This clause leaves it open to investing in to other forms of securities. It also makes it clear that it is the authority that will be investing in the funds and not the Board)*

#### **CLAUSE 27**

**THAT** clause 27 be amended-

(c) in subclause (4) by deleting the words “a reasonable period of time” and substituting therefor the words “one month”.

*(Reasonable period of time for licensing needs to be specified.)*

(d) by inserting the following new subclause immediately after subclause (6)—

(7) The Cabinet Secretary shall—

(a) publish in the Kenya Gazette all approved applications to establish a special economic zone; and

(b) within hundred and eighty (180) days of the coming into force of this Act, publish regulations on the application, issuance, suspension, revocation and appeal process on licensing of special economic zones.

*(This will promote and encourage transparency and accountability ill decision- making and ensure access to information in line with Article 35 of the Constitution)*

#### **CLAUSE 28**

**THAT** clause 28 of the Bill be amended in sub clause (c) by inserting the words “to be enacted within hundred and eighty (180) days of the coming into force of this Act.



*(The Special Economic Zones (Land Use) Regulations are not in place and are necessary for an effective implementation of this provision. Hence the need for a specific timeline for their enactment.)*

### **CLAUSE 31**

**THAT** clause 31 of the Bill be amended-

- (c) in subclause 1 by inserting the words “, subject to Section 5,” immediately after the words “Authority shall”.

*(The clause empowers the special economic zone authority to give notice to the KRA after the Special economic zone developer, operator or enterprises has been licensed. This is inappropriate considering that the KRA would need to carry out its own evaluation and assessment before the license is issued. Therefore it should be subjected to section 5 of the Bill)*

- (d) in the marginal note by deleting the words “Authority to give notice to the Kenya Revenue Authority” and substituting therefor the words “Activities permitted within a Special Economic Zone”.

*(To be consistent with the contents of this clause-editorial)*

### **CLAUSE 33**

**THAT** clause 33 of the Bill be amended—

- by renumbering the clause appearing immediately after clause 33 as “34”  
(editorial)

### **CLAUSE 35**

**THAT** clause 35 of the Bill be amended –

- (d) In subclause (1) by deleting the words “all existing taxes and duties payable under the Customs and Excise Act, Income Tax Act, East African Community Customs management Act and Value Added Tax Act, on special economic zone transactions” and substituting therefor the words “duties and taxes in accordance with the existing tax laws”.

*(Articles 209 and 210 of the Constitution require that the national taxes be enacted in their respective Acts and not in other Acts of parliament such as this Bill.)*

- (e) in the marginal note by inserting the words “developers and operators” immediately after the word “enterprises”; and

*(to reflect the contents within clause 35)*

- (f) in subsection(2) by deleting paragraphs (g), (h) and (i).

*(these laws have been repealed hence no need of mentioning them)*

### **CLAUSE 37**

That clause 37 of the Bill be amended by inserting the words “within thirty days” immediately after the word “settlement”.

*(There is need for timely determination under S. 37 (1) subject to which the dispute is submitted to arbitration under Clause 37 (2))*

### **CLAUSE 39**

**THAT** clause 39 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (h)—

- (i) determine the fees to be levied under this Act.

*(It is important that the fees applicable SEZ are published for certainty and transparency to guide decisions on investment)*

### **INSERTION OF A NEW SCHEDULE**

**THAT** the following new Schedule be inserted immediately after clause 39—

#### **FIRST SCHEDULE**

**(S.4(1))**

#### **TYPES OF SPECIAL ECONOMIC ZONES**

3. The Authority shall permit multiple sector or single sector Special Economic Zones including but not limited to the following—
- (q) Free Trade Zones (FTZ)
  - (r) Industrial Parks
  - (s) Free Ports
  - (t) Information Communication and Technology Parks (ICT Parks)
  - (u) Science and Technology Parks
  - (v) Agricultural Zones
  - (w) Tourist and Recreational Zones
  - (x) Business Service Parks

The Committee further resolved to seek clarifications (which should be made by 30<sup>th</sup> June, 2015) on the following amendments from the Ministry of Industrialization & Enterprise Development and the National Treasury to enable it make informed decisions:

#### **Clause 2**

- in the definition of “Freeport Zone” by deleting the words “special economic zone or”;

*(The definition as it is provides the authority (special economic zone authority) as the entity responsible for the Freeport Zone. Under the laws of Kenya, the Kenya Ports Authority Act provides for Kenya Ports Authority to be the entity responsible for free ports)*

- in the definition of “Fund” by deleting the word “ General”;  
*(The word “general” is superfluous and implies the establishment of other specific funds by the Authority)*
- by deleting the definition of “ regional headquarters”;  
*(Regional headquarters for companies are not established in the special economic zones but in customs territories, outside the zones. The zones are supposed to be left for business enterprises which intend to make profits and enjoy tax holidays and exemptions obtainable in the zones and not shell entities whose main objective would be to provide inter company management and consultancy services to affiliate companies in order to avoid paying taxes that they would otherwise pay if they are established outside the zones.)*
- by deleting the definitions of “free trade zone” “industrial park” “information communication technology park” “science and technology park” and “tourist and recreational centre”;  
*(The authority to create special economic zones or other special economic arrangements is vested in the EAC council of Ministers. So far only a Freeport has been created by the Council as a special economic zone. Enacting the above definitions in the special economics Act will contravene the customs laws of the community which overrides the national laws (section 253 of the EACCMA). The zones should be approved by the Council before they are legislated on.)*

#### **CLAUSE 4**

- in subsection (3) by—
  - deleting the word “public” wherever it appears and substituting therefor the word “national”; and

#### **CLAUSE 21**

**THAT** clause 21 be amended in subsection (1) by deleting the word “General” appearing immediately after the words “be known as the”.

#### **CLAUSE 33**

**THAT** clause 33 of the Bill be amended—

- by renumbering the clause appearing immediately after clause 33 as “34”  
(editorial)
- in subclause (1) by deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) enjoy benefits on duty and value added tax on free material and equipment used in the development and management of the zones;”

*(A special economic zone developer can only enjoy duty and VAT free material and equipment. Extending such benefits to include income taxes would not be appropriate considering that such developers and operators would be undertaking activities similar to what would be carried out by similar firms in the customs territory.)*

- in subclause (2) by inserting a new paragraph immediately after paragraph (f)—

“(g) provide adequate customs facilities including office block, customs warehouse, verification bay, weighing equipment and a suitable enclosure to separate the special economic zones from the customs territory.”

*(To introduce a paragraph to commit the special economic zone developer or enterprise or operator to provide custom facilities as explained in the paragraph.)*

**MIN.NO. DCF/187/2014    ADJOURNMENT**

The chairperson adjourned the meeting at 1.00 p.m.

**Signed**.....

**Chairperson**

**Date**.....

ANNEX 5: CLAUSE BY CLAUSE ANALYSIS

Clause.	Highlights	COMMITTEE'S COMMENTS
<b>PART 1- PRELIMINARY</b>		
1.	Provides for the short title of the Bill and its commencement	This is in order.
2.	Provides for the interpretation of terms	This is in line with the best international practice
3.	Outlines the objective of the Bill	This is in line with the best international practice
<b>PART II- THE SPECIAL ECONOMIC ZONES</b>		
4.	Outlines who declares the SEZs , when and the ensuing procedures	This is in line with the best practise
5.	Provides for the criteria used/ factors considered when determining SEZs.	This is in line with the best practise.
6.	Defines imports and/ versus exports (goods) in Kenya.	Should include services in order to match Clause 7's provisions.
7.	Outlines the control of the movement of goods/services in and out of the SEZs	This is in line with the best practice.
8.	Outlines how goods may be handled when in the SEZs, and the penalties for contravening such a law	This is in order; however, there may be need to identify the criteria used to arrive at 20m or the three years.
9.	Outlines rules governing the payments and receipts of the enterprises in the SEZs.	This is in line with other laws, i.e. CBK Act and the Banking Act.
<b>PART III- THE SPECIAL ECONOMIC ZONES AUTHORITY</b>		
10.	This establishes the SEZs Authority and outlines its powers	This is necessary to facilitate the management and regulation of the SEZs. However, its functions may overlap those of the EPZ Authority.
11.	Outlines the functions of the Authority.	The functions are clearly outlined.
12.	Provides that there shall be a Board of Directors composed of ten members and the CEO as an ex-officio member	The diverse backgrounds will enhance better performance of the Board.
13.	Provides the conduct and regulations of the Board in accordance to schedule	The regulations will be a tool to monitor the operations of the Board.
14.	Provides for the powers of the Board.	This is in line with other provisions of the Bill.

15.	Provides for the remuneration of the Directors.	The remuneration should be subject to SRC's advice on benefits.
16.	Establishes the position of the Chief executive Officer.	The Qualifications of a CEO...e.g. post graduate degree should be included to make the position competitive.
17.	Provides for the appointment of staff of the Authority.	This is in line with the best
18.	Outlines that the Board may delegate some duties of the Authority	There should be a limitation of duties i.e. major decisions should only be made by the Board
19.	Provides for the independence of the staff of the authority from personal liability.	This is in line with the best international practice
20.	Provides for the custody of the common seal of the Authority	This is line with the best international practise.
<b>PART IV: FINANCIAL PROVISIONS</b>		
21	Provides for the establishment of a Fund of the authority that shall be administered by the board; outlines the regulations regarding payment of monies into and out of the fund.	This will promote proper management of such a fund and its administration.
22	The financial year of the Authority to be the period of twelve months that ends on 13 <sup>th</sup> June each year.	This is line with the calendar of the national government.
23	Provides for procedures and guidelines on preparation of estimates of the revenue and expenditure of the authority	This is in line with all other relevant laws.
24	Outlines the guidelines on book keeping and Audit of the accounts of the Authority.	This will enhance proper management of the funds of the Authority.
25	Provides for investment of the funds of the authority in securities.	The authority may invest its funds in other forms apart from securities.
<b>PART V: REGULATORY PROVISIONS</b>		
26	Prohibits the carrying on business as a special economic zone developer, operator or enterprise and any other related activities within a special economic zone without a license issued under this act.	This is to enhance adherence and as well monitor the operators/developers and enterprises

27	Provides the procedures of Application, issuance and revocation of a license to a special economic zone developer, operator or enterprise.	This is line with the other provisions of the Bill.
28	Provides qualifications of a special economic zones developer and operator	This is in line with best practices.
29	Requires special economic zones enterprises to fulfil specific qualifications before they are licensed by the authority.	This will promote adherence to terms and conditions required by the Act. However, there are no regulations on land use for these special economic zones.
30	Requires the Authority to keep a register of licenses issued under this Act.	This is to enhance proper control and regulation of the players.

**PART VI: RIGHTS AND OBLIGATIONS OF SPECIAL ECONOMIC ZONE ENTITIES**

31	Requires the Authority to give notice to the Kenya Revenue Authority of every special economic zone developer, operator or enterprise, its activities and conditions as per the issued license.	It's important for KRA to be aware of the SEZ, for purposes of applying the necessary regulations on fiscal incentives
32	Provides for facilities a special economic zone developer shall be required to maintain.	This ensures a predictable environment and boosts investor confidence.
33	Outlines the rights to be enjoyed by a special economic zone enterprise.	This acts as an incentive to promote the industries therein. The subheading should include enterprises.
35	Provides for the exemption of special economic zone enterprises, developers and operators from all existing taxes and duties payable under al taxes, and provides for work permits for of the 20% of full-time employees.	This is essential since it enhances competitiveness of the enterprises operating in special economic zones. The developers and Operators should be included in the sub-heading. The tax-waivers should not be perpetual. Delete the Sisal and Coffee Acts have since been repealed.

**PART VII: MISCELLENOUS PROVISIONS**

36	Provides for the furnishing of information to the Cabinet Secretary on need basis.	The information is necessary during policy formulation by the cabinet secretary.
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37	Provides a dispute resolution mechanism for disputes between a special economic zone enterprise and the Authority.	This is necessary in order to enhance proper conduct and solution of disputes to solve any matter that arises enterprises and the authority,
38	Exempts the Authority from paying stamp duty for land transactions	This acts as a further incentive and subsequently reduces cost of land to the Authority.
39	Gives the Cs the mandate to make all relevant regulations in regard to the Act as well with the advice of the Authority.	This vests the Cs and the Authority with the powers to make all necessary regulations in order to foster proper function of the SEZs.
SCHEDULE: Provisions for the conduct and affairs of the Board established in Clause 12.		