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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

REPORT OF THE STANDING COMMITTEE ON TRADE,
INDUSTRIALIZATION AND TOURISM

ON

PETITION CONCERNING THE ALLEGED FRAUDULENT DEALINGS AT
DIAGEO PLC, EAST AFRICA BREWERIES LIMITED, KENYA BREWERIES
AND UDV (KENYA) LIMITED

Clerk's Chambers,
Parliament Buildings,
NAIROBI.

DECEMBER, 2024

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LIST OF ABBREVIATIONS/ACRONYMS

EABL	- East African Breweries Limited
KBL	- Kenya Breweries Limited
CMA	- Capital Market Authority
KRA	- Kenya Revenue Authority
MP	- Member of Parliament
CAK	- Competition Authority of Kenya

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PRELIMINARIES

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Article 124 (1) of the Constitution of Kenya provides for the establishment of Committees where each house of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

The Senate Standing Committee on Trade, Industrialization and Tourism is established pursuant to Standing Order 228(3) of the Senate Standing Orders. As set out in the 187, the Committee is mandated to consider all matters related to trade, industrialization, tourism, cooperatives, investment and divestiture policies.

COMMITTEE MEMBERSHIP

- | | |
|---|---------------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Anyieni Okenyuri, MP | - Vice-Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |
| 4. Sen. Jackson Kiplagat Mandago, EGH, MP | - Member |
| 5. Sen. Paul Karungo Thangwa, MP | - Member |
| 6. Sen. Crystal Kegehi Asige, MP | - Member |
| 7. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 8. Sen. Betty Batuli Montet, MP | - Member |
| 9. Sen. Hezena M. Lemaletian, MP | - Member |

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

At the sitting of the Senate held on 30th May, 2023 a Petition was reported by Sen. Wakili Hilary Sigei, MP, on behalf of the Petitioner, Mr. Rono Nicholas from Bomet County pursuant to standing order 236 (2) regarding the alleged fraudulent dealings at Diageo Plc, East African Breweries Limited (EABL), Kenya Breweries and UDV (Kenya) Limited. Specifically, the petitioner highlighted the following;

1. There was a controversial majority acquisition of EABL by Guinness PLC and that the Capital Markets Authority (CMA), Kenya Revenue Authority (KRA), the National Treasury and EABL have not acted to stop the fraudulent activities of shareholding and acquisitions;
2. The acquisition of an extra 15 percent in EABL by Diageo PLC in 2023 was a fraud for acquiring of shares for an onward transfer to a new buyer (Heineken/Castel Group) at a much higher value to the detriment of Kenyan shareholders;
3. Employees of EABL were bullied, coerced, threatened, and otherwise intimidated to sell their share options to Diageo PLC which is against the laws of Kenya;
4. Kenya Breweries Limited (KBL), initially owned massive real estate in Kenya that comprised staff houses, staff complexes, go downs and warehouses, factories and other assets; and
5. There is massive loss of employment at EABL. Currently EABL employs a paltry 600 employees, as compared to over 6000 direct employees.

Mr. Speaker Sir,

The petitioner prayed that the Senate investigates these allegations with a view to recommending amendments to the Capital Markets Authority (CMA) Act to cushion the shareholders from future manipulation.

Mr. Speaker Sir,

The Committee conducted an investigation and engaged the relevant institutions and stakeholders on the issues raised in the Petition including the Petitioner, the Capital Markets Authority, the Competition Authority of Kenya, the Kenya Revenue Authority and the East African Breweries Limited.

Following consideration and analysis of the submissions, the Committee made the following observations and findings; -

- a) With respect to the 1997 EABL acquisition by Guinness Plc, EABL sought to raise Kshs. 1.5 billion from the existing shareholders, through a rights issue. Guinness PLC increased its share to 46% and eventually to 50.03 % through an internal reorganization in 2000, by consolidation of shares from Guinness Overseas Limited and Diageo Holdings Netherlands B.V. in the year 2000;
- b) In October 2022, Diageo Plc announced plans to raise its stake in EABL from 50.03% to 65% and which was approved by the Capital Markets Authority in January 23, 2023, which reduced local shareholding in EABL to 35%;
- c) The tender offer was oversubscribed, receiving requests for 143.52 million shares against the 118.39 million sought. The attractive offer included eligibility for an interim dividend of Kshs. 3.75 per share;
- d) There were several reported complaints to the Competition Authority of Kenya regarding anti-competitive practices by KBL and EABL, which calls for enforcement of penalties under the Competition Act;
- e) That there were reported cases against EABL for abuse of dominant position and the Capital Markets Authority in most cases recommended variation of contracts whereas enforcement of the pecuniary penalty is likely to be more expedient in deterring repeated abuse; and
- f) There are pending tax disputes between EABL and KRA which are at various stages of resolution however, there are no reported tax disputes involving Diageo PLC.

The Committee therefore recommends that —

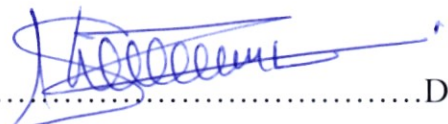
- a) The Capital Markets Authority monitors compliance with the Capital Markets (Public Offers, Listings and Disclosures) Regulations, 2023 and submit a report to the Committee on the status of implementation and compliance with the said Regulations within six months of tabling of this report.
- b) The Capital Markets Authority engages and sensitizes the public on the provisions of the Regulations in (a) above and demonstrate the initiatives taken in this regard in the report to be submitted to the Committee.
- c) The Competition Authority of Kenya should enforce the pecuniary penalty outlined under section 24(3) of the Competition Act, 2010 for abuse of dominant position to

deter breach of Competition rules and promote fair marketing practices for all players and submit a report to the Senate within six months of the tabling of this report.

- d) The Competition Authority of Kenya, within six months of the tabling of this report, submits a report to the Senate on the reported cases of abuse of dominance from 2023 to 2024 and the respective measures and decisions taken by the Authority to resolve the cases.

Mr. Speaker, Sir,

It is now my pleasant duty and privilege, on behalf of the committee to present this report of the Standing Committee on Trade, Industrialization and Tourism on its consideration of the petition by Mr. Rono Nicholas concerning fraudulent shareholding activities and illegal acquisition of East African Breweries Limited by Diageo Plc.

Signed..........Date.....*5th December, 2024*.....

SEN. LENKU OLE KANAR SEKI, MP

CHAIRPERSON,

SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND
TOURISM

CHAPTER ONE:

INTRODUCTION AND BACKGROUND

1. At a sitting of the Senate held on 30th May, 2023, a petition on alleged fraudulent dealings at Diageo PLC, East Africa Breweries Limited, Kenya Breweries and UDV (Kenya) Ltd was reported by Sen. Wakili Hilary Sigei, MP, on behalf of the Petitioner, Mr. Rono Nicholas a resident of Bomet County pursuant to the Standing Order 232(1) of Senate Standing Orders. The petition was committed to the standing committee on Trade, Industrialization and Tourism for consideration and subsequent Tabling of the Report in accordance with Standing Order 238.

Legal basis for Petitions

2. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
3. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities while Article 119(1) of the Constitution provides that “every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”*
4. Section 5(2) of the Petition to Parliament (Procedure) Act, 2012 provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.* In this regard, Standing Order 238 of the Senate Standing Orders on Committal of Petitions provides as follows-
 - (1) *Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.*
 - (2) *Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.*
5. Standing Order 239 requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 238 (Committal of Petitions) submit a copy of the report to the petitioners.

Salient matters raised by the Petition

6. The salient issues raised in the said Petition include —
- (1) THAT Kenya Breweries Limited is one of the oldest publicly listed companies in Kenya having been established in the year 1922;
 - (2) THAT, there has been a controversial majority acquisition of East African Breweries by Guinness PLC in 2000 which was strongly resisted by the people of the Republic of Kenya through Parliament;
 - (3) THAT, having knowledge of the dealings the Capital Markets Authority (CMA), Kenya Revenue Authority (KRA), the National Treasury and East African Breweries Limited have since not acted to correct or stop the fraudulent activities of shareholding and acquisitions;
 - (4) THAT to deflect some of the backlash, Guinness Plc made a pledge to cede back most of the acquired shares to Kenyans in due course;
 - (5) THAT, in complete and total betrayal of this undertaking, Diageo PLC (the successor of Guinness Plc) has now purported to acquire an additional 15 per cent shares in the East African Breweries Limited (EABL);
 - (6) THAT, the undertaking by Guinness PLC to cede back shares is actionable through a class action;
 - (7) THAT, the recent acquisition of the extra 15 per cent in EABL is a fraud upon the people of Kenya as the shares are being acquired for an onward transfer to a new buyer at a much higher value for the benefit of the shareholders and to the detriment of Kenyan shareholders who will be denied the benefit of the higher price that Diageo will get from onward sell shortly;
 - (8) THAT employees of EABL have been bullied, coerced, threatened, and otherwise intimidated to sell their share options to Diageo Plc which is against the laws of Kenya;
 - (9) THAT an onward sale of Diageo interests in EABL has been agreed with Heineken/Castel Group and purchase of an additional 15 per cent shares is meant to assure Heineken/Castel Group of a controlling stake in East African Breweries Limited (EABL) after the onward sale;

- (10) THAT, even as the process for acquiring the extra 15% shares was ongoing, there was an ongoing due diligence at EABL conducted by the prospective purchasers of the Diageo shares and the representations made to the Capital Markets Authority and the Nairobi Securities Exchange were blatantly and criminally false and amount to fraud on the people of Kenya;
- (11) THAT the sale of the shares to Heineken/Castel Group has been prompted by the desire by the desire of Diageo to fraudulently evade huge tax liabilities that EABL has been hiding through massive bribery of KRA and National Treasury officials;
- (12) THAT a whistleblower in 2020 detailed to the well-known reporter John Kamau how EABL had been manipulating the water and alcohol content of its products to change the tax bracket of its producers and through this illegal water content manipulation EABL has managed to evade taxes amounting in excess of Shs. 875 billion to date;
- (13) THAT, Kenya Breweries Limited (KBL), when it was locally owned, possessed massive real estate in Kenya that comprised staff houses, staff complexes, go downs and warehouses, factories and other assets and had employed over 6,000 Kenyans;
- (14) THAT, EABL has corruptly disposed most its properties and repatriated the sale proceeds to Diageo Plc in order to feed the rapacious and gluttonous appetite of Diageo Plc. EABL is now but a mere shell of itself, employing a paltry 600 employees;
- (15) THAT, having sold off all its properties of EABL, and needing to satisfy the Diageo Plc shareholders, the new scheme is to quickly progress the sale of Diageo Plc share in EABL to recognize the sale proceeds to boost the balance sheet of Diageo Plc before the end of the financial year ending 30th June this year;
- (16) THAT the added incentive is to guarantee huge bonus payments to the Chief Executive Office of Diageo Plc, Ivan Menezes and directors and executives of EABL who have pushed for the sale after which the announcement of the retirement of Ivan Menezes was made effective end of June 2023 to coincide with the conclusion of the sale of EABL to Heineken/Castel Group;
- (17) THAT, the overall impact of this contrived corporate action is a serious betrayal of people of Kenya;

- (18) THAT a parliamentary hearing is urgently required to interrogate these events and to secure the public interest of Kenya and her people;
- (19) THAT the Senate is the last temple of justice and the only institution that can assert itself against the pervasive influence of Diageo Plc; and
- (20) THAT, the petitioner had made efforts to have this matter addressed to the relevant authorities, all of which have been unsuccessful and that this matter was not pending before any court of law or any constitutional body.

Prayer by the Petitioner

7. The petitioners prayed that the Senate investigates with a view to recommending amendments to the Capital Markets Authority (CMA) Act to cushion the shareholders from such future manipulation.

CHAPTER TWO:
CONSIDERATION OF THE PETITION

8. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petitioner. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
9. In the course of its inquiry, the Committee met with the following stakeholders;
 - (a) The Petitioner, Mr. Nicholas Rono
 - (b) The Capital Markets Authority
 - (c) The Competition Authority of Kenya; and
 - (d) The Kenya Revenue Authority
 - (e) East African Breweries Ltd

Submission by the Petitioner

10. The Petitioner appeared before the Committee on 29th June, 2023 to elucidate further on the petition. In his submission, he stated that —
 - a) the petition arose after a family member, (his grandfather, now deceased) allegedly lost shares at EABL under mysterious circumstances;
 - b) there were concerns on the shareholding by Diageo PLC at the EABL which stood at 65%. According to the petitioner, this exceeded the requisite percentile reserved for foreign investors. He also submitted that Diageo Plc was pushing for a full takeover of EABL. He was concerned that this would disadvantage local investors by edging them out of the market and will promote a monopoly in the sector;
 - c) between 2015 and 2017, there was an unresolved tax dispute between EABL and Kenya Revenue Authority on the matter of unpaid taxes and sought to understand how the issues were resolved;
 - d) furthermore, that Kenya Revenue Authority gave preferential treatment to EABL on tax relief yet the same was not extended to other local distillers;
 - e) there was need to ascertain the status of the Kshs. 15 billion Kisumu Breweries Plant, where over 100,000 farmers were signed up for millet farming. The plant was not operational;

- f) the Capital Markets Authority had the role of protecting investors as well as shareholders. However, that was not being done adequately. Additionally, there was need to investigate the change in shareholding of EABL over the years and the recent amendments to Capital markets Authority Regulations before EABL share trading; and
 - g) there was irregular sale of shares and purchase by Diageo Plc.
11. The petitioner therefore prayed that the Committee intervened with a view to protecting Kenyan firms against unfair competition through foreign take overs, acquisitions and mergers.
 12. Further, at another meeting held on 27th July, 2023, the Petitioner submitted that whereas he had referred to the lost shares of his grandfather, it was only for illustration on how he was affected by the matters of domestic shareholding in public listed companies in Kenya. He requested the Committee to expunge the said illustration from his evidence as he was not the administrator of the deceased's estate.
 13. The petitioner also requested the Committee to invite key persons of interest including the whistle-blower to shed light on the transactions and the prayers in the petition be amended to address holistic public interests in public listed companies.

Submissions by the Capital Market Authority

14. The Capital Markets Authority (CMA) is a State Corporation responsible for regulating and supervising all entities and individuals involved in the capital markets. This includes market intermediaries such as stockbrokers, investment banks, and asset managers, as well as listed companies and other market participants. The regulatory objectives of CMA include protecting the interests of investors by ensuring fair and transparent markets.
15. The CMA stated that the Authority ensured compliance with disclosure requirements and was also responsible for ensuring market discipline especially in relation to market manipulation, insider trading, and other fraudulent activities.
16. Overall, the Capital Markets Authority of Kenya plays a pivotal role in ensuring the integrity, stability, and growth of the country's capital markets. By regulating market participants, protecting investors, and promoting market development, the CMA strived to create a robust and vibrant capital market ecosystem that contributed to Kenya's economic growth and development.

Acquisition of EABL shares by Diageo Kenya

17. The transaction involved the acquisition of EABL shares by Diageo Kenya through a tender offer, and subsequent to the transaction, an increased percentage shareholding by Diageo Kenya in EABL.
18. They explained that in a takeover transaction, the role of the Capital Markets Authority was limited to ensuring that the governing regulations were adhered to by the parties involved. The Authority did not make an assessment of the merits and demerits of takeover offers as that was a matter for individual shareholders to decide by making an election to accept or decline an offer.
19. The CMA role was to ensure that any take-over bid of a listed company strictly met the requirements as stipulated in the Capital Markets (Take-overs and Mergers) Regulations, 2002.
20. The main role of the regulator in any transaction include —
 - a) Ensuring that detailed disclosures regarding the offer are made in the offer document to enable the affected shareholders make an informed decision;
 - b) Making sure that the shareholders are provided with comprehensive details regarding operations and financial position of the Offeree;
 - c) Ascertaining the existence of adequate facilities for compensation of shareholders who accept the offer;
 - d) Reviewing all announcements and circulars relating to the offer for purposes of making sure that shareholders are not misled in any way; and
 - e) Ensuring that all the conditions of the offer, regulatory or otherwise are met.

Background of East African Breweries Limited (EABL) as a Listed Company

21. EABL is a leading beverage company operating in Kenya and other East African countries. Diageo, a global leader in alcoholic beverages, is a significant shareholder in EABL for many years. Diageo Plc is headquartered in London, United Kingdom, and has a primary listing on the London Stock Exchange and is a constituent of the FTSE 100 index. It also has a secondary listing on the New York Stock Exchange, in USA. Through its subsidiaries, joint ventures and other investments, Diageo operates in multiple other African countries offering various alcoholic and non-alcoholic beverages to consumers.

22. In 1997, EABL sought to raise Kshs. 1.5 billion for the expansion programme in both Uganda and Tanzania from the existing shareholders, through a rights issue. At the time, Guinness Plc (now Diageo) held 25.06% of the ordinary shares of EABL. Although it was open to all existing shareholders of the company, many local shareholders did not participate.
23. The transaction structure was such that Guinness Plc would act as an underwriter for the rights issue and acquire any untaken rights, to ensure full subscription for the issue and to get enough funds for the identified projects. As a result of this and low participation by local investors, the shareholding of Guinness Plc increased to 46%, thereby making it the largest single shareholder. At that time, Guinness Plc had indicated that it had no intention of making a full takeover of EABL and was willing to consider reducing its shareholding in future, subject to favorable market conditions and future business strategy. However, there was no legal or contractual obligation on Guinness Plc to reduce its shareholding in EABL.
24. The rights issue approval and grant of exemption from the repealed Takeovers Rules of 1992 was based on the following considerations:
 - a) The renounced rights were traded at the Nairobi Securities Exchange and were available to any local investor, but it attracted few new investors;
 - b) The rights issue was meant to enhance the shareholder value and their interest as well as positioning EABL as a leading company within East Africa; and
 - c) The exemption of Guinness Plc from making a full takeover bid as a result of underwriting the rights issue was informed by the fact that making a full takeover bid would have placed an even larger shareholding of EABL in the hands of Guinness, with a possibility of compulsory acquisition of remaining shareholders. This would have been against public interest as with such a huge shareholding, a majority shareholder was in a position to pass a de-listing resolution.
25. The matter was investigated in November 2000, by the then Parliamentary Committee on Finance, Planning and Trade. The Authority made submissions to the Committee with emphasis that —
 - a) while it was important to redefine national policy as regards local shareholding limits for privatized enterprises to encourage broad shareholding by Kenyans,

it would be undesirable to extend such a policy to privately owned companies as such a move would negate the policy on attraction of foreign investments; and

- b) there should be a balance between taking care of national interests and encouragement of foreign investments, which were also useful to the economy.

Subsequent Restructuring

26. In the year 2020, Diageo Plc indirectly held 395,608,434 ordinary shares in EABL, representing 50.03% of the issued shares of the listed company. These shares were held through the following indirectly held wholly owned subsidiaries:

No.	Subsidiary	No. of shares	% holding
1.	Diageo Kenya Limited	338,618,340	42.82%
2.	Guinness Overseas Limited	20,628,804	2.61%
3.	Diageo Holdings Netherlands B.V	36,361,290	4.6%

27. Following an internal group re-organization, the shares held by Guinness Overseas Limited and Diageo Holdings Netherlands B.V were transferred to Diageo Kenya Limited. That resulted in the consolidation of holding by Diageo Kenya Limited to 50.03%. The intention was indicated as to simplify the indirect holding structure of EABL by consolidating the shareholding of Diageo Plc to a single entity. Diageo Kenya Limited further indicated that there was no intention to take over EABL.
28. There was no change in ultimate beneficial ownership since Diageo Plc remained the ultimate beneficial owner of this 50.03% stake in EABL. The transfers were affected through a private transfer under regulation 57 (e) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002, which allow for private transfers, not resulting in any change in beneficial ownership.

Tender Offer

29. A tender offer is a bid to purchase some or all of shares in a listed company from the existing shareholders. The prospective buyer announces a tender offer, inviting existing shareholders to sell their shares to the buyer at a specific price. The person making the offer prepares a tender offer document, which is circulated to shareholders. The offer is conducted publicly and shareholders are invited to sell their shares for a

specified price and within a particular window of time. The price offered is usually at a premium.

30. Shareholders can decide if they want to participate in the tender offer, and if they do, they tender their shares to the company. Shareholders who do not want to participate do not have to take any action and are under no obligation to tender their shares to the buyer.
31. Diageo Kenya, a subsidiary of Diageo PLC made a tender offer to acquire additional shares in EABL, thereby increasing its stake in the company. This was informed by Diageo’s observation that the company was keen to acquire an additional stake in EABL in line with comparable stakes held by similar companies in the region and the greater African continent.

Transaction Details

32. Parties Involved:
 - a) EABL: Listed on Nairobi Securities Exchange- A prominent beverage company headquartered in Nairobi, Kenya being the issuer and listed company
 - b) Diageo Kenya PLC- Offeror -The subsidiary of Diageo Plc, a global leader in alcoholic beverages with its headquarters in London, United Kingdom
 - c) Other shareholders holding 49.7% in EABL as at the time of the transaction.
33. The proposed acquisition by Diageo Kenya of the Ordinary Shares in EABL was indicated to be consistent with Diageo Plc’s African growth objectives and its active portfolio management. Further, Diageo noted that its indirect shareholding in EABL of 50.03% was lower than the average shareholding of approximately 66.9% held by other multinational parent companies in listed subsidiaries in Kenya.
34. The ownership percentage was also lower than the average shareholding for other listed subsidiaries of Diageo PLC in Africa such as in Guinness Nigeria and Guinness Ghana Breweries Limited where Diageo indirectly holds a 58.02% and 80.4% stake, respectively.
35. Table 1 below highlights the percentage shareholding by multinational parent companies for companies listed at the NSE.

Table 1: Percentage shareholding by multinational parent companies for companies listed at the NSE

	Company	Multinational Parent Company	% shareholding as at May 2023
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1.	East African Breweries Plc (EABL)	Diageo Kenya Limited	65%
2.	Total Energies Marketing Kenya Plc	Total Energies Marketing Afrique	92.26%
3.	Stanbic Holdings Plc	Stanbic Africa Holdings Limited (UK) which is 100% owned by Standard Bank Group Limited (South Africa)	74.92%
4.	Standard Chartered Bank	Standard Chartered Holdings (Africa) BV	73.89%
5.	Liberty Kenya Holdings Plc	Liberty Holdings Limited S.A.	73.47%
6.	Absa Bank Kenya	Barclays Africa Group	68.5%
7.	BAT	Molenssteegh Invest BV	60%
8.	BOC Kenya Plc	BOC Holdings	65.38%
9.	Limuru Tea Plc	Unilever Tea Kenya Limited	52%
10.	TPS East Africa	Aga Khan Fund for Economic Development S.A.	64.58%
11.	Kapchorua Tea Kenya	Ngong Tea Holdings Limited (UK)	23.96%
		Williamson Tea Kenya Limited	39.56%
12.	Williamson Tea Kenya	Ngong Tea Holdings Limited (UK)	51.46%
13.	Unga Group Plc	Victus Limited	50.93%
14.	WPP Scangroup	Cavendish Square Holding BV	40.94%
15.	Kakuzi Plc	Bordure Limited	26.06%
		Lintak Investments Limited	24.64%
16.	Nation Media Group Plc	Aga Khan Fund for Economic Development SA	44.66%

36. CMA further submitted that Diageo Kenya assured stakeholders that it was keen on maintaining its listed status and had no plans to delist EABL from the Nairobi Securities Exchange (NSE). Further, that Diageo Kenya indicated that it did not envisage making any changes to the Board of Directors of EABL, executive management team of EABL, or current business strategy of EABL, as a result of an increase of its shareholding in EABL pursuant to the Tender Offer.
37. CMA stated that the Diageo Plc offered to purchase shares from willing shareholders at a premium and no shareholder was under any obligation to accept the offer.
38. The tender offer price was set at Ksh 192 per share, which was at a premium. As at 12 October 2022, being the last trading day prior to submission of the Notice of Intention, an aggregate of 8,300 Ordinary Shares of EABL traded at an average price of Kenya Shillings 137.48 per Ordinary Share on the Nairobi Securities Exchange on an ex-dividend basis.
39. Historical trading and volume data showed that, over the 12-month period to 12 October 2022, EABL shares had traded on the Nairobi Securities Exchange at prices of between Kenya Shillings 129.99 and 164.72 per Ordinary Share.
40. The results of the tender offer indicated that 118,394,897 shares were tendered and accepted by Diageo Kenya. As a result, Diageo Kenya acquired 118,394,897 additional ordinary shares of East African Breweries Plc by means of a tender offer. Diageo Kenya PLC also sought and was granted an exemption from making a mandatory takeover of EABL pursuant to Regulation 4 of the Capital Markets (Takeovers and Mergers) Regulations, 2002. The total value of the transaction was Ksh. 22,731,820,224. The Authority had not received any complaint from any shareholder of EABL or any other party.

Compliance with the Capital Markets Act and the Public Offers Regulations

41. The transaction was reviewed to ensure compliance with disclosures required by the Capital Markets Act and Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002. The relevant disclosures were made in a tender offer document which was circulated to all shareholders to ensure fairness, transparency, and investor protection.

42. The process was as follows —
- a) Diageo Kenya Limited served a Notice of Intention on the listed company on October 13, 2022. This was also published in two newspapers of national circulation;
 - b) East African Breweries Limited published a cautionary announcement on October 17, 2022 informing shareholders about the proposed tender offer;
 - c) Diageo Kenya prepared a tender offer document which provided the details of the offer, terms and basis of the offer price;
 - d) Tender offer document was circulated to shareholders and an abridged version published in two newspapers of national circulation; and
 - e) the offer was open for acceptance by shareholders in accordance with the published offer timetable.
43. In addition to its listing on the stock market in Kenya, EABL is cross-listed on the Dar es Salaam Securities Exchange stock market of the United Republic of Tanzania and the Uganda Securities Exchange in Uganda. Accordingly, notifications of the Tender Offer were made to the relevant authorities in Uganda, being the Capital Markets Authority in Uganda and the Ugandan Securities Exchange and in Tanzania being the Capital Markets & Securities Authority in Tanzania, the Dar es Salaam Stock Exchange) and owing to EABL's majority shareholding in Serengeti Breweries Limited, it was necessary to make an application to the Fair Competition Commission of ("FCC") in Tanzania. Diageo Kenya submitted its merger filing to the FCC on 28 October 2022 and obtained approval for the transaction on December 19, 2022 after the 163rd case meeting of the FCC.
44. Diageo Kenya PLC through its financial advisers, SBG Securities wrote to the CMA to seek an exemption on behalf of Diageo Kenya from the requirement in the Capital Markets (Take- overs and Mergers) Regulations, 2002 (the Take- Over Regulations) for Diageo Kenya to make a take-over offer in relation to the proposed acquisition of up to 118,394,897 additional ordinary shares (the Sale Shares) in EABL, by means of a tender offer made to all the shareholders of EABL. The CMA approved this application on January 23, 2023 after obtaining confirmation that Diageo Kenya intended to maintain EABL's listing on the Nairobi Securities Exchange following completion of the Tender Offer, as it believed the interests of EABL's shareholders

and the broader public would be best served by EABL remaining a company listed on the Nairobi Securities Exchange and available to be invested in by the Kenyan public.

45. In addition, Diageo and Diageo Kenya did not envisage making any changes to the board of directors of EABL, the executive management team of EABL or the current business strategy of EABL, as a result of an increase of its shareholding in EABL pursuant to the Tender Offer.
46. The detailed tender offer document (the Tender Offer Document) that set out the salient details of the offer was made available to all shareholders by post, email, and other electronic means such as posting the document on Image Registrars' website. Shareholders were invited to complete and return tender offer forms (the Tender Form) to offer to sell their ordinary shares in EABL.
47. Diageo Kenya made the Tender Form available to Shareholders through various options including electronic means where shareholders were encouraged to submit their acceptances via an online portal on Image Registrars' website and physical tender forms that were provided by post, email or downloaded from Image Registrar's website. The results of the tender offer were communicated after the closing date of the offer and shareholders paid for the shares tendered. The shares were subsequently transferred to Diageo Kenya.
48. The transaction between the shareholders of EABL and Diageo Kenya through the tender offer did not breach any provisions outlined in the Capital Markets Act and Diageo Kenya PLC was required to make the necessary disclosures to shareholders.
49. The transaction was reviewed and evaluated by the CMA and engagements were held with the representatives of Diageo Kenya PLC to understand the rationale for the transaction and strategic intent of Diageo Kenya PLC in the operations of EABL.

Acquisition of the securities with an intention by the purchaser to transfer the shares onward to a new buyer and at a higher value

50. CMA submitted that Diageo Kenya confirmed in writing that it was not acting in concert with any person (whether pursuant to a formal or informal agreement or understanding) in relation to the acquisition of the Ordinary Shares or the consolidation of control of EABL.
51. Further, CMA Stated that Diageo Kenya affirmed that there was no agreement or arrangement that had been made by which shares acquired by Diageo Kenya in

- pursuance of the Tender Offer would or may have been transferred to any other person.
52. The above notwithstanding, it was noteworthy that a shareholder was free to deal with their shares as they wished with no limitation, just like any other property, provided that they did not breach any existing laws. The Capital Markets Authority had no information ascertaining that the acquisition by Diageo Kenya was with the intention of transferring to another party. If that was later found to be the case, regulatory sanctions could be taken against the company for non-disclosure of material information to shareholders.
 53. Further, since the Diageo Kenya PLC held 66% shareholding in EABL, the Takeovers and Mergers Regulations require that any additional acquisition of shares by Diageo was subject to regulatory consideration. The CMA would ensure that Diageo Kenya upheld representations made in the Tender Offer.
 54. CMA informed the Committee that the Cabinet Secretary (CS) to the National Treasury, through the Capital Markets (Foreign Investors) (Amendment) Regulations 2015 dated 11th June 2015, dispensed with the 75% investment limit for foreign investors, that was hitherto applicable. The Cabinet Secretary could however, by notice in the Kenya Gazette, prescribe a maximum foreign shareholding in an issuer or listed company. No such limit had been imposed on the shares of EABL.

Acquisition of the securities with an intention by the purchaser to evade tax liability

55. The advisers to the transaction correctly indicated that as the Ordinary Shares were listed on the Nairobi Securities Exchange, no capital gains tax would be payable in Kenya in connection with the gain accruing on the transfer of such Ordinary Shares in accordance with the relevant laws. Similarly, no stamp, registration or similar duties or taxes would be payable in Kenya in connection with the transfer of the Ordinary Shares in accordance with applicable laws. That opinion and conclusion by the advisers to the transaction however did not preclude the Kenya Revenue Authority (KRA) from conducting an independent assessment to ensure compliance with the applicable tax laws in Kenya.

Financial and Economic Implications

Strengthened Partnership

56. The increased shareholding by Diageo Kenya PLC through the tender offer signified its continued commitment and confidence in the growth potential of EABL and the East African market. The increase in shareholding by Diageo Kenya PLC could lead to enhanced collaboration between EABL and Diageo Plc, leveraging the latter's global expertise and resources to drive innovation, market expansion, and job creation in Kenya.

Economic Impact

57. The transaction demonstrated foreign direct investment (FDI) in Kenya's beverage industry, contributing to the country's economic development and job creation. It indicated increased investor confidence in the Kenyan market, potentially attracting more FDI in the future. Further, Diageo Kenya paid a premium on the traded value of EABL securities. Thus, the total value of the transaction was Kshs. 22,731,820,224, which was to the benefit of the shareholders of EABL.

Evaluation

58. In evaluating the recent transaction between the shareholders of EABL and Diageo Kenya PLC through a tender offer, it was the conclusion of the Authority that the transaction was conducted in compliance with the Capital Markets Act, the Public Offers Regulations as well as the Takeovers Regulations. The tender offer price, the results of the tender offer, and the overall implication of the transaction were largely positive for the market.
59. The Authority submitted that they were in the process of overhauling the current Capital Markets (Takeovers and Mergers) Regulations to provide for matters as independent valuations and to take into consideration the best practices relating to such transactions. The Authority placed the draft regulations on exposure between 16th August and 4th October 2022 and had engaged stakeholders in face to face deliberations up to 31st May 2023. The draft Regulations were submitted to National Treasury and Economic Planning for further review before transmission to the Attorney General's Office.
60. Considering the Government's policy of attracting foreign investments, the Authority was keen to ensure a balance between taking care of national interests and

encouraging foreign investments, which was also useful to the economy. Further, this was also necessary to maintain the country's competitiveness against other countries and as such should not be perceived as having unfavorable conditions for such foreign investments.

61. Additionally, the Authority highlighted that the petitioner did not approach the Authority on this matter by way of a complaint or in any other manner. The Authority was mandated to consider and make a determination on complaints, and if a complainant was dissatisfied with the decision of CMA, they could appeal to the Capital Markets Tribunal, which was independent and under supervision of the judiciary.

Additional Information submitted Capital Market Authority

62. The Committee vide a letter dated 3rd August 2023 requested for further information relating to acquisition of shares in EABL by Guinness Plc and Diageo Plc.:

63. The Authority responded as follows:

a) Report on the initial acquisition of shares by Guinness Plc in EABL approved by the Authority in 2000:

i. Particulars of the tender offering by Guinness Plc including the prospectus filed with the Authority

64. The Authority submitted that in year 2000, it did not approve any tender offer transaction with respect to Guinness Plc acquiring shares in EABL. However, in 1997, EABL sought to raise Ksh. 1,500,000,000, through a rights issue for the expansion programme in Uganda and Tanzania. As per the prospectus documentation, the rights issue was in the ratio, 3 new shares for every 7 shares held by the existing shareholders of the company then, with the rights issue price being Ksh. 53. To guarantee raising of the required funds, Guinness Plc acted as the underwriter in the rights issue in case of unsubscribed rights.

65. The Authority's role in the transaction was to ensure that adequate disclosures were made to shareholders for them to decide on whether or not to participate in the rights issue. The results of the rights issue are summarized below —

Table 2: EABL Rights Issue Result-1997

Total number of rights offered	28,080,675
Number of shares allotted	8,592,720

Excess applications	19,487,955
Total shares allotted	28,080,675
Gross proceeds	Ksh. 1,488,275,775

66. At the time of the Rights Issue in 1997, Regulation 3(1) (b) of the Capital Markets Authority (Foreign Investors) (No. 2) Regulations, 1995 provided that the shares purchased by foreign investors would not exceed 40% in aggregate of the total shares offered. However, it also allowed locally incorporated companies, which were owned by foreign investors and individuals who were residents in Kenya to be treated as domestic investors, therefore, the company was placed in the category of local investor and consequently was not in violation of the Foreign Investor Regulations at the time.
67. Later on, an amendment was made on the 1995 Foreign Investors regulations in form of Section 3 of the Capital Markets (Foreign Investors) Regulations, 2002. It required that at least 25% of the ordinary shares of an issuer be reserved for local investors; therefore, implying that a foreign company could hold up to 75% of the shares in an issuer. Taking this into consideration, Guinness was as at the time considered to be within the stipulated limit as their shareholding at that point in East African Breweries Limited was less than the threshold.

Subsequent Restructuring of Diageo PLC Shareholding in EABL in 2000:

68. In the year 2000, Diageo Plc indirectly held 395,608,434 ordinary shares in EABL, representing 50.03% of the issued shares of the listed company. These shares were held through the following indirectly held wholly owned subsidiaries —

Table 3: Diageo EABL Share Restructuring in 2000

No.	Subsidiary	No of shares	% holding
1.	Diageo Kenya Limited	338,618,340	42.82%
2.	Guinness Overseas Limited	20,628,804	2.61%
3.	Diageo Holdings Netherlands B.V	36,361,290	4.6%

69. Following an internal group re-organization, the shares held by Guinness Overseas Limited and Diageo Holdings Netherlands B.V were transferred to Diageo Kenya

- Limited. That resulted in the consolidation of holding by Diageo Kenya Limited to 50.03%. The intention was indicated to simplify the indirect holding structure of EABL by consolidating the shareholding of Diageo Plc to a single entity. Diageo Kenya Limited further indicated that there was no intention to take over EABL.
70. Following the transaction, there was no change in ultimate beneficial ownership since Diageo Plc remained the ultimate beneficial owner of the 50.03% stake in EABL.
71. The justification for the approval of the transaction was based on the following reasons —
- a) The under subscription of the shares by EABL shareholders which was noted in the company's Public Statement issued on December 11, 1997.
 - b) Guinness Africa confirmed that it had no intention of launching a takeover bid for EABL.
- ii. The justification for approval of the acquisition including any other representations made to the Authority by Guinness Plc and EABL Limited in support of the acquisition.*
72. CMA reiterated that there was no tender offer in the year 2000. However, as indicated above, EABL raised funds through the rights issue in 1997.
- b) Disclosure on any complaints received from shareholders, relevant stakeholders, and the public at large on the initial acquisition of EABL Ltd by Guinness Plc**
73. In the year 2000, with anticipation that Guinness PLC would offload the shares underwritten in the 1997 rights issue, there was public debate through the media on the same. This led to an investigation by the then Parliamentary Committee on Finance, Planning and Trade in November 2000. The Authority was invited and made submissions to the Committee with emphasis on the following —
- a) while it was important to redefine national policy as regards local shareholding limits for privatized enterprises to encourage broad shareholding by Kenyans, it would be undesirable to extend such a policy to privately owned companies as such a move would negate the policy on attraction of foreign investments; and
 - b) there should be a balance between taking care of national interests and encouragement of foreign investments, which were also useful to the economy.

74. The Association of Kenya Stockbrokers raised the same issues with the Authority, seeking clarifications on the following —
- a) whether there was any intention by EABL to take-over the company, contrary to their earlier commitments; and
 - b) that the rights issue was priced above the market price hence making it difficult for their members to participate.
75. Subsequently, the Authority addressed the same through a meeting with the Association, where the issues were deliberated upon.

(c) An analysis of the economic benefits that the Guinness acquisition in 2000 accrued to Capital Markets

76. The Authority in assessing the economic benefits relied on information in public domain including the audited financial statements of EABL as summarized in Table 4 below —
- (a) The value of total assets of EABL had increased by more than 680% from Ksh. 14 billion in 2000 to Ksh. 110 billion in 2022.
 - (b) The issuer had been consistently profitable, and had been paying investors dividends on a regular basis. For instance, in the last ten years from 2013 to 2022, dividends paid amounted to Ksh. 53 billion representing an average dividend yield of 4% and pay-out ratio of 76%.
 - (c) The issuer had maintained blue chip status in the market, and was included in the NSE 20, NSE 25 and NASI indices which provide investors with a comprehensive and complementary benchmark to measure the performance of the Kenyan stock market.
77. The table below outlines the financial highlights of the company between 1997 and 2002.

Table 4: EABL Performance from 1997-2002

Ksh. '000	1997	1998	1999	2000	2001	2002
Turnover	22,952,678	25,778,213	25,248,788	25,448,122	26,813,674	27,734,679
Net Sales	10,849,910	12,873,000	12,840,000	12,914,000	13,969,000	14,444,000
Profit	1,157,946	494,000	1,507,000	1,798,000	2,499,000	3,401,076

Before Tax						
Net Profit	870,878	230,970	1,075,745	1,234,060	1,573,406	2,301,459
Tax Paid	251,348	166,476	379,032	623,308	946,793	1,099,617
Total Assets	13,429,273	13,281,433	13,938,133	14,095,809	15,134,076	17,986,236
Net Assets	8,551,672	8,558,563	8,665,454	8,738,556	10,314,701	11,121,592
Earnings Per Share*	13.29	2.82	11.49	12.91	14.88	21.27
Dividend paid	393,129	561,613	655,215	655,215	981,275	1,161,341
Dividend Per Share*	6.00	6.82	7.00	7.50	9.00	11.50
Market Price*	50	65	73	75	82	92
Dividend Yield	12%	11%	10%	10%	11%	13%

*Not in Ksh'000

(d) Parameters for assessing the justification of “strategic growth objectives” in approving acquisition by foreign investors in listed companies

78. CMA submitted that in assessing the strategic objective of an investor or issuer, it looks at how the stakeholders in the transaction would benefit. That can be in the form of—
- (a) Transfer of skills;
 - (b) Sharing of expertise and experience;
 - (c) Technical assistance in operations;
 - (d) Increase in funding and market share; and
 - (e) Tax and other incentives.
79. In the Public Announcement circulated on December 11, 1997, EABL indicated that the partnership with Guinness brought immense depth of expertise and experience in brewing and distribution from one of the world’s foremost brewing groups. On the

other hand, Guinness indicated that it would work with EABL Management to help strengthen and protect the company's position in East Africa.

Prospects for further acquisition of shares in EABL by another foreign entity

Shareholder returns in EABL

80. CMA observed that as at June 2023, foreign companies held 9.304% of the total shares as illustrated below. Of the 9%, the top 8 foreign shareholders in top 20 as at June 2023 were —

Table 5: Top eight Foreign Shareholders at EABL

	Names	Shares	Percentage
1	Canary Wharf London E145LB United, USA	22,935,194	2.90%
2	Stanbic Nominees Ltd A/C NR1031461	4,928,194	0.62%
3	SSB: SSBATC Al Meh CO IN LLC FN: AEJN, A Bahar Towers 1, United Arab Emirates	3,728,180	0.47%
4	The Bank of New York Mellon	3,383,135	0.43%
5	Standard Chartered Kenya Nominees Ltd /C KE22446	3,041,700	0.38%
6	Standard Chartered (Mauritius) Ltd 6A and 6B 6 th Floor Raffles Tower Lot 19	2,800.000	0.35%
7	Oddo BHF Asset Management GMBH Wegen Kilimanjaro Frontier Africa Fund	2,542,300	0.32%
8	SSB: SSBATACF CH GL MK, LP FN: CGPA 416 NE Dallas Street, Suite 202 Camas, 98607 USA	2,043,880	0.26%

81. CMA further submitted that between 2019 and 2023 foreign shareholding had been decreasing with local shareholding increasing as demonstrated below —

Table 6: Foreign shareholding at EABL

Date	Foreign Shareholding
June 2023	9.304%
June 2022	15.250%
June 2021	18.06%

June 2020	27.26%
Dec 2020	27.96%
Dec 2019	27.96%

Submission by Competition Authority of Kenya (CAK)

The Competition Authority of Kenya submitted as follows —

82. The Authority is a state Corporation established by Section 7 of the Competition Act No. 12 of 2010. The mandate of the Authority is to enforce the Act with the objective of enhancing the welfare of the people of Kenya by promoting and safeguarding effective competition in the national economy and protecting consumers from unfair and misleading market conduct.
83. The Authority achieves its mandate through regulation of market conduct and structure. Regulation of market conduct involves investigation into conduct such as abuse of dominance, restrictive trade practices, abuse of buyer power, and consumer issues and complaints. Regulation of market structure includes approving or disapproving of mergers after analyzing their likely effects on competition.
84. Section 31 of the Competition Act, 2010 mandates the authority to receive and investigate complaints amounting to any conduct or proposed conduct that is alleged to constitute or may constitute an anti-competitive conduct.
85. On restrictive trade practices, section 21(1) of the act prohibits agreements between undertakings, decisions by associations of undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya unless they are exempt. Some of the collusive practices prohibited under this section include; price fixing, market allocation, collusive tendering/ bid rigging and output restriction.
86. On the aspect of dominance, section 23(1) of the Act provides the criteria for determining a dominant position. Specifically, an undertaking is considered dominant if—
 - a) Controls less than one –half of the total goods produced, supplied or distributed in Kenya or any substantial part of Kenya; or

- b) Controls not less than one-half of the services that are rendered in Kenya or any substantial part of Kenya.
87. Section 23 (2) further provides that notwithstanding the above, an undertaking is also deemed to be dominant for the purpose of the Act where the undertaking —
- a) though not dominant, controls at least forty percent but not more than fifty percent of the market share unless it can show that it does not have market power; or
 - b) controls less than forty percent of the market share but has market power.
88. Section 24 (1) of the Act prohibits any conducts which amount to the abuse of a dominant position. These include —
- a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - b) limiting production, market access, investment;
 - c) predatory pricing and,
 - d) discrimination in dealing

The Alcoholic Beverages Sector in Kenya

89. The alcoholic beverages market in Kenya is an essential sector of the economy. The market composed of the production of beer, spirits and wines as well as their distribution. The alcoholic market had two major players, EABL, through its wholly owned subsidiary KBL and Keroche Industries. As at 2020, KBL had a 90% market share while Keroche had 2% of the market. The rest of the players like Heineken, SABMiller Bacardi, Pernod Richard and KWAL shared the remaining 8% of the market share. However, with respect to the supply and distribution of alcoholic beverages market, EABL had an estimated market share of 71% according to a 2017 Euromonitor report.
90. Based on this, KBL being a subsidiary of EABL which controls 100% of its shareholding enjoyed dominance of approximately 90% of the market share. This fell above the threshold percentage (50+1%) as stipulated in Section 23 of the Competition Act, 2020.
91. Notably, there are significant barriers to entry in the alcoholic beverages market such as opening a brewery and setting distribution which is capital intensive and brand loyalty. Incumbents such as EABL and Keroche have elaborate distribution networks

that guarantee their brands reach all corners of the country which is achieved through contractual arrangements with distributors. These barriers to entry hinder entry and expansion of the players in this market giving the incumbents market power which can be abused to the detriment of the consumers.

Previous investigations against EABL

(a) EABL and its distributors (2003)

92. In 2003, the then monopolies and price commission received the following complaints from anonymous EABL distributors —

- a) The company was setting the wholesale price structure forcing the distributors not to sell any brands at any price different from those recommended without the company's prior agreement;
- b) The EABL could terminate its agreement with the distributor if the latter sold the company's products at prices other than the recommended prices;
- c) Whereas EABL distributors could not vary prices of the product in relation to increase in transport and other related costs, EABL had provided for specific escalation clauses in their dealings with Tibbett and Britten & Express Kenya Limited in which these firms could automatically adjust their returns to cater for specific increases in their distribution costs.

93. The complaints triggered the Commission to launch an investigative study of the alcoholic beverages sector. Some of the practices that were deemed to have breached the Restrictive Trade Practices, Monopolies and Price Control Act (Cap 504) included

- a) **Territorial Allocation:** it was found that KBL and each distributor, super distributor and transporter had an arrangement defining the geographic area within which the distributor must sell or transport its products. This arrangement eliminated the possibility of any intra-brand competition because the distributor was a monopoly within the defined territory.
- b) **Exclusive Dealership:** The agreement between KBL and each distributor and super distributor barred the distributor from being concerned directly or indirectly in manufacturing, importation, marketing or any sale of goods which were similar or competitive with KBL brands in Kenya.

c) **Price Fixing:** The agreement empowered KBL to fix the wholesale prices for resale of its brands from time to time and the distributors could not sell at any price different from the ones fixed by KBL.

94. The commission invoked section 15 (3) of Cap 504 and required EABL to revise their distribution agreements with their distributors to remove clauses that provided for territory allocation, exclusivity in dealing and price fixing. It did not oblige and was invited to negotiate a Consent Agreement in accordance with section 15 (3). They refused to negotiate the Agreement prompting the commissioner to recommend to the minister to make an order regulating the practices in question. There was no indication in the file that the Minister took the requisite action.

(b) Keroche Breweries and East African Breweries Limited (2009)

95. Keroche filed a complaint with the Commission alleging that EABL—
- a) were hindering promotion of summit lager through removal and destruction of Keroche’s advertisement materials;
 - b) threatened and bribed bar operators to stop dealing in Keroche products, and
 - c) colluded with banks to recall loans owned to banks by Keroche and its distributors.
96. Although there was no tangible evidence, oral evidence corroborating allegations (a) and (b) were overwhelming from the distributors of Keroche and retail outlets. There was also a preliminary finding on exclusivity arrangement with senator branded bar owners not to sell competing products.
97. EABL was invited by the commission to comment on the allegations by Keroche and findings of the Commission but denied involvement in any of the allegations. Regarding the position of the Commission that the Senator branded bar arrangement was restrictive, EABL explained that —
- a) its sales representatives were able to negotiate with bar owners who therefore agreed that the outlets be branded Senator by painting them Senator Keg brand, donning Senator KEG table mats having Senator Keg branded chairs in the bars.
 - b) Senator branded owners were not prohibited from stocking/selling other competitors brand; and

c) EABL could not refuse to deal with the Senator branded bar owners on account of those bars stocking other competitors' brands.

98. Premised on the above clarification, the Commission concluded that the arrangement with senator branded bars was not restrictive. The commission therefore closed the case since there was sufficient evidence to proceed with the matter.

(c) EABL and Maxam Limited (2010)

99. A complaint was lodged to the Commission by Maxam Limited, a local distributor of Heineken brand of beer accusing EABL of —

- a) removal of advertising materials of Heineken from market outlets;
- b) entering into exclusivity deals with outlets to prevent them from stocking other beers, especially Heineken;
- c) entering into arrangement with outlets like Nakumatt Limited to accept only EABL's fridges and prevent the stocking of Heineken beer and,
- d) offering beer outlets fridges to be exclusively used for the brands of the EABL.

100. Allegation (d) was not pursued by the Commission because an enterprise could not be encouraged to joyride on the investments of a competitor. This was because —

- i. joyriders would have undue competitive advantage over those who have invested in the coolers it would cost them nothing to provide the facilities and
- ii. encouraging joyriding would adversely affect innovation and investment since nobody will accept to tie capital in those ventures to be enjoyed by the competitors without incurring any cost.

101. The outcome of the of the investigations were that —

- i. There was no evidence of removal of advertising materials of Maxam Ltd by EABL or its agents.
- ii. There was no proof of any form of contract between EABL and outlets of alcohol beverages which hindered stocking of Heineken.
- iii. There was evidence of an agreement between EABL and Harlequins Bar which barred the outlet from accepting fridges offered by suppliers of alcoholic beverages that compete with EABL products.

102. The Commission invoked sections 15(1) and 15(2) of the Competition Act, 2010 which required EABL to comment on the allegations and propose measures that they

intended to take to bring their business practices into conformity with the Competition Act, 2010 within 14 calendar days from the date of the letter.

103. EABL agreed to review arrangement with Maxam with a view to ensuring that it conformed to provision of law. They consequently, amended, to the satisfaction of the Commission, articles of the Agreements which —

- a) hindered stocking of alcoholic beverages that competed with its products and
- b) barred the outlets from accepting fridges offered by suppliers of alcohol beverages that competed with its products.

(d) Competition Authority of Kenya v KBL (2014)

104. In March 2014, the Authority pursuant to section 31 of the Act initiated investigations into the formal alcoholic beverages sector in Kenya. Among the findings made by the Authority during the investigation was that the KBL/EABL was engaged in territory allocation and was specifying brands to be supplied by the distributors hence undermining the intra-brand competition. A further full investigation also established that the distribution agreement between KBL and its distributors were restrictive leading to the lessening of intra-brand competition because it provided for both territorial and brand exclusivity.

105. In March 2018, the Authority engaged KBL in a settlement process pursuant to section 38 of the Act. The settlement entered into required KBL/UDV to —

- a) Review and amend the then existing Distributorship Agreement to remove clauses on territorial and brand exclusivity.
- b) Rollout the amended agreement to all its distributors and provide the Authority with at least two copies of the executed Agreements within two months from 13th November, 2017.
- c) Implement an internal Competition Compliance Programme and conduct competition law training for its key personnel at least once a year; and
- d) Review the compliance policy biennially.

106. KBL/UDV adhered to all the terms of the settlement agreement as was established by subsequent compliance checks carried out by the authority, with the last compliance check having been undertaken this year.

(e) Keroche Breweries Ltd v EABL& KBL (2019)

107. The Authority investigated allegations of abuse of dominance in the Euro Brown Beer bottle market following the receipt of a complaint from Keroche Breweries Limited (Keroche). The issues surrounding the case were also part of a court petition, *Civil Case E471 of 2019*, in which a ruling referred the matter to the Authority.
108. The complaint was pegged on allegations of abuse of dominance due to the embossing of the Universal Euro Brown beer by EABL. Keroche alleged that these actions were aimed at distorting a natural universal use bottle market to enable KBL collect more bottles from the market than was initially injected. Keroche further alleged that these actions were also aimed at imposing exclusivity which distorted the bottle exchange market.
109. Following conclusion of the investigation, the Authority noted that there was no abuse of dominance by the actions of KBL embossing Euro Brown Beer Bottles. However, the Authority noted areas of concern, though then not raising competition issues that could be a recipe for concerns in the future. Specifically, the Authority noted the following —
- a) There appeared to be a mix up of both parties' bottles in the market, considering that both parties targeted the same retail outlets; and
 - b) There seemed to be no clear mechanisms in the market on the treatment of competitors' bottles.
110. In order to cure the inefficiencies observed in the bottle management system, the Authority came up with suggestions to the parties and encouraged them to come up with amicable solutions to resolve their industry issues. One of the parties however declined the invitation. With no contravention to be remedied, the Authority had no powers to impose such obligations on the parties. As such the Authority closed the investigation.
111. The Authority intended to consider soft regulation mechanisms in this area such as the issuance of guidelines specific to sector and establishing a code of practice for industries where in the Authority's opinion depict market failures, inefficiencies, supply chain integrity issues and/ or problem of free riding.

Culpability of EABL for Anti- competitive practices

112. From the foregoing, the Authority had initiated various investigations against EABL. While in some of these investigations no contravention of the Act was established, in other cases such as Competition Authority of Kenya v KBL (2014) and East African Breweries Limited and Maxam Limited (2010), the Authority had pursuant to section 36 (d) of the Act, directed for the distributorship arrangements with distributors to be amended in order to adhere to the provisions of the Act.

Mergers

113. One of the issues identified by the Senate that required the Authority to address was whether the defunct Price Control and Monopolies Commission investigated the acquisition of majority shares in EABL in 1997 by Guinness and the share restructuring in 2000 culminating in Diageo Kenya PLC acquiring majority shares in the Company.
114. The Authority noted that the records pertaining to the above mergers were dully destroyed in accordance with the records management process. As such the Authority could not ascertain how the above mergers were analysed and the relevant approvals granted.
115. The Authority further noted that there were significant barriers to entry in the alcoholic beverages market which cushioned the incumbents from effective competition and could lead to exploitation of consumers.
116. The presence of anti-competitive conduct towards its distributors was a subject the Authority had dealt with in previous cases such as Competition Authority of Kenya v KBL 2014, in which the Authority in a settlement process pursuant to section 38 of the Act directed KBL and UDV to review and amend their existing distributorship agreements to remove clauses of territorial and brand exclusivity. KBL/UDV adhered to all the terms of the settlement agreement.

Submission by the Kenya Revenue Authority

117. Kenya Revenue Authority (KRA) submitted as follows —
- The number of KRA personnel stationed at EABL and their respective roles in enforcing tax compliance at the company*
118. In the Financial Year FY 2022/2023, KRA had three personnel (resident officers) attached to EABL Nairobi, and one personnel attached to EABL Kisumu.

119. The roles of the officers were to —

- a) carry out risk –based inspections of the factory to ensure compliance;
- b) identify areas of non-conformity in the factory and take remedial action;
- c) verify and maintain registers and records of all the imported products received into the warehouse;
- d) monitor production at the factory;
- e) confirm all raw materials received for production;
- f) confirm production quantities dispatched for sale;
- g) monitor proper use of measuring and metering devices (Flow Meters) and other tax accounting systems;
- h) scan products to check for proper affixation and activation of excise stamps at the factory;
- i) supervise and record receipts of manufactured goods into the Excise Stock Room;
- j) supervise and record receipts of manufactured goods into the Excise Stock Room and;
- k) prepare and submit monthly reports on production and deliveries.

The turnaround rate of KRA personnel based at the EABL and reasons for recalling the said personnel

120. KRA submitted that personnel were routinely rotated or recalled based on work exigencies. The table below illustrates the turnaround rate of personnel at EABL.

Table 6: List of resident Officers deployed since 2017 and their reasons for recalling

In a letter dated 15th March, 2023, the Kenya Revenue Authority presented the following information relating to Officers deployed at EABL premises since 2017 and their reasons for recalling

S/N	Officer Name	Start date	End date	Duration	Duty Station	Reason for recalling
1	Joel Kibaki	Aug 2017	Dec 2018	1 year 2 months	EABL Nairobi	Internal re-organization
2	David Wekesa	July 2018	July 2022	4 Years	EABL Nairobi	Internal re-organization

3	Soila Kasero	Dec 2018	Feb 2019	3 Months	EABL Nairobi	Internal re- organization
4	Kennedy Macharia	Oct 2019	Jan 2021	1 Year 3 Months	EABL Nairobi	Internal re- organization
5	Simon Adede	Nov 2019	July 2023	3 Years 9 Months	EABL Kisumu	Internal re- organization
6	Tobias Ogendo	Mar 2021	Aug 2022	1 Year 6 Months	EABL Nairobi	Internal re- organization
7	Jacinta Mumo	June 2022	Dec 2022	7 Months	EABL Nairobi	Internal re- organization
8	Godfrey Munga	Aug 2022	Apr 2023	8 months	EABL Nairobi	Internal re- organization
9	Irene Barkitoch	Nov 2022	Apr 2023	6 months	EABL Nairobi	Internal re- organization
10	Felix Asaka	May 2023	To date	9 months	EABL Nairobi	Internal re- organization
11	Moses Mutiso	May 2023	To date	9 months	EABL Nairobi	Internal re- organization
12	Dan Iginza	May 2023	To date	9 months	EABL Kisumu	Internal re- organization
13.	John Kinuthia	Jul 2023	To date	7 months	EABL Nairobi	Internal re- organization

Collusion between KRA personnel and EABL resulting in tax evasion and non – compliance with the applicable tax requirements

121. KRA stated that there had been no case(s) reported or brought to KRA’s attention regarding collusion between KRA personnel and EABL resulting in tax evasion and non-compliance with applicable tax requirements.

Table 7: Revenue performance during Officers’ Tenures

122. KRA submitted that the revenue performance during the tenure of the officers posted to the EABL plants. Regarding the variances in revenue performance, it was notable that:

- a) The Revenue performance was affected by the change in Excise Duty rates.
- b) Taxes for the years 2020 and 2021 were affected by the prevalence of the COVID-19 pandemic, especially for beer.
- c) Monthly taxes vary on account of seasonal consumption patterns. For example, December was always high due to the holiday season.
- d) The revenue collected was based on the taxes remitted by the particular EABL plant and not the amounts collected by individual officers.
- e) Both KBL Kisumu and KBL Nairobi had a single PIN, and hence the payment of taxes was through a unified PIN thus the collections cannot be separated.

NO.	Name of Officers	Company Collections in (Ksh)	
		& KBL	UDV
1.	Joel Kibaki (<i>July 17 – Dec 18</i>)	54,729,369,967	11,767,192,855
	<i>Dec 18 – Feb 19</i>		
2.	Soila Kasero		
3.	David Wekesa	9,564,666,577	1,970,928,932
	<i>Oct 19 – Jan 21</i>		
4.	Kennedy Macharia		
5.	David Wekesa	37,879,800,363	13,783,679,052
	<i>Mar 21 – Jul 22</i>		
6.	Tobias Ogendero	48,485,729,388	18,085,027,929
7.	David Wekesa		
	<i>Jun 22 – Aug 22</i>		
8.	Jacinta Mumo		
9.	Tobias Ogendero	5,547,753,664	2,509,844,987
	<i>June 22 – Dec 22</i>		
10.	Irene Barkitoch		
11.	Godfrey Munga	22,483,863,279	9,797,686,617
12.	Jacinta Mumo		
	<i>Aug 22 – Apr 23</i>		

13.	Irene Barkitoch		
14.	Godfrey Munga	31,249,042,323	13,640,632,059
	<i>May 23 - Date</i>		
15.	John Kinuthia		
16.	Moses Mutiso	28,197,318,218	12,132,506,198
17.	Felix Asiku		

Tax Disputes between EABL and KRA

123. KRA submitted a breakdown of several cases of tax disputes between KRA and EABL. The list is attached to this report (annex 3).
124. Further, the Authority stated that it did not have any cases with Diageo Plc.

Implication of variation in the manufacturing ingredients of alcoholic beverages on taxes

125. KRA stated that tax rates for beer products were the same and the Authority had not noted any variations in the manufacturing ingredients that had tax implications dating back five years. The taxpayers (KBL & UDV) contributed over 60% of domestic excise collections in financial years 2021/22 and 2022/23.

Tax rebates for use of local material in the manufacture and brewing of alcohol

126. The Committee had sought to find out if there were any tax rebates granted to EABL for use of local material in the manufacture and brewing of alcohol. The Committee was informed that EABL and other manufacturers of excisable products enjoyed remissions as guided by section 14 of the Excise Duty Act, legal notice 52 of 2017 and legal notice 196 of 2019.

Submission by East African Breweries Limited

127. EABL management submitted that the Company (EABL) was a Kenyan multinational business established in 1922 and headquartered in Nairobi. The company operated extensively throughout the East African region and was publicly listed in the Nairobi Securities Exchange. It was also cross listed on the Uganda Securities Exchange and the Dar es Salaam Stock Exchange, epitomizing a Kenyan-origin multinational with substantial regional influence.

128. EABL served as a hub for Diageo's Africa and global operations and accommodated a variety of specialized business units that furnish a range of services and expertise globally, encompassing the Diageo Africa:
- (a) Innovation Hub
 - (b) Procurement Centre of Excellence
 - (c) Logistics Hub
 - (d) Digital Marketing Hub
 - (e) Corporate relations Centre of Excellence
 - (f) Digital and Technology Hub
129. That EABL had productive value chains across the region which covered farmers, employees, suppliers, distributors, retailers and the hospitality industry. This was directly managed by a workforce of over 1400 direct employees working in partnership with the different stakeholders. EABL also had 156 personnel deployed in various Diageo businesses and hubs across the world either as expatriates or experts in global functions.
130. They noted that EABL's award winning products were responsibly marketed, exported and sold and are preferred by adult consumers across the world- as goods made in Kenya. The net result was that EABL was the largest contributor of domestic excise in Kenya and the second largest taxpayer in Kenya- contributing to the development of the nation.
131. It was the position of EABL that the petition lacked credibility and had no legal or solid grounds.

The strategic business impact and benefits of the acquisition of an additional 15% shareholding in EABL by Diageo Plc in 2023

132. Diageo Kenya Limited (Diageo Kenya) acquired an additional 15% shareholding in EABL in 2023 by way of a Public Tender Offer to all EABL shareholders. The transaction was approved by Capital Markets Authority (CMA) and relevant regulators. Hence Diageo Kenya increased its shareholding in EABL from 50.03% to 65%.
133. The transaction was the single largest foreign direct investment in the Kenya stock market in 2023 where Diageo Kenya paid a total of KES 22.7 billion to EABL shareholders in the market. This was recognized by His Excellency the President Dr. Rutto on 22nd March 2023 during the bell ringing event at the Nairobi Securities Exchange as a show of confidence in the local Kenyan market by foreign investors.

134. That contrary to the false and malicious assertions in the petition, EABL did not cease to be a Kenyan company instead it had transformed over the years into a strong local Kenyan multinational, employing thousands of Kenyans and East Africans.

Whether the acquisition by Diageo Plc is a consolidation of the alleged transfer to and eventual takeover by Heineken or Castel Group

135. EABL submitted that there was no evidence to substantiate this claim and should therefore be treated as a false allegation. Further that as part of its disclosures in the 2023 Public Tender Offer, Diageo Kenya disclosed that it had made no agreement or arrangement to sell EABL shares to any other person. They therefore requested that the Petitioner be cautioned against making false or unsubstantiated allegations as it could cause harm to businesses.

Why EABL was undertaking considerable downsizing despite consistent posting of marginal profits

136. EABL management submitted that EABL had not engaged in any corporate downsizing initiatives within the past decade. The company had channeled substantial investments exceeding USD 640 M (Circa KES 96 billion) during this period, facilitating significant job creation. Notable instances of such investments include:
- a) The allocation of USD 120 million (circa KES 14 billion) for the establishment of the new Kisumu Brewery in 2019
 - b) A further investment of USD 42 million (circa KES 6.3 billion) in 2023 towards supply of green energy through the development of three Biomass plants in Kenya and Uganda, introducing a new business segment centered on the utilization of previously discarded biomass materials.
137. Further, that despite the pronounced adverse repercussions of the COVID 19 pandemic in 2020 and 2021 on the alcohol sector, characterized by regulatory impositions leading to bar closures and sales disruptions, no layoff were implemented, nor were there reductions in employee remunerations. Furthermore, the company intensified health insurance provisions to encompass COVID-19 related contingencies and dispensed hygiene kits for employees' families.
138. EABL had not downsized as alleged and is on a substantial growth trajectory, a trend reflected in the augmentation of the company's total asset value from KES 14 billion

in 2000 to KES 110 billion in 2022. Growing in tandem was EABL's contribution to government revenue and shareholder returns in terms of profits and dividends.

Justification for the policy of disposing off huge company assets and how local shareholders had benefitted from these sales

139. The management submitted that EABL had not sold any strategic, critical or performing business assets as alleged by the petitioner. The assets management strategy was directly linked with future vision of the business. This included evaluating the company's asset portfolio with the outcome of identifying what was fit for purpose for the future of the business. In the past ten years, EABL had injected USD 640 million (Circa 96 billion) in strategic investments across the region.

Final Submission by EABL

140. Following the committee resolutions on September 3, 2024, EABL was tasked with reviewing and making final submissions based on the feedback received from the Capital Markets Authority, the Competition Authority of Kenya, and the Kenya Revenue Authority.
141. EABL reiterated that following the acquisition of its shares by Diageo Plc in 1997, 2000, and 2023, its subsidiaries have conducted operations—including investments, labor relations, and tax payments—in compliance with all applicable laws in Kenya, Uganda, and Tanzania. Furthermore, these operations had been carried out with the necessary approvals from relevant regulatory agencies, including companies, capital markets, and competition authorities in Kenya and throughout the East African Community (EAC) where EABL operates as a listed entity.
142. The Petition's claims were queried directly by the Committee to the relevant government agencies and regulators in charge of these various aspects as follows:

Capital Markets Authority

143. The report by the Capital Markets Authority (CMA) to the Clerk of the Senate dated 8th August 2023 dealt with shares acquired in EABL between 1997 and 2023.
144. The shares in EABL were purchased by Diageo Plc through rights issues and public offers under the Capital Markets Act (Cap 485A, Laws of Kenya) and the Companies Act (Cap 486, Laws of Kenya). Since EABL is a public listed company at the Nairobi

Securities Exchange, no sale of shares may be carried out without the approval of the Capital Markets Authority (CMA) in strict compliance with the laws of Kenya.

145. As noted in the CMA's brief to the Senate dated 6h July 2023, the CMA is tasked with:
- i ensuring that detailed disclosures regarding the offer are made in the offer document to enable the affected shareholders, make an informed decision;
 - ii making sure that the shareholders are provided with comprehensive details regarding operations and financial position of the Offeree;
 - iii ascertaining the existence of adequate facilities for compensation of shareholders who accept the offer;
 - iv reviewing all announcements and circulars relating to the offer for purposes of making sure that shareholders are not misled in any way; and
 - v ensuring that all the conditions of the offer, regulatory or otherwise are met.
146. The CMA undertakes to protect shareholders and as per all previous submissions to the Senate, takes its tasks very seriously. Indeed, contrary to the petition claim that there has been a decrease in local participation in public listed companies, the CMA in its report avers that there are more local participants in the Nairobi Securities Exchange from 2019 to 2023. The CMA in its reports never raised such a minority/employee shareholder claim against EABL nor have any employees lodged such claims against EABL. Further, the Companies Act (Cap 486, Laws of Kenya) (both the repealed law prior to 2015 and the current law) do not permit majority shareholders to oppress minority shareholders. The law has always contained minority protections against any adverse actions taken by a majority shareholder, including during mandatory takeovers, and these remedies are frequently are frequently utilized by Kenyan shareholders to protect their rights.
147. It should be noted that we have never seen a mandatory takeover succeeded in Kenya where the minorities are oppressed of such transactions are always halted. EABL has also never been accused of oppression of minorities and it comes as a great surprise that EABL, or indeed the acquiring shareholder, Diageo PLC, is being accused of such actions.

Competition Authority of Kenya (CAK)

148. The reports by the CAK to the Committee dated 4th October 2023 and 9th October 2023 provided information to the effect that where required, EABL obtained

competition approval for the sale of shares. In addition, the report found that EABL, although a market leader, has not abused its market position and commits to the steady growth of competition in the market, as such growth benefits EABL's businesses brands and most importantly benefits the local consumer.

149. In a ruling by the CAK dated 27th October 2021, which is attached as Appendix 1, the CAK formally pronounced itself on the matter of abuse of market dominance on the favorable ruling over the embossed brown euro bottles matter. CAK concluded that beer manufacturers are at liberty to produce and bottle their products in identical bottles without infringing on the rights of such bottles that are specifically embossed with the trade mark of a specific manufacturer. This protects small and large beer manufacturers who have invested in the production of specialized glass bottles while ensuring that the customer at all times can trace the source of product to a specific manufacturer.

Kenya Revenue Authority (KRA)

150. EABL received the report by the KRA to the Committee dated 15th March 2024 on the Petition as well as an enquiry into the pending tax status of the company with KRA.
151. EABL is a non-operating holding company. Its subsidiaries include Kenya Breweries Limited and UDV (Kenya) Limited in Kenya which are alcoholic beverage manufacturing companies are the recognized taxpayers and are properly registered with and remitting taxes to the Kenya Revenue Authority. The subsidiaries have been tax compliance and good corporate citizens over the years, filing returns and paying taxes on time. This is attested by the EABL group's long standing as one of Kenya's largest corporate taxpayers. The KRA has consistently issued tax compliance certifications to EABL which is a reliable indicator of the businesses' state of tax compliance.
152. The report from the KRA, the authority outlined that there are authority personnel positioned at the plants and any relocation of staff has been for internal restructuring reasons by the KRA. As a large taxpayer and a manufacturer, this positioning of tax officers on site is standard practice by the authority in furtherance to its statutory mandate. Further, the authority gave background on tax collections it has made from the Kenyan operations from 2017 to 2023.

153. EABL entities noted to have no taxes due and payable to the KRA as at October 2024. The companies adhere strictly to the applicable tax legislation which determining the amount of taxes that are payable, promptly remitting any outstanding taxes to the KRA, and submitting tax returns to the KRA on time.
154. KRA report clarified that where there have been any disputes on tax assessments, the KRA and the EABL subsidiaries have always engaged in dispute resolution mechanisms and the relevant settlements or tax revision have been undertaken by the parties. Further the report indicates that all outstanding disputes as at the date of the report have been concluded and all taxes have been paid to KRA as per the law.
155. Where any further disputes arise from time to time between the companies and the KRA, there are ongoing engagements either directly or through the courts as is provided under the laws of Kenya. EABL clarified that in the ordinary course of business, their companies are subject to tax audits, the outcomes of which are at various stages of completion. EABL group companies handle such audits transparently and follows due processes in the closure of any unresolved matters.

Socio-Economic Impact of EABL in the Region

156. EABL stated that it has continued to grow investments within Kenya as indicated in our letters dated 27th June 2023, 6th September 2023 and 2nd September 2024, as Diageo has acquired more shares in EABL. The investments have significantly contributed to the socio-economic prosperity of the Kenyan people in terms of employment, local sourcing, production output, innovation, and in mitigating climate change impact as contextualized below.
157. Based on an oxford economic survey published in August 2023, EABL contributes £417 million (KES 70 billion)¹ in direct (i.e. direct operations) and indirect (i.e. indirect impact in the form of payment to suppliers who employ staff, generate GDP and pay taxes) economic impact through its business activities in Kenya. For every shilling generated through EABL's business activities in Kenya, there is a KES 2 multiplier impact in gross value added to the economy, translating to KES 140 billion (i.e. 14% contribution to GDP) in induced economic impact.
158. The economic value is generated through employment of a skilled and semi-skilled workforce derived in Kenya. In terms of employment, KBL's direct value chain activities provide employment to 45,000 farmers, 180,000 retail trade employees

operating in the over 45,000 outlets countrywide where EABL subsidiaries sale alcoholic and non-alcoholic beverages, 21,000 grain and finished goods transport services employees and 120 local distributors directly employing 2,400 people.

Some of the key local investments that have been made since 2000 to date and their socio-economic impact include: -

- 1) KES 15 billion brewery in Kisumu, which was built in 2017 with operations commencing in June 2019. The factory has created over 17,000 jobs in the Western region comprising of farmers supplying KBL with sorghum grain that is used in the brewing of Senator Keg. The value chain not only creates jobs for farmers, transporters, and input suppliers but it has also created linkages with the National Cereals and Produce Board (NCPB), where KBL have leases silos to store sorghum grain in Kisumu, ensuring business continuity and guaranteed supply of raw material.
- 2) Construction of a microbrewery, which marked EABL's 100-year celebration of its operations in Kenya which commenced in 1922. The microbrewery is a center of excellence, constructed at a cost of KES 1.2 billion, where EABL has expanded its local innovation capability, preserved the rich local corporate heritage dating back over 100 years while addressing changing consumers' tastes and preferences.
- 3) KBL has invested KES 6 billion in a biomass plants located, which was commissioned in 2022. The biomass steam plant has contributed to the reduction of KBL's carbon emissions by an impressive 40,000 tons per annum, thus promoting Its cleaner energy alternatives, reducing KBL's carbon footprint by 95% annually and reducing the high costs associated with energy consumption. This investment has created value chain linkages to local farmers of macadamia, rice, sugarcane bagasse and traders who own sawmills within a 150 km radius to the factories in Nairobi and Kisumu., KBL buys agricultural waste from these farmers and traders, which is then used as biomass fuel, all of which is transported by Kenyan logistics companies.
- 4) EABL's local sourcing has increased from 55% 2005 to 87% currently, with commitment to sourcing 100% local raw material to run our operations.
- 5) EABL total tax contribution has increased more than six (6) times since 2005 to date: KES 18 billion in 2005 to KES 113 billion by June 2024. Through its

Kenyan subsidiary KBL, EABL remains the second taxpayer in Kenya. KBL is currently the second largest taxpayer in Kenya with a total tax contribution averaging KES 80 billion annually. Out of KES 2 trillion in tax revenue that Kenya Revenue Authority (KRA) collects on average per year, KES 820 billion comes from large taxpayers and KBL contributes 10% of the large taxpayers' tax revenue contribution in Kenya

- 6) Outsourcing of contracts to Kenyan owned companies. who provide professional and support services to EABL. A total of 465 outsourced personnel work for EABL, providing various services including facility management, security, cleaning, catering services for both Nairobi and Kisumu plants.
 - 7) In 2005, the EABL Foundation was launched aimed at enriching the lives of marginalized people in East Africa. It has supported millions of vulnerable people in gaining access to clean water, acquiring employable skills through vocational training and providing social amenities that have greatly improved their public health outcomes. EABL foundation has also partnered with organisations such as Nature Kenya to boost Kenya's forest cover through afforestation and Upper Tana Nairobi Water Fund Trust in support of Kenya's water conservation strategy. Such partnerships embody EABL's commitment to protect the next generation from the impact of climate change. More details are contained in the EABL Annual Sustainability report.
159. EABL, through its subsidiary East African Malting Limited (EABL), has the only malting plant in Kenya, which was set up in 1953 in Industrial Area, off Kampala Road. The plant currently collects and processes over 85,000 tonnes of barley and sorghum from across Kenya and malts barley for supply not just for Kenya but for supply across East Africa annually.
160. Since the 1970s, EABL has been supporting the growth of sports in the country, with TUSKER Football Club (FC) having won the Madaraka Cup, Guinness Cup and Nairobi Football League Cup two years in a row by 1972. Tusker FC is the second most successful club in the history of Kenya, having won a total of 13 Kenya Premier League (KPL) trophies since its establishment in the 1970s³ a proud legacy of budding youth talent in sports.

161. As demonstrated above, EABL has a long, established, and rich heritage as a local entity in Kenya. EABL would welcome the opportunity to showcase the business activities we have highlighted in this letter, to help the Committee better establish the facts to finalise the petition once and for all.
162. Following the final responses from government authorities, including the CMA, CAK, and KRA, EABL has noted that it has provided the Committee with all necessary information to conclude the petition. EABL emphasized that the allegations presented have caused significant harm to its reputation due to their false and unsubstantiated nature

CHAPTER THREE:

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Committee Observations

163. Following its consideration of the Petition and meetings with key stakeholders, the Committee observed that —
 - a) With respect to the 1997 EABL acquisition by Guinness Plc, EABL sought to raise Kshs. 1.5 billion from the existing shareholders, through a rights issue. At the time, Guinness Plc held 25.06% of the ordinary shares of EABL and was the underwriter for the rights issue. Many shareholders did not participate even though the tender offer was open to all existing shareholders of the company. Therefore, Guinness Plc acquired any untaken rights, to ensure full subscription for the issue and to raise adequate funds for EABL the identified projects. Subsequently, the shareholding of Guinness Plc increased to 46%, thereby making it the largest single shareholder in EABL.

- b) Further, the shareholding of Diageo Kenya (a subsidiary of Diageo PLC) in EABL increased to 50.03% following internal reorganization in 2000 that led to the shares of Guinness Overseas Limited and Diageo Holdings Netherlands B.V being consolidated and transferred to Diageo Kenya Limited through a private transfer. There was no change in beneficial ownership following this transfer.
- c) At that time of the 1997 tender offer, Guinness Plc had indicated that it had no intention of making a full takeover of EABL and was willing to consider selling part of its shares to the shareholders subject to favourable market conditions and future business strategy. However, the Committee noted that there was no legal or contractual obligation on Guinness Plc to reduce its shareholding in EABL as alleged by the Petitioner. Consequently, Guinness Plc has never sold back its shares to the public.
- d) In October 2022, Diageo Plc announced that it had offered to buy additional shares in Kenya's East African Breweries to boost its stake in the company from 50.03% to 65%. It further stated that it did not intend to take over the entire company should it attain its desired level of ownership and that it would keep the company listed. The operations of EABL have not changed since the acquisition of additional shares.
- e) Diageo Kenya acquired approval from the Capital Markets Authority on 23rd January 2023, to acquire an extra 14.97% stake in Kenya's East African Breweries. The tender offer by Diageo Plc was an offer of securities within the definition set out under section 30A(1) of the Capital Markets Act. The transaction reduced the local shareholding in EABL to 35%. A detailed disclosure of the tender offer was made in Daily Nation Newspaper of 14th October, 2022 and on EABL Website on the same date.
- f) On 6th February 2023, Diageo Plc launched partial tender offer to increase its aggregate equity stake in EABL Plc from its 50.03 % to a maximum of 65%. Tender offer price was KSh. 192.00 per ordinary share and the maximum number of shares subject to the tender offer was Shs. 118,394,897. The total value of the transaction was Ksh. 22,731,820,224. Based on the offer, the purchase would yield investors a 39.7 % premium over the market price of EABL shares whose

value was at Kshs. 137.48 per ordinary share on the Nairobi Securities Exchange on the last day of trading before the announcement of the tender offer.

- g) Historical trading volume data revealed that over the 12-month period to 12th October 2022, EABL shares had traded on the Nairobi Securities Exchange at prices of between Kenya Shillings 129.99 and 164.72 per Ordinary Share.
- h) The role of Capital Markets Authority in the transaction to ensure compliance with laws and regulations by all the parties involved. The decision on whether to sell shares to Diageo Plc or not was a matter for individual shareholders to decide by making an election to accept or decline an offer.
- i) The tender offer by Diageo Kenya was oversubscribed as it received offers to purchase 143.52 million shares against the 118.39 initially sought. The offered price was attractive considering the prevailing market prices as well as Diageo's offer that allowed those selling shares to remain eligible of EABL's interim dividend of Kshs. 3.75 per share for the half year that ended in December 2022.
- j) The transaction did not classify as a "merger" under the definition set out in the Competition Act as the additional acquisition of 14.97% of shares by Diageo did not result in the change of beneficial ownership in the business. The transaction could therefore have proceeded following the notification without requiring approval from the Competition Authority of Kenya. That was because Diageo Plc was already a majority shareholder in EABL.
- k) There was no statutory limitation on the threshold for foreign shareholding in local companies in the alcoholic beverages sector. The additional acquisition resulting in a 65% shareholding in EABL by Diageo Plc was therefore not restricted by any statutory provisions regarding maximum shareholding by foreign entities.
- l) There was no evidence that Diageo Kenya had acquired the shares with the intention of onward transfer to a Heineken/Castel Group or any other prospective buyer. As part of its disclosure in the 2023 public tender offer and pursuant to Regulation 4 of the Capital Markets (Takeovers and Mergers) Regulations, 2002, Diageo disclosed that the proposed acquisition of the additional ordinary shares was for the purpose of a strategic long-term investment and would continue the

governance structure of EABL as it stood, with continued full participation of local stakeholders.

- m) East African Breweries Ltd has engaged in sale of a number of its assets parcels of land on Thika Highway, entire stake in central Glass Industries Ltd, its headquarters in Ruaraka among others as part of the company's realignment strategy on its asset base. However, the allegation that EABL has sold most of its assets to finance its operations could not be proven.
- n) The East African Breweries was the largest producer of Alcoholic Beverages in the country. According to the Competition Authority, KBL controlled approximately 90% market share in Kenya.
- o) The Competition Authority of Kenya had received a number of complaints against KBL and EABL. Some of the offences the entities were accused of include territorial allocation, imposing brand exclusivity requirements on distributors and retailers and abuse of dominance among others. The Authority directed EABL/KBL to take actions to remedy the irregularities but in some instances the entity did not comply. There was therefore need for more stringent implementation of the directions of the Authority through enforcement of penalties outlined in the Competition Act, 2010.
- p) There were significant barriers to entry in the alcoholic beverage market. This had hindered effective competition in the sector for many years. This could lead to exploitation of consumers.
- q) EABL had a number of unresolved tax disputes with the Kenya Revenue Authority. A number of these disputes were at different stages of consideration at the Tax Disputes Tribunal as well as the Courts. However, there were no pending tax disputes with respect to Diageo Plc.

Committee Recommendations

164. The Committee recommends that —

- a) The Capital Markets Authority monitors compliance with the Capital Markets (Public Offers, Listings and Disclosures) Regulations, 2023 and submit a report to the Committee on the status of implementation and compliance with the said Regulations within six months of tabling of this report.

- b) The Capital Markets Authority engages and sensitizes the public on the provisions of the Regulations in (a) above and demonstrate the initiatives taken in this regard in the report to be submitted to the Committee.
- c) The Competition Authority of Kenya should enforce the pecuniary penalty outlined under section 24(3) of the Competition Act, 2010 for abuse of dominant position to deter breach of Competition rules and promote fair marketing practices for all players and submit a report to the Senate within six months of the tabling of this report.
- d) The Competition Authority of Kenya, within six months of the tabling of this report, submits a report to the Senate on the reported cases of abuse of dominance from 2023 to 2024 and the respective measures and decisions taken by the Authority to resolve the cases.

LIST OF ANNEXURES

Annex 1	Minutes of the Standing Committee on Trade, Industrialization and Tourism
Annex 2	Petition on fraudulent shareholding activities and illegal acquisition of East African Breweries Limited by Rono Nicholas
Annex 3	Submission by Stakeholders A. EAST AFRICA BREWERIESS (K) LTD B. CAPITAL MARKETS AUTHORITY (CMA) C. COMPETITION AUTHORITY (CA) D. KENYA REVENUE AUTHORITY (KRA)



MINUTES OF THE A HUNDRED AND THIRTY SEVENTH (137TH) MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM HELD ON TUESDAY 26TH NOVEMBER, 2024 IN COMMITTEE ROOM 4, 1ST FLOOR BUNGE TOWER AT 8:00 A.M.

PRESENT

- | | |
|---|--------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Anyieni Okenyuri, MP | - Vice-Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |
| 4. Sen. Crystal Kegehi Asige, MP | - Member |
| 5. Sen. Betty Batuli Montet, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

APOLOGIES

- | | |
|---|----------|
| 1. Sen. Jackson Kiplagat Mandago, EGH, MP | - Member |
| 2. Sen. Paul Karungo Thang'wa, MP | - Member |
| 3. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|-------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant I |
| 2. Mr. David Ngamate | - Clerk Assistant III |
| 3. Ms. Annette Kwamboka | - Legal Counsel |
| 4. Ms. Charity Kanze | - Research Officer III |
| 5. Mr. Joseph Otieno | - Audio Officer |
| 6. Ms. Violet Nalianya | -Media Relations Office |
| 7. Mr. James Ngusya | - Serjeant – At- Arms |

MIN/SEN/SCTIT/750/2024

PRELIMINARY

The Chairperson called the meeting to order at 8.26 a.m. This was followed with a word of prayer.

MIN/SEN/SCTIT/751/2024

ADPOTION OF AGENDA

The agenda was adopted after being proposed by Sen. . (Dr.) Lelegwe Ltumbesi, CBS,,MP and seconded by Sen. Betty Montet, MP, as listed below-

1. Preliminaries;

- i. Prayer
- ii. Introduction
- 2. Adoption of the Agenda;
- 3. Confirmation of Minutes of the 129th, 130th, 135th and 136th Sittings;
- 4. Matters arising from the Minutes of Previous Meetings;
- 5. Consideration of Committee Paper No.131 on:
 - a. Draft Committee Report on the Petition on the fraudulent dealings at Diageo Plc, EABL, Kenya Breweries and UDV (Kenya) Ltd; and
 - b. Statement on Quality and Standards of Cement in the Kenyan Market; and
- 6. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/752/2024

CONFIRMATION OF PREVIOUS MINUTES

- 1) Minutes of the 129th Sitting held on Thursday, 30th October, 2024 were confirmed after having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Betty Montet, MP;
- 2) Minutes of the 130th Sitting held on Friday 1st November, 2024 were confirmed after having been proposed by Sen. Betty Montet, MP and seconded by Sen. Crystal Asige, MP;
- 3) Minutes of the 135th Sitting held on Tuesday 19th October, 2024 were confirmed after having been proposed by Sen. Betty Montet, MP and seconded by Sen. Andrew Omtatah, MP; and
- 4) Minutes of the 136th Sitting held on Tuesday 30th October, 2024 were confirmed after having been proposed by Sen. Betty Montet, MP and seconded by Sen. Crystal Asige, MP.

MIN/SEN/SCTIT/753/2024
MINUTES

MATTERS ARISING FROM THE PREVIOUS

Under Ex- MIN/SEN/SCTIT748/2024: Committee Foreign Travel for the FY 2024-25

The Committee resolved to undertake the 2024-25 FY foreign travel to Arusha, Tanzania. It was opined that this was the most cost-effective destination owing to the limited budgetary allocations for foreign travel. The Secretariat was requested to facilitate the matter and update the Committee on the logistics relating to engagements during the said travel.

MIN/SEN/SCTIT/754/2024

CONSIDERATION OF THE DRAFT COMMITTEE REPORT ON THE PETITION ON THE ALLEGED FRAUDULENT DEALINGS AT DIAGEO PLC, EABL, KENYA BREWERIES AND UDV (KENYA) LTD COMMITTEE (COMMITTEE PAPER NO. 131);

The Committee considered the its Paper No. 131 that apprised members on the final Committee Report on the Petition on the alleged fraudulent dealings at EABL by Diageo PLC and UDV(K). The Committee confirmed the that were undertaken during the meeting held on Tuesday 19th November, 2024 which preferred the following amendments-

1. Capital Markets Authority expedites its ongoing review of the Capital Markets Act and regulations and makes proposals for improving efficiency in securities trading in line with emerging trends. The Committee advised that the recommendation puts some reporting timelines for the CMA to submit the committee.
2. Capital Markets Authority directs the Administrator(s) of the estate of Petitioner's deceased grandfather to trace the lost shares through Image Registrars, that maintains the register of shareholders in EABL. It was recommended that the recommendation on the reference to the kin of the petitioner be expunged as had been requested by the Petitioner in his submission to the Committee.

Committee Resolution

Having considered the amendments , the Committee unanimously adopted the report on the Petition on the alleged fraudulent dealings at EABL by Diageo PLC and UDV(K) for Tabling in the Senate after having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Betty Batuli Montet, MP.

MIN/SEN/SCTIT755/2024 ANY OTHER BUSINESS.

The Committee was informed of the scheduled meeting with the Cabinet Secretary Ministry of Investments, Trade and Industry on Thursday 28th November, 2024. Members were encouraged to attend in person. Further, the secretariat was advised to invite Senators with Statements relating to the Ministry.

MIN/SEN/SCTIT/756/2024 ADJOURNMENT AND THE DATE OF THE NEXT MEETING.

The meeting adjourned at 9.23 a.m and the next meeting was scheduled to be held on Thursday 28th November 2024 at 8.00am. .

SIGNATURE.......... DATE..... 28th November, 2024

(CHAIRPERSON)



MINUTES OF THE A HUNDRED AND SEVENTEENTH (117) MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM HELD ON TUESDAY 3RD SEPTEMBER, 2024 IN COMMITTEE ROOM 8, 1ST FLOOR BUNGE TOWER AT 9:00 A.M

PRESENT

- | | |
|---|--------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Anyieni Okenyuri, MP | - Vice-Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP ✓ | - Member |
| 4. Sen. Jackson Kiplagat Mandago, EGH, MP ✓ | - Member |
| 5. Sen. Crystal Kegehi Asige, MP ✓ | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT

- | | |
|----------------------------------|----------|
| 1. Sen. Paul Karungo Thangwa, MP | - Member |
| 2. Sen. Betty Batuli Montet, MP | - Member |
| 3. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|------------------------|--------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant I |
| 2. Mr. David Ngamate | - Clerk Assistant III |
| 3. Ms. Annete Kwamboka | - Legal Counsel |
| 4. Ms. Charity Kanze | - Research Officer III |
| 5. Ms. Violet Nalianya | - Media Relations Office |
| 6. Ms. Judith Aoko | - Audio Officer |
| 7. Mr. James Ngusya | - Serjeant – At- Arms |

IN -ATTENDANCE

EAST AFRICAN BREWERIES LIMITED

- | | |
|------------------------|------------------------|
| 1. Ms. Jane Karuku | - Managing Director |
| 2. Mr. Rowlands Nadida | - Group Legal Director |

3. Mr. Eric Kiniti

- Group Corporate relations

MIN/SEN/SCTIT/643/2024 **PRELIMINARIES**

The Chairperson called the meeting to order at 9.28 am. This was followed by a word of prayer. He welcomed all those present both online and physical and proceeded to read the agenda.

MIN/SEN/SCTIT/644/2024 **ADPOTION OF THE AGENDA**

The agenda was adopted after being proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Crystal Asige, MP, as listed below-

1. Preliminaries;
 - i) *Prayer*
 - ii) *Introduction*
2. Adoption of the Agenda;
3. Confirmation of Minutes;
4. Matters arising;
5. **Meeting with the Group Managing Director, East Africa Breweries Limited regarding the Petition on fraudulent dealings at Diageo PLC, East African Breweries Limited, Kenya Breweries (EABL) and UDV (Kenya) Limited (Committee Paper No. 111);**
6. Any other Business; and
7. Adjournment/Date of the Next Meeting.

MIN/SEN/SCTIT/645/2024 **CONFIRMATION OF PREVIOUS MINUTES**

The Agenda was deferred.

MIN/SEN/SCTIT/646/2024 **MEETING WITH THE GROUP MANAGING DIRECTOR, EAST AFRICA BREWERIES LIMITED REGARDING THE PETITION ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES (EABL) AND UDV (KENYA) LIMITED (COMMITTEE PAPER NO. 111);**

The Committee was taken through Committee Paper No.111 providing a brief on the Committee's resolution delivered through the letter Ref: SEN/DSEC/SCTIT/2023/183 which was dated 12th August, 2024 inviting the Group Managing Director, East Africa Breweries Limited regarding the Petition on fraudulent dealings at Diageo PLC, East African Breweries Limited, Kenya Breweries (EABL) and UDV (Kenya).

The purpose of the meeting was to provide additional clarifications and further apprise the Committee on the following specific concerns that had been raised during the previous meetings-

- a) Allegations of EABL staff coercion to sell off their minority shares;

- b) The report on the current assets owned by EABL including details on what has been sold and for how much, in addition to the purpose of selling;
- c) The status report of the outsourced companies and the number of employees by each of these companies; and
- d) The status report on pending taxes owed to Kenya Revenue Authority as at August, 2024.

The Chairperson invited the Group MD, EABL to make her submissions. She submitted as follows:

- a) Whether or not the provisions of Senate Standing Order 238(2) on the sixty (60) day timelines for consideration of the petition and if the proceedings on the petition were lawful noting that the petition was due for reporting on 30th September, 2023 as per the standing orders;
- b) That there was no coercion to any of EABL staff to sell off their shares, and that EABL had previously asked the Petitioner to provide evidence of such coercion in its written responses;
- c) That the current assets owned by EABL and its subsidiaries are in the form of ordinary working capital comprising cash, trade receivables, stock and prepayments which are used for trading and are bought and sold in the ordinary course of business. Further, in respect to the fixed assets, EABL presents asset disposals and acquisitions in its annual financial statements that are available for review on its website as required by the CMA.
- d) The Committee was provided with information contained in the respective cash flow statements as follows:
 - i. Fixed assets additions over the last 5 years (2020 to 2024):
 - ii. Kenya Breweries Limited (KES 16.9bn),
 - iii. UDV (Kenya) Limited (KES 2.2bn),
 - iv. East African Maltings Limited (KES 356m), and
 - v. EABL (KES 900m).
- e) Additionally, it was clarified that there had been no disposals to third parties and no proceeds on disposals by any of the entities and that EABL continued to invest in its business to drive business growth.
- f) On tax compliant and had tax returns, the Committee was informed that EABL Group, which consists of EABL and its Kenyan subsidiaries, including the two alcoholic beverage manufacturing companies, Kenya Breweries Limited and UDV (Kenya) Limited, has been tax compliant and had tax returns made on time. It was clarified that EABL's Group was one of Kenya's largest corporate taxpayers. Tax compliance certifications from the Kenya Revenue Authority was an indicator of the businesses' state of tax compliance; and
- g) That EABL (namely KBL, UDV and EAML) contract personnel through the services of two well established Kenyan outsourcing companies namely, Q-Sourcing Limited (Company number CPR/ 2013/113513) and Sheer Logic Management Consultants Limited (Company number C.77737). Together, these outsourcing companies have provided the companies with a total of 465 local personnel across the companies' physical locations in Nairobi and Kisumu, functionalities/departments and job cadres.

- h) Finally, the Group Managing Director thanked the Committee for according EABL time to present against the allegations in the said Petition.

Committee Resolutions

From the deliberations, the Committee resolved that;

- a) The CEO, EABL to provide details on the specific status and location of their total Assets amounting to Ksh. 16.9 billion; and
- b) The Committee to invite the Capital Markets Authority, Competition Authority to provide clarifications on emerging issues regarding the shareholdings by Diageo PLC; and
- c) The Committee to invite Kenya Revenue Authority to apprise the Committee on the status of outstanding withholding tax.

MIN/SEN/SCTIT/647/2024

ANY OTHER BUSINESS.

There was no other business.

MIN/SEN/SCTIT/648/2024

ADJOURNMENT AND THE DATE OF THE
NEXT MEETING

The meeting adjourned at 11.14 am and the next meeting to be by notice.

SIGNATURE.......... DATE..... 5/9/2024

(CHAIRPERSON)



MINUTES OF THE SEVENTY FOURTH (74TH) MEETING OF THE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM HELD ON THURSDAY, 7TH MARCH, 2024 AT 8.00 AM COMMITTEE ROOM 5 MAIN PARLIAMENT BUILDINGS

PRESENT

- | | |
|---|---------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice –Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |
| 4. Sen. Jackson Kiplagat Mandago, EGH, MP | - Member |
| 5. Sen. Paul Karungo Thangwa, MP | - Member |
| 6. Sen. Betty Batuli Montet, MP | - Member |
| 7. Sen. Andrew Omtatah Okoiti | - Member |

APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Crystal Kegehi Asige, MP | - Member |
| 2. Sen. Hezena M. Lemaletian, MP | - Member |

KENYA REVENUE AUTHORITY

- | | |
|--------------------------|--|
| 1. Mr. Humphrey Wattanga | - Commissioner General |
| 2. Ms. Carol Mburugu | - Deputy Commissioner , Legal |
| 3. Mr. Weldon Ngeno | - Deputy Commissioner, Large Taxpayers |
| 4. Ms. Grace Wandera | - Deputy Commissioner, Communication |
| 5. Mr. Ezekiel Obegi | - Chief Manager, Large Taxpayers |

SECRETARIAT

- | | |
|-------------------------|-------------------------------|
| 1. Mr. David Ngamate | - Clerk Assistant III |
| 2. Ms. Sharon Rotino | - Research Officer I |
| 3. Ms. Annette Kwamboka | - Legal Counsel II |
| 4. Mr. Rhyan Injendi | - Research Officer III |
| 5. Mr. Stanley Gikore | - Media Relations Officer III |

6. Mr. Joseph Otieno
7. Mr. John Chege

- Audio Officer
- Serjeant - at-Arms

MIN/SEN/SCTIT/412/2024

PRELIMINARIES

The Chairperson called the meeting to order at 8:24 am followed by a word of prayer.

MIN/SEN/SCTIT/413/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Esther Okenyuri, MP as follows –

1. Preliminaries
 - i. Prayer
 - ii. Introduction
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the previous sittings –
 - i. Minutes of the 70th Meeting held on 22nd February 2024;
 - ii. Minutes of the 71st Meeting held on 27th February, 2024; and
 - iii. Minutes of the 72nd Meeting held on 29th February, 2024
4. Matters arising from the Minutes of the previous meeting;
5. Meeting with the Commissioner General, Kenya Revenue Authority to consider the Petition on the alleged fraudulent acquisition of shareholding at the East Africa Breweries Ltd (EABL) by Diageo PLC and UDV(Committee Paper No. 73);
6. Any Other Business; and
7. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/414/2024

CONFIRMATION OF THE MINUTES OF PREVIOUS SITTINGS

1. Minutes of the 70th Meeting held on 22nd February, 2024 were confirmed as a true record of deliberations after being proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. Crystal Asige, MP;
2. Minutes of the 71st Meeting held on 27th February, 2024 were confirmed as a true record of deliberations after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP, and seconded by Sen. Andrew Omtatah Okoiti, MP;
3. Minutes of the 72nd Meeting held on 29th February, 2024 were confirmed as a true record of deliberations after being proposed by Sen. Betty Batuli Montet, CBS, MP, and seconded by Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP.

MIN/SEN/SCTIT/415/2024
Ex MIN/SEN/SCTIT/391/2024

MATTER ARISING FROM THE MINUTES
Meeting with the delegation from the Kenya
Small Business Development Program

1. The Committee to follow up on the program to understand the role of counties in the Kenya Small Business Development Program and the funding; and
2. The Committee resolved to liaise with the Principal Secretary, State Department for Micro, Small and Medium Enterprises (MSME) for a workshop to be appraised on the Amendments to the MSEA 2012 Act.

MIN/SEN/SCTIT/416/2024

MEETING WITH THE COMMISSIONER
GENERAL, KENYA REVENUE
AUTHORITY(KRA) TO CONSIDER THE
PETITION ON THE ALLEGED
FRAUDULENT ACQUISITION OF
SHAREHOLDING AT THE EAST AFRICA
BREWRIES LTD (EABL) BY DIAGEO
PLC AND UDV (COMMITTEE PAPER NO.
73).

The Chairperson invited the Secretariat to present the Committee Paper No.73. The paper briefed the Committee on the issues that the Commissioner General, Kenya Revenue Authority was required to apprise on the Committee on.

The Chairperson welcomed the Commissioner Secretary General, KRA Mr. Gerald Mutakha, to the meeting and requested them to make his submissions. He submitted as follows-

- 1) That KRA had 3 personnel (resident officers) attached to EABL Nairobi and one personnel attached to EABL Kisumu;
- 2) That the resident personnel were part of other measures taken by KRA for tax accounting measures;
- 3) That among other duties the personnel supervise and record the removal of goods from the Excise Stock Room; and
- 4) That the majority of the personnel average turnaround time was 6 months with the longest being three and a half years;
- 5) That there has never been any case or cases reported of collusion between the KRA personnel and the EABL resulting in tax evasion and non-compliance;
- 6) The list of the 6 active tax disputes between KRA and EABL for the last 7 years;
- 7) The list of the tax disputes resolved; and
- 8) That like other manufactures of excisable products, EABL enjoy tax remissions as guided by the section 14 of the Excise Duty Act, Legal Notice No.52 of 2017.

The Commissioner concluded his submission by assuring the Committee that KRA was committed to ensuring compliance with all laws in tax administration and trade facilitation, and would always be available to provide any additional information.

He thanked the Committee for the invitation.

Observations

The Committee appreciated the well-articulated submissions from KRA and made the following observations-

- 1) That the submissions contradicted earlier submissions on the procurement of sorghum as a raw material;
- 2) Why the large tax dispute did not attract similar measures taken against other alcohol manufactures. In particular why did EABL face closure like in the case of Keroche Breweries due to tax dispute;
- 3) That there were tax remissions awarded to EABL and whether the National Treasury /KRA initiated these rebates or the EABL requested for them;
- 4) Whether the EABL had varied their ingredients to evade taxes, notably the water adulteration of the alcohol;
- 5) Whether KRA had lost any tax dues in the additional 15% share acquisition by Diageo by way of public offer;
- 6) Whether KRA was aware of the Heineken/ Castel Group was alleged takeover of the Diageo shares at EABL; and
- 7) That the Committee had visited the Busia and Malaba One Stop Border Post and observed the sorry state of the infrastructure. This affected the efficient operations of the border clearance to smoothen trade.

Responses

The Commissioner General responded as follows-

- 1) KRA was not aware of the EABL sorghum procurement procedures;
- 2) They did not close EABL despite the large tax dispute as the EABL continues to remit tax obligations and comply to tax disputes resolution agreements unlike the mentioned brewers;
- 3) There was no ingredient variation on productions.
- 4) All taxes due from the public offer by Diageo were collected from the sellers and that the Diageo listing at London Stock Exchange did not affect that; and
- 5) That EABL was listed at the Nairobi Stock Exchange and any share transfers whether locally or internationally would not lead to any tax loss. Further, KRA would not know of the EABL shares acquisition by Heineken from Diageo; and
- 6) The KRA would embark on a fact finding mission to the border post to remedy the Committee's concerns. This would be done without prejudice to the stationed officers.

Resolutions

After deliberations the committee resolved that the Commissioner General provide within seven days, additional information on:-

- 1) The KRA staff redeployed from EABL and the reasons for the deployment/transfer;
- 2) The tax variance occasioned by (i) above;
- 3) The tax bonds given to EABL by KRA; and
- 4) The total tax claims in dispute by KRA to EABL. ✓

MIN/SEN/SCTIT/417/2024

ANY OTHER BUSINESS

The Committee was invited to attend an address to the Parliament's joint committees of Trade by H.E. Wamkele Mene, the Secretary General, African Continental Free Trade Area (AfCFTA) on Thursday 21st March, 2024 at 9.00am. in Mini Chambers, County Hall.

MIN/SEN/SCTIT/418/2024

ADJOURNMENT

There being no other business, the meeting was adjourned at 11.18 am. The next meeting would be held on Tuesday, 12th March, 2024 at 8.00 am in Impala Hall, KICC Building.

SIGNATURE.....

DATE: 12th March 2024

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP



MINUTES OF THE SIXTY NINTH (69TH) HYBRID MEETING OF THE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM, HELD ON THURSDAY, 15TH FEBRUARY, 2024 AT 8.00 AM IN IMPALA HALL, KICC.

PRESENT

- | | |
|------------------------------------|----------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice –Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member |
| 4. Sen. Paul Karungo Thangwa, MP | - Member (Virtually) |
| 5. Sen. Betty Batuli Montet, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 7. Sen. Crystal Kegehi Asige, MP | - Member (Virtually) |

APOLOGIES

- | | |
|---|----------|
| 1) Sen. Jackson Kiplagat Mandago, EGH, MP | - Member |
| 2) Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|-------------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant I |
| 2. Mr. David Ngamate | - Clerk Assistant III |
| 3. Ms. Annette Kwamboka | - Legal Counsel II |
| 4. Ms. Sharon Rotino | - Research Officer I |
| 5. Mr. William Wambiru | - Fiscal Analyst III |
| 6. Ms. Felistus Mutune | - Media Relations Officer III |
| 7. Mr. Joseph Otieno | - Audio Officer III |
| 8. Ms. Lucy Mwaniki | - Assistant Serjeant at Arms |

MIN/SEN/SCTIT/380/2024

PRELIMINARIES

The Chairperson called the meeting to order at 8:27 am followed by a word of prayer.

MIN/SEN/SCTIT/381/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Betty Batuli Montet, MP and seconded by Sen. Crystal Asige, MP as follows –

1. Preliminaries
 - i. Prayer
 - ii. Introduction
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the 68th Meeting held on 13th February, 2024
4. Matters arising from the Minutes of the previous Meetings;

5. Consideration of the Petition on the alleged fraudulent acquisition of shareholding at the East Africa Breweries Ltd (EABL) by Diageo PLC and UDV (Kenya) (Committee Paper No. 68);
6. Any Other Business; and
7. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/382/2024

CONFIRMATION OF THE MINUTES OF PREVIOUS SITTINGS

Minutes of the 68th Meeting held on 13th February, 2024 were confirmed as a true record of deliberations after being proposed by Sen. Betty Batuli Montet, MP, and seconded by Sen. Esther Okenyuri, MP.

MIN/SEN/SCTIT/383/2024

MATTERS ARISING FROM THE MINUTES

1. *Ex MIN/SEN/SCTIT/377/2023*

consideration of memoranda on the Street Vendors (Protection of Livelihood) Bill, 2023 (Senate Bill No. 41 of 2023) (Committee Paper No. 67);

The Committee resolved to seek stakeholder submissions on the Street Vendors Associations of Kenya and present the Committee.

2. *Ex MIN/SEN/SCTIT/379/2023*

Suppliers and distributors of Edible oil to KNTC

- i. The Committee resolved to meet the suppliers and distributors of Edible oil to KNTC. In addition, the Committee resolved to invite the former and current Cabinet Secretaries, Ministry of Industrialization, Trade and Enterprise Development to apprise the Committee on the status of the essential commodities.

MIN/SEN/SCTIT/384/2024

CONSIDERATION OF THE PETITION ON THE ALLEGED FRAUDULENT ACQUISITION OF SHAREHOLDING AT THE EAST AFRICA BREWERIES LTD (EABL) BY DIAGEO PLC AND UDV (KENYA) (COMMITTEE PAPER NO. 68)

The Committee was taken through Committee Paper No.68 on the Petition on the alleged fraudulent acquisition of shareholding at the East Africa Breweries Ltd (EABL) by Diageo PLC and UDV (Kenya). The Paper provided the status progress on the Petition. The Committee resolved to invite the Commissioner General, Kenya Revenue Authority (KRA) to apprise the Committee on the following issues-

- i. Provide information on the number of KRA Personnel stationed at East Africa Breweries and their respective roles in enforcing tax compliance at the company;
- ii. Submit a report on the turnaround rate of KRA personnel bases at the EABL and reasons for recalling the said personnel;

- iii. Explain whether there is any collusive engagement between KRA Personnel and East Africa Breweries Limited resulting in Tax Evasion and non-compliance with the applicable tax requirements;
- iv. Submit a list of any tax disputes between the Authority and KRA in the last seven years including any decided disputes and the respective rulings therein;
- v. Confirm whether any variance in the manufacturing ingredients of alcoholic beverages have tax implications and if so, a report on any ingredient variations by EABL in the last five years that have resulted in changes in the company's tax obligations; and
- vi. Confirm whether there are any tax rebates granted to EABL for use of local material in the manufacture and brewing of Alcohol.

Further, the Committee observed that the Commissioner General, KRA had failed to honor two previous Committee invitations to clarify on the submissions presented and resolved to invite the Commissioner General to appear in person on 29th February, 2024.

MIN/SEN/SCTIT/385/2024

ANY OTHER BUSINESS

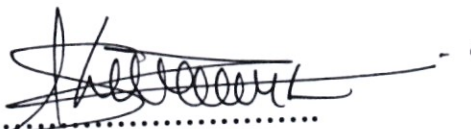
1. The Committee was informed that it had been invited by the Ministry of Cooperatives and MSMEs for a consultative meeting on the Cooperatives Amendment Bill, 2023 in Mombasa from 15th February to 18th February 2024;
2. The Committee resolved to consider the work-plan for the Third Session in the subsequent sitting; and
3. The Committee was informed that the 2024 Budget Policy Statement was scheduled to be tabled in the Senate on 15th February, 2024. The Committee was expected to consider the subsectors on Cooperatives, Trade, Industry, Micro small and Medium enterprises development, Investment promotion and Tourism and thereafter make a presentation to the Standing Committee on Finance and Budget.

MIN/SEN/SCTIT/386/2024

ADJOURNMENT

The meeting was adjourned at 9.07 am and the next meeting would be on Tuesday, 20th February, 2024 at 8.00 am in Impala Hall, KICC Building.

SIGNATURE.....



DATE:

20th February, 2024

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



MINUTES OF THE FOURTY-FIFTH (45TH) MEETING OF THE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM, HELD ON THURSDAY, 7TH SEPTEMBER, 2023 AT 9.00 AM IN ROOM 26, 5TH FLOOR BUNGE TOWERS, PARLIAMENT BUILDINGS

PRESENT

- | | |
|---|---------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice –Chairperson |
| 3. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 4. Sen. Paul Karungo Thangwa, MP | - Member |
| 5. Sen. Betty Batuli Montet, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|------------------------------------|----------|
| 1. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member |
| 2. Sen. Crystal Kegehi Asige, MP | - Member |
| 3. Sen. Hezema M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant |
| 3. Ms. Sharon Rotino | - Research Officer |
| 4. Ms. Annette Kwamboka | - Legal Counsel |
| 5. Ms. Hamun Mohamud | - Research Officer |
| 6. Ms. Khadija Ali | - Protocol Officer |
| 7. Ms. Felistus Mutune | - Media Relations Officer |
| 8. Mr. Joseph Otieno | - Audio Officer |
| 9. Mr. Abdallah Mbore | - Sergeant-At-Arms |

EAST AFRICA BREWERIES LIMITED

- | | |
|------------------------|--------------------------------------|
| 1. Ms. Jane Karuku | - CEO |
| 2. Mr. Rowlands Nadida | - Group Legal director |
| 3. Mr. Eric Kiniti | - Group Corporate Relations Director |
| 4. Mr. Paras Shah | - External Lawyer (EABL) |
| 5. Ms. Adhiambo Wameyo | - External Lawyer (EABL) |

MIN/SEN/SCTIT/262/2023

PRELIMINARIES

The Chairperson called the meeting to order at 9:28 am followed by a word of prayer.

MIN/SEN/SCTIT/263/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Jackson Kiplagat Mandago, EGH. MP and seconded by Sen. Esther Okenyuri, MP as follows -

1. Preliminaries
 - a) Prayer
 - b) Introduction
2. Adoption of the Agenda;
3. **Meeting with the Group Managing Director, East Africa Breweries Ltd to respond to the Petition on the fraudulent acquisition of shareholding at the EABL and UDV Ltd (Committee Paper No. 49);**
4. Any Other Business; and
5. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/264/2023

MEETING WITH THE GROUP MANAGING DIRECTOR EABL TO RESPOND ON THE PETITION ON THE FRAUDULENT ACQUISITION OF SHAREHOLDING AT THE EABL AND UDV (COMMITTEE PAPER NO. 49)

The Chairperson welcomed the delegation from the EABL led by the Group Managing Director led by Ms. Jane Karuku. He called for self -introduction.

The secretariat presented Committee Paper No.49 providing the background to the Petition on the fraudulent acquisition of shareholding at the EABL and the UDV. The background Papers highlighted the following issues -

- i. A detailed report on the initial acquisition of shares;
- ii. That on Thursday 10th August, 2023, the Committee had met with the Chief Executive officer, Capital Markets Authority and was apprised on the policy and regulatory framework on acquisitions and mergers over the last 20 years. Further, the CEO, Capital Markets Authority responded to most of the issues raised in the preamble of the Petition regarding the Authority's opinion and approval of the acquisition of additional shares by Diageo PLC;
- iii. That the Committee had initially invited the Group MD EABL to appear in person on Thursday, 6th July 2023. However, the Group MD the meeting did not proceed as the delegation EABL was not allowed to proceed with responses to the petition; and
- iv. At its Sitting held on Thursday 10th August, 2023 the Committee invited the Group MD EABL though the letter REF: SEN/DSEC/SCTIT/2023/90 to appear in person to apprise it on the following-

- a) The strategic business impact and benefits of the acquisition of an additional 15 per cent shares in the East African Breweries Limited (EABL) by Diageo PLC;
- b) Whether the acquisition by Diageo PLC is a consolidation for the alleged transfer to and eventual takeover by Heineken or Castemil group;
- c) Why EABL was undertaking considerable downsizing despite consistent posting of marginal profits; and
- d) Provide justification for the policy of the disposing off huge company assets and how local shareholders have benefited from these sales.

The Chairperson thereafter requested the Group MD Ms. Karuku, to respond to the matters emanating from the issues as reported in the Committee Paper and further those that would be raised by Members of the Committee.

Ms. Karuku thanked the Committee for the invitation and gave a background of EABL and its current business footing. She proceeded to make the following submissions. That;

- i. The Petition lacked credibility and invoked standing order 238(2) that the 60 days' timeline had lapsed and that there lacked any extension of time or legal extension;
- ii. That the 15% additional acquisition of EABL shares by Diageo Kenya Limited (Diageo Kenya) was though a Public Tender Offer and duly approved by the Capital Markets Authority;
- iii. That the transaction was the single largest Foreign Direct Investment in 2023 with Diageo paying Kshs. 22.7 billion to Kenyan shareholders;
- iv. That the acquisition was not a consolidation for transfer to Heineken or Castle Group;
- v. That it had not downsized its staff establishment, but rather outsourced the non-core functions e.g logistics, security, warehousing etc;
- vi. That it continued to grow and consolidate its asset base in line with future strategic business vision and had injected more than Kshs. 96 billion in the region; and
- vii. That EABL continued to grow and pay huge taxes and issue profits to shareholders as a result of the business strategy.

She concluded her submission by emphasizing that the transaction followed all the laid down legal procedures. She thanked the Committee for the opportunity to address the issues raised in the Petition.

Observations by the Committee

From the deliberations that ensued, the Committee made the following observations:

- i. That the Petition was rightfully before the Committee and that the Committee was in order to continue prosecuting the petition even beyond the purported expiry of the timelines;

- ii. Why EABL despite the stated growth continued to dispose assets for example the Central Glass Industries, the various warehouses especially in Industrial Area and other pieces of prime land;
- iii. The continued downsizing of staff (from 6,000 to 1,400) despite continuous posting of huge profits;
- iv. The rationale for Diageo Kenya's Public offer of the shares at Kshs.192 way above the then market price of Kshs. 136 and which was unaffordable by locals;
- v. The response did not provide the share register at the time of Diageo's acquisition of the additional 15%; and
- vi. The implication on tax compliance for the importation of sorghum into the Country including disclosure on the volume of imported sorghum and the tax exemptions by the Kenya Revenue Authority.

Resolutions by the Committee

The Committee therefore resolved that -

1. The secretariat to invite the Competition Authority of Kenya, Kenya Revenue Authority and former CEO, Capital Markets Authority to apprise the Committee on their role during the acquisition of shareholding by Diageo PIC in the EABL. The secretariat to flag out key issues to assist the Committee to interrogate the matters raised in the petition on the fraudulent acquisition of shareholding at the East.
2. The Group MD to submit written responses to the observations as she did not have the ready responses at the time they were sought by the Committee.

MIN/SEN/SCTIT/265/2023

ANY OTHER BUSINESS

The secretariat to process a final invitation letter to the Cabinet Secretary, Ministry of Investment Trade and Industry having failed to appear on Tuesday 5th September, 2023 to respond to all the pending Statements that relate to the Ministry. The Committee to resolve on the dates during the subsequent meeting.

MIN/SEN/SCTIT/266/2023

ADJOURNMENT

The meeting was adjourned at 11.37 am and the next meeting was scheduled for Tuesday, 12th September, 2023

SIGNATURE.....

DATE: 12/10/2023.....

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



MINUTES OF THE FOURTIETH (40TH) MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM, HELD ON THURSDAY, 27TH JULY, 2023 AT VIP 2 BOARDROOM, FIRST FLOOR, KICC AT 8.00 AM (HYBRID)

PRESENT

- | | |
|---|-------------------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice -Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member (<i>virtually</i>) |
| 4. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 5. Sen. Betty Batuli Montet, MP | - Member (<i>virtually</i>) |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 7. Sen. Crystal Kegehi Asige, MP | - Member (<i>virtually</i>) |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Paul Karungo Thangwa, MP | - Member |
| 2. Sen. Hezema M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant |
| 3. Ms. Annette Kwamboka | - Legal Counsel |
| 4. Ms. Hamun Mohamud | - Research Officer |
| 5. Ms. Felistus Mutune | - Media Relations Officer |
| 6. Mr. Joseph Otieno | - Audio Officer |
| 7. Mr. Abdallah Mbore | - Sergeant-At-Arms |

PETITIONER

1. Mr. Nicholas Rono

MIN/SEN/SCTIT/230/2023

PRELIMINARIES

The Chairperson called the meeting to order at 8:17 am followed by a word of prayer.

The agenda of the meeting was adopted after it was proposed by Sen. Jackson Mandago, MP, and seconded by Sen. Esther Okenyuri, MP as follows -

1. Preliminaries
 - i. Prayer
 - ii. Introduction
2. Adoption of the Agenda;
3. *Meeting with the Petitioner to consider additional submissions on the Petition on the alleged fraudulent acquisition of shareholding at the East African Breweries Ltd (EABL) (Committee Paper No. 42);*
4. *Consideration of the Quarterly Report on the Activities of the Committee for the period commencing 1st April, 2023 to 30th June 2023 (Committee Paper No. 43);*
5. Any Other Business; and
6. Adjournment/ Date of the Next Meeting

MIN/SEN/SCTIT/232/2023: **MEETING WITH THE PETITIONER TO CONSIDER ADDITIONAL SUBMISSIONS ON THE PETITION ON THE ALLEGED FRAUDULENT ACQUISITION OF SHAREHOLDING AT THE EAST AFRICAN BREWERIES LTD (EABL) (COMMITTEE PAPER NO. 42)**

The Secretariat presented Committee Paper No. 42 where Mr. Nicholas Rono the petitioner had requested to appear on Thursday, 27th July, 2023 to provide the additional information as requested by the Committee.

The Chairman welcomed the petitioner, Mr. Rono once again to the meeting of the Committee and acknowledged him for the commitment and sacrifice to highlight the plight of Kenyan shareholders against competition from multinational investors.

Mr. Rono proceeded to make the following submissions:

1. That whereas he had referred to the lost shares of his grandfather (now deceased), it was only for illustration on how he has been affected by the matters of domestic shareholding in public listed companies in Kenya. He requested to expunge the said illustration from his evidence as he was not the administrator of the deceased's estate;
2. That key persons of interest including the whistle-blower be invited to shed light on the transactions; and
3. The Committee to allow for amendment of the prayers in the petition to address holistic public interests in public listed companies.

Observations by the Committee

The Committee noted that the period provided under the Senate's Standing Order on the carrying out a petition had expired on 29th July 2023. The Committee therefore requested for

guidance on the procedure for seeking extension to a petition following the expiry of the 60-day deadline.

Resolution by the Committee

After deliberations, the Committee resolved that the Director General, Competition Authority of Kenya be invited to appear on Thursday 3rd August, 2023.

MIN/SEN/SCTIT/233/2023:

**CONSIDERATION OF COMMITTEE PAPER
NO. 43: CONSIDERATION OF THE
QUARTERLY REPORT ON THE
ACTIVITIES OF THE COMMITTEE FOR
THE PERIOD COMMENCING 1ST APRIL,
2023 TO 30TH JUNE 2023;**

The Secretariat took the members through Committee Paper No. 43 on the Quarterly Report of the Committee's activities for the period commencing 1st April 2023 to 30th June 2023 pursuant to standing order 56(1)(b) of the Senate Standing Orders that a Committee Chairperson shall at least once in every three (3) months, make a Statement relating to the activities of the Committee. The Paper highlighted the following:

1. Two Bills whose Committee Stage Amendments Report had been tabled in the Senate
 - a. The The Startup Bill, 2022 (Senate Bills No. 14 of 2022); and
 - b. The County Licensing (Uniform Procedures) Bill, (Senate Bills No. 9 of 2022)
2. Two legislative proposals that the Committee had approved for] Publishing
 - a. The Street Vendors (Protection of Livelihood) Bill 2023; and
 - b. The Price Control (Essential Goods) (Amendment) Bill, 2023
3. The Petition on the fraudulent shareholding activities and illegal acquisition of Eat Africa Breweries Ltd (EABL);
4. The 23 Statements committed to the Committee that had further carried out one county visit to the Machakos County; and
5. The Priority activities of the next Quarter

Recommendations by the Committee

The Committee recommended amendments on the report as follows-

1. That the Report on Drumvale Farmers liquidation includes the legislative recommendations on the Cooperative Act under the Committee's considerations;
2. That the Statement on Operations and Financial Status of the Kenya Airways indicates that KQ current fortunes could be reversed back to profitability;
3. That the two legislative proposals indicate the time when they will undergo publication; and
4. That the report highlights the statements that were concluded separate from the ongoing statements.

The Secretariat was tasked to incorporate the amendments and present the amended report for adoption on Tuesday 1st August, 2023.

MIN/SEN/SCTIT/234/2023:

ANY OTHER BUSINESS

- a. The Committee to summon the Cabinet Secretary, Ministry of Trade, Investments and Industry on Thursday, 10th August, 2023.
- b. The Secretariat to apprise the Committee on the role of Capital markets Authority and Competition Authority of Kenya on foreign acquisition of shareholding in public listed companies in Kenya. This is to provide specific background information ahead of the scheduled meeting on Thursday, 3rd August, 2023, to consider the Petition on the alleged fraudulent acquisition of shareholding at the East African Breweries Ltd (EABL).

MIN/SEN/SCTIT/235/2023

ADJOURNMENT

There being no other business, the meeting was adjourned at 9.52 am. The next meeting was scheduled for Tuesday, 1st August, 2023.

SIGNATURE.....



DATE: 8-8-2023.....

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



**MINUTES OF THE THIRTY NINTH (39TH) MEETING OF THE SENATE
STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM,
HELD ON TUESDAY, 25TH JULY, 2023 IN VIP 2 BOARDROOM, FIRST FLOOR,
KICC AT 9.00 AM (HYBRID)**

PRESENT

- | | |
|---|---------------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice -Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member <i>virtually</i> |
| 4. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 5. Sen. Paul Karungo Thangwa, MP | - Member <i>virtually</i> |
| 6. Sen. Betty Batuli Montet, MP | - Member <i>virtually</i> |
| 7. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 8. Sen. Crystal Kegehi Asige, MP | - Member <i>virtually</i> |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Hezena M. Lemaletian, MP | - Member |
|----------------------------------|----------|

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant |
| 3. Ms. Annette Kwamboka | - Legal Counsel |
| 4. Ms. Hamun Mohamud | - Research Officer |
| 5. Ms. Felistus Mutune | - Media Relations Officer |
| 6. Ms. Shirley | - Audio Officer |
| 7. Mr. Abdallah Mbore | - Sergeant-At-Arms |

MIN/SEN/SCTIT/224/2023

PRELIMINARIES

The Chairperson called the meeting to order at 9:29 am followed by a word of prayer.

MIN/SEN/SCTIT/225/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Jackson Mandago, MP, and seconded by Sen. Esther Okenyuri, MP as follows -

1. Preliminaries

- i. Prayer
 - ii. Introduction
2. Adoption of the Agenda;
3. Consideration of Committee Paper No. 41: Meeting with the Petitioner to consider additional submissions on the Petition on the alleged fraudulent acquisition of shareholding at the East African Breweries Ltd (EABL);
4. Confirmation of the Minutes of previous Meetings –
 - i. Minutes of the Thirty seventh (37th) Sitting held on 18th July, 2023;
 - ii. Minutes of the Thirty eighth (38th) Sitting held on 20th July, 2023;
5. Matters Arising from Minutes of the previous Meetings;
6. Any Other Business; and
7. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/226/2023:

CONSIDERATION OF COMMITTEE PAPER NO. 41: MEETING WITH THE PETITIONER TO CONSIDER ADDITIONAL SUBMISSIONS ON THE PETITION ON THE ALLEGED FRAUDULENT ACQUISITION OF SHAREHOLDING AT THE EAST AFRICAN BREWERIES LTD (EABL);

The Secretariat presented Committee Paper No. 41 where Mr, Nicholas Rono the petitioner had requested to appear on Tuesday, 25th July, 2023 to provide the additional information as requested by the Committee. The petitioner, did not appear but however requested the meeting be rescheduled. He requested time to finalize on the collecting additional information on the petition.

Resolution by the Committee.

After deliberations, the Committee resolved that the petitioner appears before the Committee on Thursday, 27th July, 2023 together with Sen. Wakili Hillary Sigei, MP to provide further clarifications on how to proceed with the petition.

Further, the Secretariat to schedule the meeting with the Group CEO East Africa Breweries Ltd, to consider the petition on the fraudulent acquisition of shareholdings in EABL on Thursday 27th July, 2023 until the additional information and deliberations with the petitioner are concluded.

MIN/SEN/SCTIT/227/2023:

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

- 1) Minutes of the thirty seventh (37th) sitting held on 18th July, 2023 at 8.00 am were confirmed after being proposed by Sen. Betty Montet, MP, and seconded by Sen. Esther Okenyuri, MP; and

- 2) Minutes of the thirty eighth (38th) sitting held on 20th July, 2023 were confirmed after being proposed by Sen. Okenyuri, MP, and seconded by Sen. Mandago, MP.

MIN/SEN/SCTIT/228/2023:

**CONFIRMATION OF THE MINUTES OF
THE PREVIOUS SITTINGS**

Under MIN/SEN/SCTIT/217/2023 on the submissions by the Commissioner of Cooperative Development and the Liquidator for Drumvale Farmers' Cooperative Society, Machakos county

- a. The handing over of the Documents was scheduled for Friday 28th July, 2023 at the Office of the Commissioner of Cooperatives;
- b. The Committee to be provided with the handing over report by the Ministry of Cooperatives and MSMEs ;

Under MIN/SEN/SCTIT/222/2023 on the response to the Statement requested by Sen. Tabitha Mutinda, MP concerning the rise in road-side hardware suppliers in residential areas in Nairobi City County.

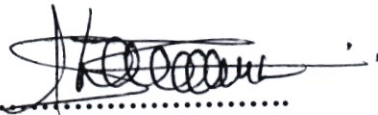
- a. The Secretariat to invite the CEC Business Development and Hustler Opportunities for Nairobi City County; and
- b. The Secretariat writes to the Principal Secretary Roads for written submissions on the statement.

MIN/SEN/SCTIT/229/2023

ADJOURNMENT

The meeting was adjourned at 10. 02 am and the next meeting was scheduled for Thursday, 27th July, 2023.

SIGNATURE.....



DATE: 3-8-2023

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



**MINUTES OF THE THIRTY EIGHTH (38TH) MEETING OF THE SENATE
STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM,
HELD ON TUESDAY, 25TH JULY, 2023 AT KICC VIP 2 BOARDROOM, FIRST
FLOOR, KICC AT 9.00 AM (HYBRID)**

PRESENT

- | | |
|------------------------------------|---------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice -Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member |
| 4. Sen. Betty Batuli Montet, MP | - Member |
| 5. Sen. Crystal Kegehi Asige, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|---|----------|
| 1. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 2. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 3. Sen. Paul Karungo Thangwa, MP | - Member |
| 4. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Ms. Annette Kwamboka | - Legal Counsel |
| 3. Ms. Hamun Mohamud | - Research Officer |
| 4. Ms. Felistus Mutune | - Media Relations Officer |
| 5. Ms. Shirley | - Audio Officer |
| 6. Mr. Abdallah Mbore | - Sergeant-At-Arms |

PETITIONERS

Mr. Nicholas Rono - Petitioner (EABL Petition)

MIN/SEN/SCTIT/219/2023

The Chairperson called the meeting to order at 9:29 am followed by a word of prayer.

PRELIMINARIES

MIN/SEN/SCTIT/220/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Crystal Asige, MP, and seconded by Sen. Esther Okenyuri, MP as follows -

1. Preliminaries
 - i. Prayer
 - ii. Introduction
2. Adoption of the Agenda;
3. Consideration of Committee Paper No. 39: Meeting with Mr. Nicholas Rono, the Petitioner in the Petition on Fraudulent shareholding at the East Africa Breweries Ltd;
4. Consideration of Committee Paper No. 40: Consideration of responses to Statements before the committee -
 - a) Statement requested by Sen. Tabitha Mutinda, MP concerning the rise in road-side hardware suppliers in residential areas in Nairobi City County; and
 - b) Statement requested by Sen. James Murango, MP regarding the marketing of Kenyan produce in foreign markets.
5. Any Other Business; and
6. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/221/2023:

CONSIDERATION OF COMMITTEE PAPER NO. 39: MEETING WITH MR. NICHOLAS RONO, THE PETITIONER TO CONSIDER THE PETITION ON THE FRAUDULENT SHAREHOLDING ACTIVITIES AND ILLEGAL ACQUISITION OF EAST AFRICA BREWERIES LTD (EABL)

The Secretariat presented Committee Paper No. 39 which highlighted on the background and the status of the Petition regarding fraudulent shareholding activities and illegal acquisition of EABL.

The Chairperson acknowledged the presence of the petitioner, Mr. Nicholas Rono, and proceeded to explain the efforts that the committee had made in the consideration of the Petition.

The Committee was informed that during a previous meeting with the Chief Executive Officer of the Capital Markets Authority, it was reported by the CMA that the Mr. Rono had not logged any complaint on the shares that had been purported to have been lost mysteriously lost.

In the circumstances, the committee was not able to proceed with the efficient consideration of the petition because there was no proof by the petitioner that all mechanisms had been exhausted before the petition was reported in the Senate.

The Committee further observed that the petitioners prayers did not cohere with the preamble of the petition as the only prayer was for the Committee to intervene with a view to amend the Capital Authority Act.

Resolution by the Committee

The Committee thanked the petitioner for the efforts made and resolved that the petitioner appears before the Committee on Tuesday, 25th July, 2023 together with Sen. Wakili Hillary Sigei, MP to provide further clarifications on how to proceed with the petition.

MIN/SEN/SCTIT/222/2023:

**CONSIDERATION OF COMMITTEE PAPER
NO. 40: CONSIDERATION OF RESPONSES
TO STATEMENTS BEFORE THE
COMMITTEE**

a) Statement requested by Sen. James Murango, MP on the measures taken to market Kenyan Produce in external markets

The secretariat reported that pursuant to Standing order 53(1) of the Senate Standing Orders, at the Sitting of the Senate held on Tuesday, 28th March, 2023 Sen. (Dr.) James Murango, MP, requested for a Statement from the Standing Committee on Trade, Industrialization and Tourism regarding the marketing of Kenyan produce in foreign markets.

In the Statement, the Committee was requested to among others,-

- 1) State the measures, if any, that the Government has put in place, to ensure marketing of Kenyan produce by Kenyan Missions;
- 2) Explain the measures, if any, that the Government has put in place to control imports of goods produced locally and to increase demand for local produce; and
- 3) State the measures, if any, put in place by the Government to market Kenyan goods like tea, coffee, and horticultural produce to increase the volume of exports.

Further, the secretariat reported that the Committee had received a response from the Cabinet Secretary, Ministry of Investments, Trade and Industry dated 13th April, 2023 which was shared with Sen. (Dr.) James Murango, MP for his reaction and comments.

Subsequently the Committee invited Sen. Murango, MP to its meetings on Thursday, 18th May, 2023 and then on Thursday, 20th July, 2023 to which there was no confirmation, apology or comment on the response received on the statement.

Observations by the Committee

The Committee observed that all efforts had been made to process the statement as reported. However, Sen. Murango, MP did not respond whenever invited to appear before the Committee.

Resolution of the Committee

From the deliberations that ensued, it was noted that since there was no response from the Senator on the response to the statement, the matter was closed for further consideration and that the resolution be updated on the Senate Statement Tracker.

b) Statement requested by Sen. Tabitha Mutinda, MP concerning the rise in road-side hardware suppliers in residential areas in Nairobi City County.

The Secretariat reported that at the Sitting of the Senate held on Tuesday, 22nd November, 2022, Sen. Tabitha Mutinda, MP requested for a Statement from the Standing Committee on Trade, Industrialization and Tourism concerning the rise in the number of road-side hardware suppliers in residential areas in Nairobi City County.

In the Statement, the Committee was requested to-

- 1) Explain the reasons for the rapid increase of road-side selling of sand, ballast and other hardware supplies along streets of residential areas in Nairobi, particularly in South B and South C Estates;
- 2) Elucidate on the measures the Nairobi City County has taken, if any, to address this matter following numerous complaints by residents of the affected areas;
- 3) Apprise the Senate on the identities of the owners of the road-side hardware businesses and the legal process followed in issuing of licenses for the operation of such businesses; and
- 4) Undertake a visit to South B, South C and other affected areas, with a view to gaining a deeper understanding of the matter and recommending measures to curb the proliferation of these businesses.

Status of the Statement

It was reported that the Committee had received a response from the County Government of Nairobi which was shared with Sen. Tabitha Mutinda, MP, for her reaction and comments.

Reactions by the Committee

- 1) The Committee acknowledged the response from the County Government of Nairobi and observed that the response was inadequate and had not addressed the critical concerns especially, on issue no. 2 on the measures the Nairobi City County has taken, to address the numerous complaints by residents of the affected areas. These complaints relate to security, environment and other concerns and
- 2) Further, the Committee observed that no. 3 of the statement on the identities of the owners of the road-side hardware businesses and the legal process followed in issuing of licenses for the operation of such businesses was not responded. Additionally, it was a matter of concern that the County Government referred the Committee to seek such information from the Sub-County Offices.

Resolution by the Committee

From the deliberations that ensued, the Committee recommended that the following stakeholders be invited to appear before the Committee within two weeks to provide the information on the concerns raised in the above observations-

- a) The County Executive Member for Business Development and Hustler Opportunities;
- b) The Principal Secretary, State Department for Roads;

c) and the Resident Association for South B and B.

MIN/SEN/SCTIT/223/2023

ADJOURNMENT

The meeting was adjourned at 10. 38 am and the next meeting was scheduled for Tuesday, 25th July, 2023.

SIGNATURE.....

DATE: 3-8-2023

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



**MINUTES OF THE THIRTY SIXTH (36TH) HYBRID MEETING OF THE SENATE
STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM,
HELD ON TUESDAY, 11TH JULY, 2023, AT CAUCUS 110 BOARDROOM, FIRST
FLOOR, KICC AT 9.00 AM**

PRESENT

- | | |
|-----------------------------------|---------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice -Chairperson |
| 3. Sen. Paul Karungo Thangwa, MP | - Member |
| 4. Sen. Betty Batuli Montet, MP | - Member(online) |
| 5. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|---|----------|
| 1. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member |
| 2. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 3. Sen. Crystal Kegehi Asige, MP | - Member |
| 4. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|----------------------|--------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant |
| 3. William Wambiru | - Fiscal Analyst |
| 4. Ms. Zeinab Jirma | - Legal Counsel |
| 5. Mr. Joseph Otieno | - Audio Officer |
| 6. Mr. Abdalla Mbore | - Sergeant-At-Arms |

STAKEHOLDERS –CAPITAL MARKETS AUTHORITY (CMA),

- | | |
|--------------------------|----------------------------------|
| 1. Mr. Wycklyffe Shamiah | - CEO |
| 2. Mr. Daniel Warutere | - Ag. Director Market Operations |
| 3. Mr. Justus Agoti | - Manager, Product Dev. & Uptake |
| 4. Mr. Richard Muigai | - Manager |
| 5. Ms. Cyrilla Masiache | - Senior Officer |
| 6. Mr Onchuru Nyamtika | - Senior Officer |
| 7. Mr. Antony Mwangi | - Senior Officer |

MIN/SEN/SCTIT/211/2023

PRELIMINARIES

The Chairperson called the meeting to order at 9:28 am followed by a word of prayer.

MIN/SEN/SCTIT/212/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Esther Okenyuri, MP and seconded by Sen. Andrew Omtatah Okoiti, MP -

1. Preliminaries
 - i. Prayer
 - ii. Introduction
2. Adoption of the Agenda;
3. Consideration of Committee Paper No. 37; Meeting with the Chief Executive Officer (CEO) Capital Markets Authority (CMA) to consider the Petition on the alleged fraudulent acquisition of shareholding at the East African Breweries Ltd;
4. Any Other Business; and
5. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/213/2023

CONSIDERATION OF COMMITTEE PAPER NO. 37; MEETING WITH THE CHIEF EXECUTIVE OFFICER (CEO) CAPITAL MARKETS AUTHORITY (CMA) TO CONSIDER THE PETITION ON THE ALLEGED FRAUDULENT ACQUISITION OF SHAREHOLDING AT THE EAST AFRICAN BREWERIES LTD

The Secretariat took the Committee through Committee Paper No. 37 on the above matter. The Paper provided the background on meetings with the petitioner Mr. Nicholas Rono who had appeared before the Committee on Thursday 29th June, 2023 and responded to clarifications on the Petition.

Further, that the Committee had then resolved to invite the Capital Markets Authority (CMA) to apprise it on mergers, acquisitions and takeovers on the current shareholding at the EABL as well the legal and policy framework.

The Chairperson then invited the Chief Executive Officer, Capital Markets Authority, Mr. Wycklyffe Shamiah to respond to the petition.

Mr. Shamiah made the following submissions: That;

1. The petitioner had not approached the Authority on the matter by way of a complaint or in any other manner;

2. The transaction involving the acquisition of additional shareholding by Diageo at EABL was in compliance with the Capital Markets Act and the Public Officers Regulations as indicated below-
 - i. Diageo Kenya Limited served a Notice of Intention on the listed company on October 13, 2022. This was also published in two newspapers of national circulation;
 - ii. East African Breweries Limited published a cautionary announcement on October 17, 2022 informing shareholders about the proposed tender offer;
 - iii. Diageo Kenya prepared a tender offer document which provided the details of the offer, terms and basis of the offer price;
 - iv. Tender offer document was circulated to shareholders and an abridged version published in two newspapers of national circulation; and
 - v. The offer was open for acceptance by shareholders in accordance with the published offer timetable;
3. In the matter of Tax evasion, the transaction correctly indicated that as the Ordinary Shares are listed on the Nairobi Securities Exchange, no capital gains tax would be payable in Kenya in connection with the gain accruing on the transfer of such Ordinary Shares in accordance with the relevant laws. Notwithstanding, however, the Kenya Revenue Authority could conduct an independent assessment to ensure compliance with the applicable tax laws in Kenya;
4. Diageo Kenya confirmed in writing that it was not acting in concert with any person (whether pursuant to a formal or informal agreement or understanding) in relation to the acquisition of the Ordinary Shares or the consolidation of control of EABL; and
5. The transaction was in compliance with applicable law and regulations, including the rationale for the transaction from Diageo's point of view, and the likely impact of the transaction on the operations of EABL and the shareholders of the company.

Committee observations

Arising from the submission, the Committee noted that the petitioner had not provided sufficient evidence and clarifications.

Resolutions by the Committee:

The Committee resolved that the petitioner provides additional evidence and disclosure on the actual issues of concern to be addressed by EABL and the Capital Markets Authority.

Further, the Secretariat to facilitate the Committee with the November 2000 Parliamentary Committee on Finance, Planning and Trade report on the Kenya Breweries Limited.

MIN/SEN/SCTIT/214/2023

- ADJOURNMENT

The meeting adjourned at 11.21 am and the next meeting was scheduled for Thursday, 13th July, 2023 at 9.30 am.



SIGNATURE..... DATE: 3-8-2023.....

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



**MINUTES OF THE THIRTY FIFTH (35TH) HYBRID MEETING OF THE SENATE
STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM,
HELD ON THURSDAY, 6TH JULY, 2023, AT 9.00 AM AT CAUCUS 110
BOARDROOM, FIRST FLOOR, KICC BUILDING AND THE ZOOM ONLINE
PLATFORM**

PRESENT

- | | |
|---|----------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice -Chairperson |
| 3. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 4. Sen. Paul Karungo Thangwa, MP | - Member(Virtually) |
| 5. Sen. Betty Batuli Montet, MP | - Member(Virtually) |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member (Virtually) |
| 7. Sen. Crystal Kegehi Asige, MP | - Member(Virtually) |

ABSENT WITH APOLOGIES

- | | |
|------------------------------------|----------|
| 1. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member |
| 2. Sen. Paul Karungo Thangwa, MP | - Member |
| 3. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant |
| 3. Ms. Hamun Mohamud | - Research Officer |
| 4. Ms. Felistus Mutune | - Media Relations Officer |
| 5. Mr. Joseph Otieno | - Audio Officer |
| 6. Mr. Brian Dindi | - Audio Officer |
| 7. Mr. Abdalla Mbore | - Sergeant-At-Arms |

STAKEHOLDERS –EAST AFRICA BREWERIES

- | | |
|------------------------|-------------------------------|
| 1. Mr. Nadida Rowlands | - Group Legal Director |
| 2. Mr. Eic Kiniti | - Corporate Relations Officer |

3. Ms. Karen Mate- Gitonga - Corporate & Operations Counsel
4. Mr. Richard Harney - Lawyer for EABL

5. Ms. Adhiambo Wameyo - Lawyer for EABL

MIN/SEN/SCTIT/204/2023

PRELIMINARIES

The Chairperson called the meeting to order at 9:05 am followed by a word of prayer.

MIN/SEN/SCTIT/205/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Jackson Kiplagat Mandago, EGH. MP and seconded by Sen. Esther Okenyuri, MP as follows-

- 1) Prayer;
- 2) Adoption of the Agenda;
- 3) Confirmation of minutes of the Thirty Third (33rd) Sitting held on 29th June, 2023;
- 4) Matters Arising;
- 5) Consideration of Committee Paper No. 35; Meeting with Group Managing Director EABL on the Petition regarding the fraudulent shareholding activities and illegal acquisition of East Africa Breweries Ltd (EABL);
- 6) Consideration of Paper No. 36 on Statements before the Committee
 - a) Statement requested by Sen. (Prof.) Tom Ojiambo, SC, MP, on the state of the Financial Inclusion Fund nationally and its impact on the residents of Kisumu County;
 - b) Statement requested by Sen. David Wakoli, MP on the management of the Metropolitan National Sacco Limited;
 - c) Statement requested by Sen. Paul Karungo Thang'wa, MP on the issue of proliferation of dairy products from Uganda; and
 - d) Response to Statement requested by Sen. James Murango, MP regarding the marketing of Kenyan produce in foreign markets;
- 7) Any Other Business; and
- 8) Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/206/2023

CONFIRMATION OF MINUTES OF THE THIRTY THIRD SITTING

Members deferred the confirmation of the Minutes of the 33rd Sitting held on 29th June, 2023 to the next meeting as there was no seconder among the members present.

MIN/SEN/SCTIT/207/2023

MATTERS ARISING FROM MINUTES OF THE
THIRTY THIRD SITTING

There were no matters arising following the deferment of the Minutes.

MIN/SEN/SCTIT/208/2023:

CONSIDERATION OF COMMITTEE PAPER NO.
35; MEETING WITH GROUP MANAGING
DIRECTOR EABL ON THE PETITION
REGARDING THE FRAUDULENT
SHAREHOLDING ACTIVITIES AND ILLEGAL
ACQUISITION OF EAST AFRICA BREWERIES
LTD (EABL)

The Chairperson invited the stakeholders representing EABL in the petition. He assured the delegation that the petition was properly before the Committee.

The Chairperson invited the Secretariat to present Committee Paper No.35 on the Status of the Petition.

The Committee observed that adverse responses received from the EABL were defensive rather than responding to rational issues raised in processing the matters as petitioned. The Chairperson advised the delegation from EABL to adopt an approach that was not confrontational and defensive.

He then invited EABL delegation for self-introduction and proceed to make their submissions. The EABL Group Legal Director, Mr. Rowlands Nadida, made the following submissions:

1. That the Group Managing Director, Mrs. Jane Karuku was not able to honour the invitation by the Committee to appear in person as the communication had been at short notice;
2. That the Group CEO had requested the Committee to accept submissions from the delegation sent to the Committee led by the Group Legal Director, Mr. Nadida; and
3. That EABL submitted that they were strangers to the operation of Senate Committees and their procedures. However, they had taken adequate lessons from the directions given by the Committee.

Committee Resolutions

Having considered the explanation and submission from the EABL delegation, the Committee resolved as follows. That;

1. The Committee will not receive submissions from EABL delegation led by Mr. Rowland Nadida since the matters raised in the Petition required the response of the Group CEO;
2. The Committee would proceed to receive submissions from the Capital Markets Authority and the Competition Authority ahead of meeting with the EABL leadership; and
3. The Group Managing Director to appear in person on Thursday 20th July, 2023 to respond to the issues raised by the petitioner.

MIN/SEN/SCTIT/209/2023

CONSIDERATION OF PAPER NO. 36 ON STATEMENTS BEFORE THE COMMITTEE

1. The Secretariat reported that the following statements had been requested from the committee
 - a) Statement sought by Sen. David Wakoli, MP on the management of Metropolitan National Sacco
 - b) Statement sought by Sen. Paul Thangw'a, MP on the proliferation of dairy products from Uganda;
 - c) Statement sought by Sen. (Prof.) Tom Ojienda, MP, on the Status of the Cooperative Societies in Kisumu County;
 - d) Statement sought by Sen. (Prof.) Tom Ojienda, MP on the status of the Financial Inclusion Fund and its impact on the residents of Kisumu County; and
 - e) Statement sought by Sen. Esther Okenyuri, MP regarding the sensitization and involvement of women and youth startups in Special Economic Zones

Committee Resolution

Having considered the above status of new statements, the Committee resolved that -

1. Sen. (Dr.) James Murango, MP, be invited to the meeting of Tuesday 18th July, 2023 review the response received Cabinet Secretary, Ministry of Investments Trade and Industry regarding the marketing of Kenyan produce in foreign markets; and
2. The Secretariat fast tracks the processing of the statements for responses from the relevant ministries and respondents.

MIN/SEN/SCTIT/210/2023

- ADJOURNMENT

The meeting adjourned at 11.02 am. And the next meeting was scheduled for Tuesday, 11th July, 2023 at 9.00 am at Caucus 110, First Floor Boardroom, KICC Building.

SIGNATURE.......... DATE: 3-8-2023.....

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



**MINUTES OF THE THIRTY THIRD (33RD) MEETING OF THE SENATE
STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM,
HELD ON THURSDAY, 29TH JUNE, 2023 AT 8.00 AM AT CAUCUS 110
BOARDROOM, FIRST FLOOR, KICC BUILDING**

PRESENT

- | | |
|---|---------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice -Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member |
| 4. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 5. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Paul Karungo Thangwa, MP | - Member |
| 2. Sen. Betty Batuli Montet, MP | - Member |
| 3. Sen. Crystal Kegehi Asige, MP | - Member |
| 4. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant |
| 3. Ms. Hamun Mohamud | - Research Officer |
| 4. Ms. Felistus Mutune | - Media Relations Officer |
| 5. Mr. Joseph Otieno | - Audio Officer |
| 6. Mr. Brian Dindi | - Audio Officer |
| 7. Mr. Abdalla Mbore | - Sergeant-At-Arms |

IN- ATTENDANCE

STATE DEPARTMENT OF COOPERATIVES

- | | |
|-----------------------|-------------------------------------|
| 1. Mr. David Obonyo | - Commissioner of Cooperatives |
| 2. Mr. Peter Wanjohi | - Liquidator –Drumvale Farmers’ Ltd |
| 3. Mr. Kennedy Otachi | - Ass. Commissioner of Cooperatives |

PETITIONERS

Mr. Nicholas Rono

- Petitioner (EABL Petition)

MIN/SEN/SCTIT/189/2023

PRELIMINARIES

The Chairperson called the meeting to order at 8:29 am followed by a word of prayer.

MIN/SEN/SCTIT/190/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP, and seconded by Sen. Andrew Omtatah Okoiti, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the Minutes of previous Meetings –
 - i. Minutes of the Twenty Ninth (29th) Sitting held on 13th June, 2023;
 - ii. Minutes of the Thirtieth (30th) Sitting held on 15th June, 2023;
 - iii. Minutes of the Thirty first (31st) Sitting held on 20th June, 2023;
 - iv. Minutes of the Thirty Second (32nd) Sitting held on 22nd June, 2023;
4. Matters Arising from Minutes of the previous Meetings;
5. Meeting with Sen Wakili Hilary Sigei, MP and the petitioner to consider the Petition on the fraudulent shareholding activities and illegal acquisition of East Africa Breweries Ltd (EABL) (*Committee Paper No.32*);
6. Meeting with Commissioner of Cooperatives and the Liquidator, Drumvale Farmers' Cooperative Society in Machakos County on the Statement requested by Sen. Agnes Muthama, MP on the liquidation of Drumvale Farmers' Cooperative Society Ltd, Machakos County (*Committee Paper No.33*);
7. Any Other Business; and
8. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/191/2023

CONFIRMATION OF THE MINUTES OF PREVIOUS MEETINGS

1. Minutes of the Twenty Ninth (29th) sitting held on 13th June, 2023 at 8.00 am were confirmed as a true record of the deliberations after being proposed by Sen. Esther Okenyuri, MP, and seconded by Sen. Andrew Omtatah Okoiti, MP; and
2. Minutes of the Thirtieth (30th) sitting held on 15th June, 2023 at 8.00am were confirmed as a true record of the deliberations after being proposed by Sen. Esther Okenyuri, MP, and seconded by Sen. Andrew Omtatah Okoiti, MP.
3. Minutes of the 31st sitting held on 20th June, 2023 were confirmed as a true record of the deliberations after being proposed by Sen. Andrew Omtatah, MP, and seconded by Sen. Esther Okenyuri, MP.

4. Minutes of the Thirty Second (32nd) sitting held on 22nd June, 2023 were confirmed as a true record of the deliberations after being proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. (Dr.) Lelegwe Ltumbesi, MP.

MIN/SEN/SCTIT/192/2023

MATTERS ARISING FROM MINUTES OF THE PREVIOUS MEETINGS

Under Ex. MIN/SEN/SCTIT/180/2023 Meeting with Sen. Samson Cherarkey, MP to consider a Statement regarding the state of operations and financial status of Kenya Airways (KO).

- (a) It was reported that there was an ongoing initiative to consider the matter of Kenya Airways through an Ad hoc committee; and
(b) Members observed that the Committee's allocated budget for the financial year may not be sufficient to prosecute the Statement on Kenya Airways noting the diverse stakeholders involved in Kenya Airways.

Resolution: The Committee tasked the Chairperson to follow-up at the Senate Liaison Committee as to whether the Committee budget could be enhanced to facilitate the holistic consideration of the statement on Kenya Airways.

MIN/SEN/SCTIT/193/2023:

MEETING WITH SEN WAKILI HILARY SIGEL, MP AND THE PETITIONER TO CONSIDER THE PETITION ON THE FRAUDULENT SHAREHOLDING ACTIVITIES AND ILLEGAL ACQUISITION OF EAST AFRICA BREWERIES LTD (EABL) (COMMITTEE PAPER NO. 32)

The Secretariat presented Committee Paper No. 32 on the Petition regarding fraudulent shareholding activities and illegal acquisition of EABL.

The Chairperson thereafter invited the petitioner, Mr. Nicholas Rono, a resident of Bomet County to apprise the Committee on the Petition and the prayers requested.

Mr. Rono thanked the Committee for prioritizing the consideration of the petition and explained that the issues raised were matters of serious of public concern. He then proceeded to make his representations as follows:-

1. That the petition arose after a family member, specifically the grandfather (now deceased) allegedly lost shares EABL in mysteriously circumstances;
2. There were concerns on the shareholding by Diageo PLC which stood at 65% in the EABL shareholding exceeded the requisite percentile reserved for foreign investors;

3.

4. In 2015 to 2017, there was an unresolved tax dispute between EABL and Kenya Revenue Authority on the matter of unpaid taxes and sought to understand how the issues had been resolved;
5. The status of the Kshs. 15 billion Kisumu Breweries Plant, where over 100,000 farmers were signed up for millet farming;
6. Kenya Revenue Authority was giving preferential treatment to EABL on tax relief when there was not extended to other local distillers;
7. He prayed that the Committee intervenes with a view to protect Kenyan firms against unfair competition through foreign take overs, acquisitions and mergers.

Resolution by the Committee

The Committee thanked Mr. Rono on behalf of other petitioners for highlighting some of the concerns in the preamble of the Petition which affected many Kenyans. The Committee resolved to invite Capital Markets Authority, Competition Authority and Kenya Revenue Authority to respond to the issues raised in the Petition.

In response, Mr. Rono inquired from the Committee whether or not he could amend the prayers of the Petition to which the Committee responded that the current petition will be considered as reported in the Senate.

MIN/SEN/SCTIT/194/2023: SUBMISSIONS BY THE COMMISSIONER OF COOPERATIVE DEVELOPMENT AND THE LIQUIDATOR FOR DRUMVALE FARMERS COOPERATIVE SOCIETY, MACHAKOS COUNTY

The meeting was disrupted due to fire safety drill at the KICC building.

MIN/SEN/SCTIT/195/2023 - ADJOURNMENT

The meeting adjourned abruptly and the next meeting would be by notice.

SIGNATURE.......... DATE:3-8-2023.....
(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)



**MINUTES OF THE TWENTY FIFTH (25TH) MEETING OF THE SENATE
STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM,
HELD ON TUESDAY, 6TH JUNE, 2023, AT CAUCUS 110 BOARDROOM, FIRST
FLOOR KICC AT 8.00 AM**

PRESENT

- | | |
|---|---------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice -Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, MP | - Member |
| 4. Sen. Jackson Kiplagat Mandago, EGH. MP | - Member |
| 5. Sen. Paul Karungo Thangwa, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 7. Sen. Crystal Kegehi Asige, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Betty Batuli Montet, MP | - Member |
| 2. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant |
| 2. Mr. David Ngamate | - Clerk Assistant |
| 3. Ms. Sharon Rotino | - Research Officer |
| 4. Ms. Annette Kwamboka | - Legal Counsel |
| 5. Mr. William Wambiru | - Fiscal Analyst |
| 6. Ms. Hamud Mohamud | - Research Officer |
| 7. Ms. Felistus Mutune | - Media Relations Officer |
| 8. Mr. Joseph Otieno | - Audio Officer |
| 9. Mr. Abdalla Mbore | - Sergeant-At-Arms |

MIN/SEN/SCTIT/151/2023

PRELIMINARIES

The Chairperson called the meeting to order at 8:24 am followed by a word of prayer.

The agenda of the meeting was adopted after it was proposed by Sen. Crystal Kegehi Asige, MP, and seconded by Sen. Paul Thang'wa, MP as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Updates on the Proposed Committee visit to Drumvale Farmers' Cooperative Society Ltd;
4. Consideration of a Petition concerning fraudulent shareholding activities and illegal acquisition of EABL (Committee Paper No.26);
5. Any Other Business; and
6. Adjournment/ Date of the Next Meeting.

1. The Secretariat informed the Committee that the programme for the inspection visit to engage with stakeholders and affected persons following the statement by Sen. Agnes Kavindu Muthama, MP on the liquidation of Drumvale Farmers' Cooperative Society Limited.
2. The Committee was further informed that correspondence had been dispatched to the invited stakeholders including the Ministry of Cooperatives and MSMEs, the Governor of Machakos County, and County Assembly of Machakos and the affected persons.
3. However, the Committee was informed that there was an apology from the Principal Secretary, State Department for Co-operatives requesting a rescheduling of the inspection visit to a later date as the Ministry had a scheduled engagement in Meru County to the Matters of Coffee and tea Cooperatives;

Observations by the Committee

From the consideration of the draft programme, the Committee observed that the programme for the site inspection includes non-members of the Cooperative Society and who had purchased parcels of land from the original members of the society and who were interested parties to the land.

Resolutions

From the above observation, the Committee resolved unanimously to adopt the programme and members were urged to confirm their availability to enable the secretariat to plan.

MIN/SEN/SCTIT/154/2023

**CONSIDERATION OF A PETITION
CONCERNING FRAUDULENT
SHAREHOLDING ACTIVITIES AND
ILLEGAL ACQUISITION OF EABL
(COMMITTEE PAPER NO.26);**

The Secretariat reported that a Petition was reported in the Senate on 30th May, 2023 by Sen. Wakili Hilary Sigei, MP on behalf of the Petitioner Mr. Rono Nicholas from Bomet County.

Members were taken through Committee Paper number 26 provided the background to the petition concerning fraudulent shareholding activities and illegal acquisition of East Africa Breweries Limited.

The petitioners Prayed that the Senate investigates the matter with a view to recommending amendments to the Capital Markets Authority (CMA) Act to cushion the shareholders from such future manipulation.

Further, Ms. Sharon Rotino, the Research Officer took the members through brief on the shareholding structure of EABL in Kenya, the performance dealings by the Diageo group in other African Countries.

The Committee was informed that it was required to process the petition and Table its report to the Senate within 60 days;

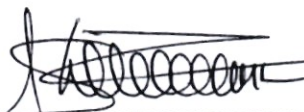
Committee Resolutions

The Committee resolved that the petitioners be invited to appear before the Committee to apprise the Senate on the matters raised in the petition.

MIN/SEN/SCTIT/155/2023

- ADJOURNMENT

There being no other business for consideration, the meeting adjourned at 9.43 am. The next meeting was scheduled for Thursday, 8th June, 2023 at 8.00 am at Caucus 110, First Floor Boardroom, KICC.

SIGNATURE.......... DATE: 28-7-2024.....
(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)

30 MAY 2023

A PETITION TO THE SENATE ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

Pursuant to Section 232 of Standing Orders of the Senate,

I, the undersigned,

Citizen of the Republic of Kenya, from Bomet County, do hereby authorize the senator for Bomet County, Sen. Wakili Hillary K. Sigei, MP, to present this petition to the senate on my behalf and on behalf of other Kenyans.

Respectfully states:

THAT Kenya Breweries Limited is one of the oldest public listed companies in Kenya having been established in 1922.

THAT there has been a controversial majority acquisition of East African Breweries by Guinness Plc in 2000 which was strongly resisted by the people of Kenya through the Parliament.

THAT despite having knowledge of the dealings the Capital Markets Authority, Kenya Revenue Authority, the National Treasury and East African Breweries Limited (EABL) have since not acted so as to correct or stop the fraudulent activities relating to shareholding and acquisitions.

THAT to deflect some of the backlash, Guinness Plc made a pledge to cede back most of the acquired shares to Kenyans in due course.

THAT in complete and total betrayal of this undertaking, Diageo Plc. (the successor of Guinness Plc) has now purported to acquire 15% more shares in EABL.

THAT the undertaking by Guinness Plc to cede back shares is actionable through a class action suit.

A PETITION TO THE SENATE ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

THAT the recent acquisition of the extra 15% shares in EABL is a fraud upon the people of Kenya as the shares are being acquired for onward transfer to a new buyer at a much higher value for the benefit of the shareholders of Diageo Plc and to the detriment of Kenyan shareholders who will be denied the benefit of the higher price that Diageo Plc will onward sell the shares for shortly.

THAT employees of EABL have been bullied, coerced, threatened, and otherwise intimidated to sell their share options to Diageo Plc which is against the laws of Kenya.

THAT an onward sale of Diageo interests in EABL has been agreed with Heineken/Castel Group and the purchase of the additional 15% shares by Diageo is meant to assure Heineken/Castel Group of a controlling stake in EABL after the onward sale.

THAT even as the process for acquiring the extra 15% shares was ongoing, there was an ongoing due diligence at EABL conducted by the prospective purchaser of the Diageo shares and the representations made to the Capital Markets Authority and the Nairobi Securities Exchange were blatantly and criminally false and amount to fraud on the people of Kenya.

THAT the sale of the Diageo shares to Heineken/Castel Group has been prompted by the desire of Diageo to fraudulently evade huge tax liabilities that EABL has been hiding through massive bribery of KRA and National Treasury officials.

A PETITION TO THE SENATE ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

THAT a whistleblower in 2020 detailed to the well-known Reporter John Kamau how EABL has been manipulating the water and alcohol content of its products to change the tax bracket of its products and through this illegal water content manipulation EABL has managed to evade taxes amounting in excess of Sh875 billion to date.

THAT Kenya Breweries Limited when it was locally owned, possessed massive real estate in Kenya (staff houses and staff complexes, go downs and warehouses, factories, and other assets) and employed over 6,000 employees.

THAT East African Breweries Limited has corruptly disposed of all its properties and repatriated the sale proceeds to Diageo Plc in order to feed the rapacious and gluttonous appetite of Diageo Plc. East African Breweries Limited is now but a mere shell employing a paltry 600 employees.

THAT having sold all property of East African Breweries Limited and needing to satisfy the Diageo Plc shareholders, the new scheme is to quickly progress the sale of Diageo Plc shares in East African Breweries Limited to recognize the sale proceeds as profits to boost the balance sheet of Diageo Plc before the end of the financial year ending 30th June this year.

THAT the added incentive is to guarantee huge bonus payments to the Chief Executive Officer of Diageo Plc, Ivan Menezes and directors and executives of East African Breweries Limited who have pushed for the sale after which the announcement of the retirement of Ivan Menezes was made effective end of June 2023 to coincide with the conclusion of the sale of East African Breweries Limited to Heineken/Castel Group.

A PETITION TO THE SENATE ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

THAT the overall impact of these contrived corporate actions is a serious betrayal of the people of Kenya.

THAT a Parliamentary hearing is urgently required to interrogate these events and to secure the public interest of Kenya and her people.

THAT the Senate is the last temple of justice and the only institution that can assert itself against the pervasive influence of Diageo Plc.

We have made efforts to have this matter addressed to the relevant authorities, all of which have been unsuccessful.

We confirm that this matter is not pending before any court of law or constitutional body;

HEREFORE your humble petitioner Prays:

THAT, The Senate investigates with a view to recommending amendments to the Capital Market Authority Act to cushion shareholders from such manipulation.

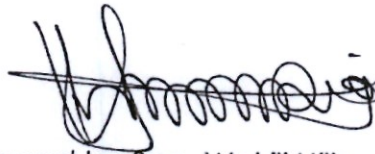
A PETITION TO THE SENATE ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

Petitioner: RONO NICHOLAS
National ID No: 27266225
Telephone: 0723 000 601
E-Mail Address: priorrono@hotmail.com

Full Address:
Resident of Bomet County,
P.O. Box 45-20422,
Silibwet, KENYA

Signature: 
.....

Dated this 30th day of May 2023.



Counter signed by Sen. Wakili Hillary K. Sigei, MP.
Senator for Bomet County.

Sen. Wakili Hillary K. Sigei, MP.
Senator for Bomet County

LIST OF ANNEXURES

Annex 1	Minutes of the Standing Committee on Trade, Industrialization and Tourism
Annex 2	Petition on fraudulent shareholding activities and illegal acquisition of East African Breweries Limited by Rono Nicholas
Annex 3	Submission by Stakeholders A. EAST AFRICA BREWERIES (k) LTD B. CAPITAL MARKETS AUTHORITY(CMA) C. COMPETITION AUTHORITY (CA) D. KENYA REVENUE AUTHORITY (KRA)

A

EAST AFRICA BREWERIES LIMITED

2 September 2024

Chairman,
Trade, Industrialization and Tourism Committee,
The Senate of Kenya
Parliament Buildings
P.O. Box 41842 - 00100
Nairobi

Page | 1 c

Through

The Honourable Clerk
The Senate of Kenya
Parliament Buildings
P.O. Box 41842 - 00100
Nairobi

Advance by Email
Original by recorded hand delivery

Attention: Mr. Jeremiah M. Nyegenye, CBS
Email: clerk.senate@parliament.go.ke / tradeindtourismcomm.senate@parliament.go.ke /
mulesi.peter@parliament.go.ke

Dear Sir,

Re: Response to an invitation to a meeting with the Senate Standing Committee on Tourism, Trade and Industrialisation

We refer to your letters dated 7 August 2024 and 27 August 2024 inviting the Group Managing Director and Chief Executive Officer of East Africa Breweries Limited ("EABL"), Ms. Jane Karuku MGH, to a meeting on 3 September 2024 with the Senate Standing Committee on Tourism, Trade and Industrialization ("the **Committee**"). EABL is local Kenyan multinational with operating subsidiaries in Uganda and Tanzania. We write to confirm that Ms. Karuku will attend the meeting before the Committee with her representatives who will assist her in providing responses to the questions raised.

We note from your letter, that the purpose of the meeting is for Ms. Karuku to give certain clarifications and information relating to the four points raised in your letter, concerning the petition raised by Mr. Rono Nicholas on 30 May 2023, sponsored by the Senator for Bomet County, Mr. Hillary Sigei ("the **Petition**").

Whilst we have no objection to assisting the Committee with any legitimate inquiry, we note with concern, the following:

1. This is the third invitation that EABL has received regarding the Petition. In fact, so far, EABL has, through its representatives, attended meetings before the Committee on 6 July 2023 and 7 September 2023. Substantive written and oral submissions were presented by EABL both before and during those meetings and which submissions dealt with the very same matters for which clarifications are said to be sought. We attach the written submissions dated 27 June 2023 and 6 September 2023 for ease of reference, as **Annexure 1**.
2. EABL's legitimate expectation and understanding based on Standing Order 238 (2), was that the inquiry into this matter was concluded on 31 July 2023, which is the 60-day statutory deadline for the Committee's report or 30 September 2023 following the finalization of the hearings. It is therefore

not clear to us under what circumstances this invitation is made, noting as we have, that the Petition was closed, by operation of law.

3. Considering the above, EABL expected that the discussions around the Petition were concluded as it did not receive any communication from the Committee after the extensive questioning and responses provided as well as responses from other regulators which were summoned by the Committee.

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EABL understands and deeply respects the Senate's oversight role in shaping business practices in Kenya. However, we wish to raise concerns that it appears that Mr. Rono Nicholas, by the Petition, is abusing the process of this Honourable Committee. It is still not clear to EABL what ends this Petition seeks to achieve and, in whose interest, the continued enquiries are being made despite the lack of evidence substantiating the claims made and/or irrespective of the substantive responses provided by EABL and the Capital Markets Authority, among others. We therefore humbly request that the Petitioner be sanctioned by the Committee from furthering these baseless and unsubstantiated enquiries, and that this Petition be dismissed in its entirety.

We restate that the responses to the Committee's enquiries were fully settled in our letters of 27 June 2023 and 6 September 2023 (Annexure 1). This is in addition to the further responses we provide below:

EABL RESPONSES TO QUESTIONS

QUESTION ONE: ALLEGATIONS OF EABL STAFF COERCION TO SELL OFF THEIR MINORITY SHARES

EABL categorically denies that there was any coercion of any of its staff to sell off their shares. EABL has previously asked the Petitioner to provide evidence of such coercion in its written responses.

We deem it necessary for this Committee's benefit to give a summary of the transactions, once more, stated in the Petition to help the Committee understand our responses and give context to the transactions.

1997 and 2000 Transactions

In the years 1997 and 2000, Guinness Kenya Limited (now Diageo Kenya) acquired majority shareholding in EABL, through a rights issue in 1997 and a scrip dividend issue and share swap in 2000 (the 1997 and 2000 Transactions).

The 1997 and 2000 Transactions resulted in Guinness Kenya Limited increasing its shareholding in EABL to 50.03%.

The 1997 and 2000 Transactions were approved by the Capital Markets Authority ("**CMA**"). The then Monopolies & Prices Commission (precursor to the Competition Authority of Kenya ("**CAK**") was also notified of the 1997 and 2000 Transactions.

In addition, the applicable laws in force at the time were duly followed, which included the Capital Markets Act (Chapter 485A of the Laws of Kenya) in force at the time, the Capital Markets Authority Rules, 1992 (repealed), the Capital Markets (Amendment) Rules, 1994 (repealed), the Central Depositories Act (Number 4 of 2000 of the Laws of Kenya) and the rules of the Nairobi Securities Exchange in force at the time.

2023 Transaction

In 2023, Diageo Kenya increased its shareholding in EABL from 50.03% to 65% by making a tender offer to EABL's shareholders (the 2023 Tender Offer).

For the Tender Offer, Diageo applied for and obtained approvals from the CMA along with the Tanzanian competition regulator, the Fair Competition Commission ("FCC") of Tanzania.

Diageo also notified the regulators in Kenya, Uganda and Tanzania (where EABL is cross listed) of the 2023 Tender Offer. These regulators included the CAK, the Nairobi Securities Exchange ("NSE"), Capital Markets Authority Uganda, Uganda Securities Exchange, Capital Markets and Securities Authority Tanzania, Dar es Salaam Stock Exchange. Page | 30

As at today's date, the CMA has never raised a minority/employee shareholder claim against EABL nor have any employees lodged such claims against EABL. Furthermore, EABL has also not been accused of oppression by its minority shareholders and it comes as a great surprise that EABL, or indeed the acquiring shareholder, Diageo PLC, is being accused of such irregular activities.

It is important to note that the Companies Act does not permit majority shareholders to oppress minority shareholders. The law has always contained minority protections against any adverse actions taken by a majority shareholder, including during mandatory takeovers, and these remedies are frequently utilized by Kenyan shareholders to protect their rights.

EABL is heavily traded on the securities exchange and prides itself with strict adherence to the law as well as transparent trading of its shares as this is crucial for investor confidence and its continued survival as a publicly traded company. There is no evidence to substantiate this claim and we humbly submit that it should be treated as a false allegation and closed.

QUESTION TWO - THE REPORT ON THE CURRENT ASSETS OWNED BY EABL INCLUDING DETAILS ON WHAT HAS BEEN SOLD AND FOR HOW MUCH, IN ADDITION TO THE PURPOSE OF SELLING

The matter in question refers to current assets owned by EABL. We wish to clarify that current assets on the books of EABL and its subsidiaries will be in the form of ordinary working capital comprising cash, trade receivables, stock and prepayments which are used for trading and will be bought and sold in the ordinary course of business.

In respect to the fixed assets, we wish to confirm that EABL presents asset disposals and acquisitions in its annual financial statements that are available for review on its website as required by the CMA. For the benefit of the Committee, we would like to provide the information contained in the respective cashflow statements as follows:

Fixed assets additions over the last 5 years (2020 to 2024):

- Kenya Breweries Limited (KES 16.9bn), — Proceeds
- UDV (Kenya) Limited (KES 2.2bn),
- East African Maltings Limited (KES 356m), and
- EABL (KES 900m).

Please note that in the same period, there have been no disposals to third parties and no proceeds on disposals by any of the entities. EABL continues to invest in its business to drive business growth.

We trust that this (and our previous responses on asset disposals on 27 June 2023 and 6 September 2023) adequately settle this query and close this matter to the satisfaction of the Committee.

QUESTION THREE - THE STATUS REPORT ON PENDING TAXES OWED TO KENYA REVENUE AUTHORITY AS AT AUGUST, 2024

The EABL Group, which consists of EABL and its Kenyan subsidiaries, including the two alcoholic beverage manufacturing companies, Kenya Breweries Limited and UDV (Kenya) Limited, has been tax compliant and good corporate citizen over the years, filing returns and paying taxes on time. This can be attested by the EABL's Group long standing status as one of Kenya's largest corporate taxpayers. In addition, the EABL Group companies have consistently received tax compliance certifications from the Kenya Revenue Authority ("KRA"), which is a reliable indicator of the businesses' state of tax compliance. EABL is a Kenyan multinational with operating subsidiaries in Uganda and Tanzania and our business is well supported in Uganda and Tanzania and delivers revenue for Kenya.

Page | 4

In response to your specific query regarding any pending taxes owed to the KRA, we wish to note that all the EABL entities have no taxes due and payable to the KRA as of August 2024. We reaffirm that the companies have been adhering strictly to the applicable tax legislation while determining the amount of taxes that are payable, promptly remitting any outstanding taxes to the KRA, and submitting tax returns to the KRA on time. We note that the regularity with which taxes are paid, and tax returns are submitted varies based on nature of the tax obligation, such as corporate income tax, employment income tax or Pay-As-You-Earn ("PAYE"), customs duties, excise tax, withholding tax, and stamp duties. Whilst some taxes are due daily, others have monthly, quarterly, or annual deadlines.

We would also like to clarify that, in the ordinary course of business, EABL is subject to tax audits, the outcomes of which are at various stages of completion. EABL Group handles such audits transparently and follows due process in the closure of any unresolved matters.

This claim in the Petition is clearly baseless, unfounded and is without merit and urge this Honourable Committee to mark it as such.

QUESTION FOUR - THE STATUS REPORT OF THE OUTSOURCED COMPANIES AND THE NUMBER OF EMPLOYEES BY EACH OF THESE COMPANIES

In undertaking its operations and increasing its efficiencies, the operational subsidiaries of EABL (namely KBL, UDV and EAML) contract personnel through the services of two well established Kenyan outsourcing companies namely, Q-Sourcing Limited (Company number CPR/2013/113513) and Sheer Logic Management Consultants Limited (Company number C.77737). Together, these outsourcing companies have provided the companies with a total of 465 local personnel across the companies' physical locations in Nairobi and Kisumu, functionalities/departments and job cadres.

In addition, due to the inevitable growth and professionalization of many operational services throughout the country and the world, many companies, including the EABL subsidiaries, have benefited from the professional of services such security, catering and cleaning via outsourcing contracts. Specifically, the businesses engage G4S Kenya Limited to provide 190 contracted security staff, NAS Airport Services Limited to provide at least 94 catering staff and Hurricane Global Facilities Management and Chania Cleaners Limited together with other local entities to provide 216 cleaning staff, which ensures the growth of professional administrative and support services sector in the country.

CONCLUSION

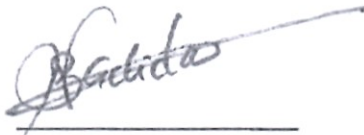
We trust that the above responses together with all other responses provided to the questions set out in the Committee's letter dated 7 August 2024 have adequately and finally addressed your concerns and finally puts this matter to rest.

Page | 5 o

Nonetheless, we consider that we have provided the Committee with all the necessary information to assist in the conclusion and closure of the Petition in an efficient and timely manner. Without prejudice to the foregoing, EABL reserves all its rights in law to protect its interests during this process. We request that Mr. Rono Nicholas is cautioned against making false or unsubstantiated allegations as this can cause serious harm to businesses.

Yours faithfully,

For: East African Breweries PLC



Nadida Rowlands
Legal Director

27 June 2023

The Honourable Clerk,
The Senate of Kenya
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi, Kenya

Advance by Email
Original by recorded hand delivery

Attention: Mr Jeremiah M. Nyegenye, CBS
Email: clerk.senate@parliament.go.ke

Dear Sir,



Subject: False and malicious petition dated 30 May 2023 by Mr. Nicholas Rono ('the Petition')

Honourable Clerk, we wish to bring the following matters to your urgent attention, as relate to the Petition.

We were shocked to learn from the Parliament website that the Petition was presented to the Senate on 30th May 2023 and committed to the Senate Committee on Trade, Industrialization and Tourism ("the Committee") on 31st May 2023. We also note that the Committee met with the Petitioner on 22 June 2023 "to consider the Petition" and a further meeting has been scheduled for 29 June 2023. Both meetings appear on the Schedule of Committee Sittings published on the Parliament website.

All this has been done without any notice to EABL or any of its affiliate companies referred to in the Petition (hereinafter together referred to as 'EABL') and/or without affording EABL a right of reply to the Petition.

We have also discovered - again, from the Parliament website, that the Petition has been fixed for hearing on 31 July 2023. We are yet to be given notice of any such hearing.

Without prejudice to the above, we have reviewed the Petition and our preliminary response is that:

1. The purchase of shareholding in EABL by Diageo plc was the single largest foreign direct investment in Kenya in 2023 where a total sum of KShs 22.8 Bn was paid to the market. This was recognized by His Excellency the President Dr. Ruto on 22 March 2023 as a show of confidence in the local Kenyan market by investors. This transaction was approved by the Capital Markets Authority (CMA).

Contrary to the false and malicious assertions in the Petition, EABL did not cease to be a Kenyan company - instead it has transformed over the years into a strong local Kenyan multinational, employing thousands of Kenyans and East Africans. A local homegrown company in partnership with the finest global partners - based in Kenya with a strong value chain making it a key driver for growth and prosperity in Kenya.

The totality of the allegations in the Petition are false, defamatory, highly inflammatory, and sensational. The Petitioner is hiding behind the cloak of the Senate so as to publish false, misleading and defamatory material of and concerning EABL. We are concerned that the false and malicious allegations in the Petition have been published on the Parliament website as if they are factual, thus exposing our business and local and foreign investors to serious harm and reputation damage.

OUR REQUEST: The false and malicious allegations in this Petition be immediately removed from the Parliament website to protect the integrity, reputation and confidentiality of EABL.

2. The allegations in the Petition are the subject of ongoing legal proceedings in **High Court Constitutional Petition 249 of 2016 Bia Tosha Distributors Limited -vs- Diageo plc (Diageo), East African Breweries plc (EABL), Kenya**

Breweries Limited (KBL) and UDV (Kenya) Limited (UDV). This case is yet to be heard and is also the subject of several other contentious legal proceedings before the Supreme Court, Court of Appeal and the High Court.

The Petition before the Senate is therefore an abuse of the process of the Senate, aimed at interfering with the ongoing litigation and an attempt to usurp the jurisdiction of the court, by unlawful means.

OUR REQUEST: As per established precedent and the rule of law, the hearing scheduled for 31 July 2023 and all proceedings and/or Committee meetings and sessions relating to the Petition be vacated to allow for the courts to hear and determine the cases before it.

3. Finally, our view is that the Petition does not present any evidence or argument of the matters within the authority of the Senate as contemplated in Article 96 of the Constitution which clearly provides that the Senate:
- 3.1. represents the counties and serves to protect the interests of counties and county governments.
 - 3.2. participates in law making functions concerning counties.
 - 3.3. exercises oversight over national revenue allocated to county governments; and
 - 3.4. participates in oversight of state officers by considering and determining any resolution to remove the President or Deputy President from office.

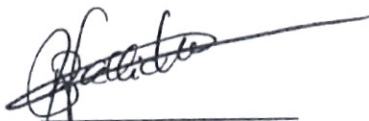
The allegations in the Petition relate to private commercial transactions and regulatory issues that are outside the purview of the Senate.

OUR REQUEST: this Petition should not be committed to the House as it does not invoke the jurisdiction of the Senate as it is not related to counties or their interests.

In conclusion, we respectfully request that you exercise your powers under Standing Order No. 1 and rule that the Senate has no jurisdiction to hear and determine the Petition as the matters raised are before competent authorities that have jurisdiction to hear and determine them. These includes the courts and the CMA. This will uphold the rule of law and respect the Constitutional limits of the Senate's jurisdiction.

We appreciate your attention and consideration of this matter.

Yours faithfully,
For East African Breweries plc



Nadida Rowlands
Group Legal Director

Cc

Hon. Amason Jeffah Kingi, EGH, MP
The Honourable Speaker,
The Senate of Kenya
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi,
Kenya

Ms. Terry Mwangi

Partner

Bowmans Law

5th Floor, West Wing, ICEA Lion Centre
Riverside Park, Chiromo Road, Nairobi
PO Box 10643-00100, Nairobi, Kenya
www.bowmanslaw.com

Please find attached a copy of the Petition for your further action.

6th September 2023



Chairman,
Trade, Industrialization and Tourism Committee,
The Senate of Kenya
Parliament Buildings
P.O. Box 41842 - 00100
Nairobi

Page | 1 of 3

Through

The Honourable Clerk
The Senate of Kenya
Parliament Buildings
P.O. Box 41842 - 00100
Nairobi

Advance by Email
Original by recorded hand delivery

Attention: Mr. Jeremiah M. Nyegenye, CBS
Email: clerk.senate@parliament.go.ke / tradeindtourismcomm.senate@parliament.go.ke

Dear Sir,

Re: Clarification on the Petition Dated 30 May 2023 on Alleged Fraudulent Dealings

East African Breweries PLC (EABL) understands and deeply respects the Senate's oversight role in shaping business practices in Kenya. We are participating in these proceedings in good faith for the greater good of our nation.

ABOUT EABL

EABL is a Kenyan multinational business established in 1922 and headquartered in Nairobi. EABL operates extensively throughout the East African region and is publicly listed on the Nairobi Securities Exchange. EABL is also cross-listed on the Uganda Securities Exchange and the Dar es Salaam Stock Exchange, epitomizing a Kenyan-origin multinational with substantial regional influence.

EABL serves as a hub for Diageo's Africa and global operations and accommodates a variety of specialized business units that furnish a range of services and expertise globally, encompassing the Diageo Africa:

1. Innovation Hub
2. Procurement Centre of Excellence
3. Logistics Hub
4. Digital Marketing Hub
5. Corporate Relations Centre of Excellence
6. Digital and Technology Hub

EABL has a productive value chain across the region which covers farmers, employees, suppliers, distributors, retailers and the hospitality industry. This is directly managed by a workforce of over 1400 direct employees working in partnership with the different stakeholders. EABL also has over 156 personnel deployed in various Diageo businesses and hubs across the world either as expatriates or experts in global functions.

Finally, EABL's award winning products are responsibly marketed, exported, sold and are preferred by adult consumers across the world - as goods made in Kenya. The net result is that EABL is the largest contributor of domestic excise in Kenya and the second largest taxpayer in Kenya - contributing to the development of our nation.

A handwritten signature or set of initials in blue ink, located at the bottom right of the page.

THE PETITION

We acknowledge the petition filed by Mr. Rono Nicholas on 30 May 2023, which is sponsored by the Senator for Bomet County, Mr. Hillary Sigei (the Petition). The Petition addresses concerns of alleged fraudulent activities within EABL.

Page | 2 of 3

EABL submitted a written response on 27 June 2023 (enclosed herewith as **Annexure 1**) penned by our Group Legal Director, Mr. Nadida Rowlands. Subsequently, on 6 July 2023, Mr. Nadida, accompanied by a delegation from EABL and legal representatives from Coulson Harney Advocates (led by Mr. Richard Harney), convened with the Senate Standing Committee on Tourism, Trade, and Industrialization (the Committee) for a comprehensive discussion.

Our position is that the Petition lacks credibility and has no legal or solid grounds and hence we anticipated the inquiry into this matter to conclude by 31 July 2023, as stipulated by Standing Orders 238 (2), which gives a 60-day statutory deadline.

In the absence of a formal extension of time or any other legal process to extend time, we were quite surprised to receive your letter dated 21 August 2023 requesting EABL to respond to four specific questions arising from the Petition. Nonetheless, we are keen to address the concerns raised and provide additional context without any prejudice to our rights under the law in order to bring this matter to a logical conclusion.

EABL RESPONSES TO QUESTIONS

I take this opportunity to represent EABL at this committee and we have prepared these responses to the four questions.

QUESTION ONE - THE STRATEGIC BUSINESS IMPACT AND BENEFITS OF THE ACQUISITION OF AN ADDITIONAL 15% SHAREHOLDING IN EABL BY DIAGEO PLC IN 2023.

Diageo Kenya Limited (Diageo Kenya) acquired an additional 15% shareholding in EABL in 2023, by way of a Public Tender Offer to all EABL shareholders. This transaction was approved by the Capital Markets Authority (CMA) and relevant regulators. Hence Diageo Kenya increased its shareholding in EABL from 50.03% to 65%. Enclosed herewith as **Annexure 2** is the Public Tender Offer as advertised in the local dailies.

This transaction was the single largest foreign direct investment in the Kenyan stock market in 2023 where Diageo Kenya paid a total of KES 22.7Bn to EABL shareholders in the market. This was recognized by His Excellency the President Dr. Ruto on 22nd March 2023 during the bell ringing event at the Nairobi Securities Exchange, as a show of confidence in the local Kenyan market by foreign investors.

QUESTION TWO - WHETHER THE ACQUISITION BY DIAGEO PLC IS A CONSOLIDATION OF THE ALLEGED TRANSFER TO AND EVENTUAL TAKEOVER BY HEINEKEN OR CASTEL GROUP.

There is no evidence to substantiate this claim and we humbly submit that it should be treated as a false allegation.

As part of its disclosures in the 2023 Public Tender Offer, Diageo Kenya disclosed that it had made no agreement or arrangement to sell EABL shares to any other person.

We request that the Petitioner is cautioned against making false or unsubstantiated allegations as this can cause serious harm to businesses.

QUESTION THREE - WHY EABL WAS UNDERTAKING CONSIDERABLE DOWNSIZING DESPITE CONSISTENT POSTING OF MARGINAL PROFITS

EABL has not engaged in any corporate downsizing initiatives within the past decade.

EABL has channeled substantial investments exceeding USD 640M (circa KES 96 billion) during this period, facilitating significant job creation. Notable instances of such investments include:

Page | 3 of 3

- 1) The allocation of USD 120 million (circa KES 14 billion) for the establishment of the new Kisumu Brewery in 2019.
- 2) A further injection of USD 42 million (circa KES 6.3 billion) in 2021 towards supply of green energy through the development of three Biomass plants in Kenya and Uganda, introducing a new business segment centered on the utilization of previously discarded biomass materials.

Despite the pronounced adverse repercussions of the COVID-19 pandemic in 2020 and 2021 on the alcohol sector, characterized by regulatory impositions leading to bar closures and sales disruptions, no layoffs were implemented, nor were there reductions in employee remunerations. Furthermore, we intensified our health insurance provisions to encompass COVID-19 related contingencies and dispensed hygiene kits for employees' families.

As a matter of fact, EABL has not downsized as alleged, and it is on a substantial growth trajectory, a trend reflected in the augmentation of the company's total asset value from KES 14 billion in 2000 to KES 110 billion in 2022. Growing in tandem, has been EABL's contribution to Government revenue and shareholder returns in terms of profits and dividends.

QUESTION FOUR - PROVIDE JUSTIFICATION FOR THE POLICY OF THE DISPOSING OFF HUGE COMPANY ASSETS AND HOW LOCAL SHAREHOLDERS HAVE BENEFITTED FROM THESE SALES.

EABL has not sold any strategic, critical or performing business assets as alleged by the Petitioner.

Our assets management strategy is directly linked with the future strategic vision of the business. This includes evaluating our asset portfolio with the outcome of identifying what is fit for purpose for the future of the business. Our focus is to invest smartly in capacity expansion to position our business for future growth and meet consumer demands effectively and efficiently. In the last 10 years, we have injected USD 640M (circa KES 96 billion) in strategic investments across the region.

As demonstrated above, we have grown our asset base, invested smartly to cater for the changing environment and consumer landscape. As a result of these strategic decisions, our shareholders have consistently received decent returns on their invested capital.

CONCLUSION

We believe our submissions have adequately addressed your concerns and puts this matter to rest.

Yours faithfully,

For: East African Breweries PLC



Jane Karuku, MGH
Group Managing Director
Chief Executive Officer

27 June 2023

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The Honourable Clerk,
The Senate of Kenya
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi, Kenya

Advance by Email
Original by recorded hand delivery

Attention: Mr Jeremiah M. Nyegenye, CBS
Email: clerk.senate@parliament.go.ke



Dear Sir,

Subject: False and malicious petition dated 30 May 2023 by Mr. Nicholas Rono ('the Petition').

Honourable Clerk, we wish to bring the following matters to your urgent attention, as relate to the Petition.

We were shocked to learn from the Parliament website that the Petition was presented to the Senate on 30th May 2023 and committed to the Senate Committee on Trade, Industrialization and Tourism ("the Committee") on 31st May 2023. We also note that the Committee met with the Petitioner on 22 June 2023 "to consider the Petition" and a further meeting has been scheduled for 29 June 2023. Both meetings appear on the Schedule of Committee Sitings published on the Parliament website.

All this has been done without any notice to EABL or any of its affiliate companies referred to in the Petition (hereinafter together referred to as 'EABL') and/or without affording EABL a right of reply to the Petition.

We have also discovered - again, from the Parliament website, that the Petition has been fixed for hearing on 31 July 2023. We are yet to be given notice of any such hearing.

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1. The purchase of shareholding in EABL by Diageo plc was the single largest foreign direct investment in Kenya in 2023 where a total sum of KShs 22.8 Bn was paid to the market. This was recognized by His Excellency the President Dr. Ruto on 22 March 2023 as a show of confidence in the local Kenyan market by investors. This transaction was approved by the Capital Markets Authority (CMA).

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The totality of the allegations in the Petition are false, defamatory, highly inflammatory, and sensational. The Petitioner is hiding behind the cloak of the Senate so as to publish false, misleading and defamatory material of and concerning EABL. We are concerned that the false and malicious allegations in the Petition have been published on the Parliament website as if they are factual, thus exposing our business and local and foreign investors to serious harm and reputation damage.

OUR REQUEST: The false and malicious allegations in this Petition be immediately removed from the Parliament website to protect the integrity, reputation and confidentiality of EABL.

2. The allegations in the Petition are the subject of ongoing legal proceedings in **High Court Constitutional Petition 249 of 2016 Bia Tosha Distributors Limited -vs- Diageo plc (Diageo), East African Breweries plc (EABL), Kenya**

B

Breweries Limited (KBL) and UDV (Kenya) Limited (UDV). This case is yet to be heard and is also the subject of several other contentious legal proceedings before the Supreme Court, Court of Appeal and the High Court.

The Petition before the Senate is therefore an abuse of the process of the Senate, aimed at interfering with the ongoing litigation and an attempt to usurp the jurisdiction of the court, by unlawful means.

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3. Finally, our view is that the Petition does not present any evidence or argument of the matters within the authority of the Senate as contemplated in Article 96 of the Constitution which clearly provides that the Senate:
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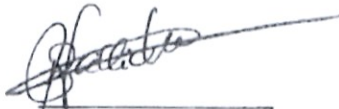
The allegations in the Petition relate to private commercial transactions and regulatory issues that are outside the purview of the Senate.

OUR REQUEST: this Petition should not be committed to the House as it does not invoke the jurisdiction of the Senate as it is not related to counties or their interests.

In conclusion, we respectfully request that you exercise your powers under Standing Order No. 1 and rule that the Senate has no jurisdiction to hear and determine the Petition as the matters raised are before competent authorities that have jurisdiction to hear and determine them. These includes the courts and the CMA. This will uphold the rule of law and respect the Constitutional limits of the Senate's jurisdiction.

We appreciate your attention and consideration of this matter

Yours faithfully,
For East African Breweries plc



Nadida Rowlands
Group Legal Director

Cc

Hon. Amason Jeffah Kingi, EGH, MP
The Honourable Speaker,
The Senate of Kenya
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi,
Kenya

Ms. Terry Mwangi
Partner
Bowmans Law
5th Floor, West Wing, ICEA Lion Centre
Riverside Park, Chiromo Road, Nairobi
PO Box 10643-00100, Nairobi, Kenya
www.bowmanslaw.com

Please find attached a copy of the Petition for your further action.

The Capital Markets Act Chapter 485A of the Laws of Kenya
Regulation 4(2) of the Capital Markets (Take-overs and Mergers) Regulations, 2002

PUBLIC ANNOUNCEMENT

Acquisition by Diageo Kenya Limited of up to 118,394,897 ordinary shares in the issued share capital of East African Breweries PLC.

DIAGEO

Pursuant to Regulation 4(2) of The Capital Markets (Take-overs & Mergers) Regulations, 2002 (the **Take-over Regulations**), we, Diageo Kenya Limited (**Diageo Kenya**), hereby announce to the public that we have on 13 October 2022 served on East African Breweries PLC (EABL) notice of our intention to acquire up to 118,394,897 additional ordinary shares in EABL by means of a tender offer (**Tender Offer**) made to all other shareholders of EABL.

1. The Proposed Offeree

The proposed offeree is EABL, a public limited company incorporated under the laws of Kenya with registration number C. 5/34, listed on the Main Investment Market Segment of the Nairobi Securities Exchange, whose registered office is 5th Floor, Garden City Business Park, Block A and of P.O. Box 30161-00106, Nairobi, Kenya. Further information in relation to EABL is available on its website at <https://www.eabi.com/>.

2. The Proposed Offeror

The proposed offeror is Diageo Kenya, a private limited liability company incorporated under the laws of the Republic of Kenya with registration number C.5445 and having its registered office at Lund Reference Number 1670/1/176, ALN House, Eldama Ravine Close, off Eldama Ravine Road, Westlands, Nairobi. Diageo Kenya is a wholly owned indirect subsidiary of Diageo plc (Diageo). Diageo is headquartered in London, England and has a primary listing on the London Stock Exchange and a secondary listing on the New York Stock Exchange and, through its subsidiaries, joint ventures and other investments operates in multiple other African countries offering various alcoholic and non-alcoholic beverages to consumers around the world. Further details on Diageo, including its annual financial reports, details of directors, core activities and management can be found on its website at <https://www.diageo.com/en>. Additional reporting information is available at <https://www.diageo.com/en/investors>.

3. Current Shareholding by Diageo Kenya in EABL

As at the date of this announcement, Diageo Kenya holds 395,608,434 ordinary shares in the capital of EABL (**Ordinary Shares**), which represents 50.03% of the issued share capital of EABL.

Diageo Kenya therefore currently has effective control of EABL, within the meaning of the Take-over Regulations.

4. Proposed Acquisition of Additional Shares of EABL by Diageo Kenya

Diageo Kenya proposes to acquire up to an additional 118,394,897 Ordinary Shares (the **Additional Shares**) in EABL, representing no more than fourteen decimal point nine seven per cent (14.97%) of the issued share capital of EABL, through the Tender Offer. The price payable for each Ordinary Share tendered in the proposed Tender Offer is Kenya Shillings 192.00 (**Tender Price**). As will be explained in more detail in the Tender Offer Document, the Tender Price represents:

- (i) a premium to the volume weighted average price (VWAP) at which Ordinary Shares of EABL traded on the Nairobi Securities Exchange days up to 12 October 2022 (the last day on which EABL shares traded before Diageo Kenya submitted its Notice of Intention to launch the Tender Offer) of: (a) thirty one decimal point four per cent (31.4%) to the past 30 trading days VWAP; (b) forty two decimal point five per cent (42.5%) to the past 90 trading days VWAP; and (c) a premium of thirty three decimal point five (33.5%) to the past 180 trading days VWAP;
- (ii) a premium of thirty nine decimal point seven per cent (39.7%) to the daily average trading price at which Ordinary Shares traded on 12 October 2022 (the last day on which EABL shares traded before Diageo Kenya submitted its Notice of Intention to launch the Tender Offer);
- (iii) an implied Price to Earnings per Share multiple of 12.8 times (for the financial year ended 30 June 2022); and
- (iv) an implied Enterprise Value to unadjusted EBITDA multiple of 5.7 times (for the financial year ended 30 June 2022).

Further details of the proposed Tender Offer will be set out in a detailed tender offer document, which will also be made available, subject to receipt of regulatory approvals, to each shareholder of EABL (the **Tender Offer Document**). Diageo Kenya also intends to publish, subject to receipt of regulatory approvals, an abridged version of the Tender Offer Document in two (2) national newspapers. If the Tender Offer is accepted in full, Diageo Kenya will hold 514,003,331 ordinary shares in EABL, which would represent sixty five per cent (65%) of the issued share capital of EABL.

5. Application for Exemption from the requirement to make a Take-over Offer

Diageo Kenya (and its parent company, Diageo) regards East Africa as one of its strategic growth markets that will help Diageo to fulfil its ambition to be one of the best performing, most trusted and respected consumer products companies in the world. Diageo is a global leader in beverage alcohol with an outstanding collection of brands across beer and spirits. Diageo's strategic priorities – sustain quality growth, embed everyday efficiency, invest smartly, promote positive drinking, champion inclusion and diversity, and pioneer gain-to-gains sustainability support the achievement of this

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6. Persons acting in concert

Diageo Kenya is not acting in concert with any person (whether pursuant to a formal or informal agreement or understanding) in relation to the acquisition of the Additional Shares or the consolidation of control of EABL.

7. Conditions

The Tender Offer is entirely subject to and conditional on:

- (i) approval from the CMA and the CMA granting the exemption sought pursuant to Regulation 5(1) of the Take-over Regulations; and
- (ii) any other regulatory approvals that may be required to implement the Tender Offer and will not commence unless and until these approvals and exemptions have been granted. If these conditions are met, it is expected that the Tender Offer will open at 9:00 p.m. on 30 January 2023 and will be open to holders of Ordinary Shares on the register of EABL as at 5:00 p.m. on 18 January 2023 (the **Record Date**). The Tender Offer will close in two phases:
 - (a) **First Closing** – the first phase of the offer will close at 5:00 p.m. on 17 February 2023 (the **First Closing Date**); and
 - (b) **Second Closing** – the second and final phase of the offer will open at 9:00 a.m. on 20 February 2023 and close at 5:00 p.m. on 12 March 2023 (the **Second Closing Date**).

The Record Date and the dates for the First Closing and Second Closing are tentative dates and are therefore subject to change. Any changes will be communicated by Diageo Kenya in due course. A holder of Ordinary Shares will only be permitted to tender their Ordinary Shares in the Tender Offer if at the First Closing Date or the Second Closing Date, as applicable, such shares are free from all pledges, liens, and other encumbrances. In accepting tenders, Diageo Kenya intends to give preference to shareholders on the register of members on the Record Date in respect of the Ordinary Shares held by them at the Record Date, up to a maximum of 10,000 Additional Shares. In order to facilitate the settlement of the Tender Offer and ensure that ordinary shares tendered in the Tender Offer can be transferred, an application will be made for trading in EABL's ordinary shares to be suspended for a short period post Second Closing to allow for the settlement and transfer of shares.

Dated 14 October 2022

By order of the Board

Diageo Kenya Limited

FINANCIAL ADVISOR
AND SPONSORING BROKER



COMMUNICATIONS
ADVISOR



LEGAL
ADVISOR



6th September 2023

Chairman,
Trade, Industrialization and Tourism Committee
The Senate of Kenya
Parliament Buildings
P.O. Box 41842 - 00100
Nairobi

Through

The Honourable Clerk
The Senate of Kenya
Parliament Buildings
P.O. Box 41842 - 00100
Nairobi

Attention: Mr. Jeremiah M. Nyegenye, CBS
Email: clerk.senate@parliament.go.ke / tradeindtourismcomm.senate@parliament.go.ke

Dear Sir,

Re: Clarification on the Petition Dated 30 May 2023 on Alleged Fraudulent Dealings

East African Breweries PLC (EABL) understands and deeply respects the Senate's oversight role in shaping business practices in Kenya. We are participating in these proceedings in good faith for the greater good of our nation.

ABOUT EABL

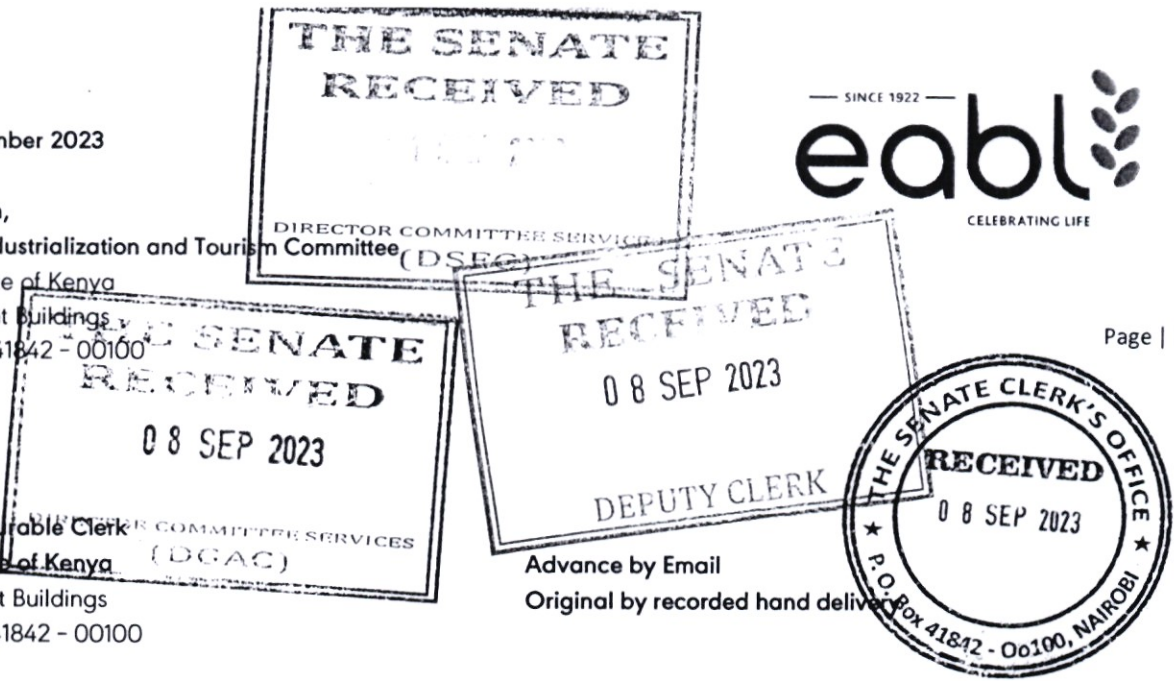
EABL is a Kenyan multinational business established in 1922 and headquartered in Nairobi. EABL operates extensively throughout the East African region and is publicly listed on the Nairobi Securities Exchange. EABL is also cross-listed on the Uganda Securities Exchange and the Dar es Salaam Stock Exchange, epitomizing a Kenyan-origin multinational with substantial regional influence.

EABL serves as a hub for Diageo's Africa and global operations and accommodates a variety of specialized business units that furnish a range of services and expertise globally, encompassing the Diageo Africa:

1. Innovation Hub
2. Procurement Centre of Excellence
3. Logistics Hub
4. Digital Marketing Hub
5. Corporate Relations Centre of Excellence
6. Digital and Technology Hub

EABL has a productive value chain across the region which covers farmers, employees, suppliers, distributors, retailers and the hospitality industry. This is directly managed by a workforce of over 1400 direct employees working in partnership with the different stakeholders. EABL also has over 156 personnel deployed in various Diageo businesses and hubs across the world either as expatriates or experts in global functions.

Finally, EABL's award winning products are responsibly marketed, exported, sold and are preferred by adult consumers across the world - as goods made in Kenya. The net result is that EABL is the largest contributor of domestic excise in Kenya and the second largest taxpayer in Kenya - contributing to the development of our nation.



DSEC
Kindly Deal
08/09/23

Mr. Mulesi
Please deal
11/09/2023

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THE PETITION

We acknowledge the petition filed by Mr. Rono Nicholas on 30 May 2023, which is sponsored by the Senator for Bomet County, Mr. Hillary Sigei (the Petition). The Petition addresses concerns of alleged fraudulent activities within EABL.

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EABL submitted a written response on 27 June 2023 (enclosed herewith as **Annexure 1**) penned by our Group Legal Director, Mr. Nadida Rowlands. Subsequently, on 6 July 2023, Mr. Nadida, accompanied by a delegation from EABL and legal representatives from Coulson Harney Advocates (led by Mr. Richard Harney), convened with the Senate Standing Committee on Tourism, Trade, and Industrialization (the Committee) for a comprehensive discussion.

Our position is that the Petition lacks credibility and has no legal or solid grounds and hence we anticipated the inquiry into this matter to conclude by 31 July 2023, as stipulated by Standing Orders 238 (2), which gives a 60-day statutory deadline.

In the absence of a formal extension of time or any other legal process to extend time, we were quite surprised to receive your letter dated 21 August 2023 requesting EABL to respond to four specific questions arising from the Petition. Nonetheless, we are keen to address the concerns raised and provide additional context without any prejudice to our rights under the law in order to bring this matter to a logical conclusion.

EABL RESPONSES TO QUESTIONS

I take this opportunity to represent EABL at this committee and we have prepared these responses to the four questions.

QUESTION ONE - THE STRATEGIC BUSINESS IMPACT AND BENEFITS OF THE ACQUISITION OF AN ADDITIONAL 15% SHAREHOLDING IN EABL BY DIAGEO PLC IN 2023.

Diageo Kenya Limited (Diageo Kenya) acquired an additional 15% shareholding in EABL in 2023, by way of a Public Tender Offer to all EABL shareholders. This transaction was approved by the Capital Markets Authority (CMA) and relevant regulators. Hence Diageo Kenya increased its shareholding in EABL from 50.03% to 65%. Enclosed herewith as **Annexure 2** is the Public Tender Offer as advertised in the local dailies.

This transaction was the single largest foreign direct investment in the Kenyan stock market in 2023 where Diageo Kenya paid a total of KES 22.7Bn to EABL shareholders in the market. This was recognized by His Excellency the President Dr. Ruto on 22nd March 2023 during the bell ringing event at the Nairobi Securities Exchange, as a show of confidence in the local Kenyan market by foreign investors.

QUESTION TWO - WHETHER THE ACQUISITION BY DIAGEO PLC IS A CONSOLIDATION OF THE ALLEGED TRANSFER TO AND EVENTUAL TAKEOVER BY HEINEKEN OR CASTEL GROUP.

There is no evidence to substantiate this claim and we humbly submit that it should be treated as a false allegation.

As part of its disclosures in the 2023 Public Tender Offer, Diageo Kenya disclosed that it had made no agreement or arrangement to sell EABL shares to any other person.

We request that the Petitioner is cautioned against making false or unsubstantiated allegations as this can cause serious harm to businesses.



QUESTION THREE - WHY EABL WAS UNDERTAKING CONSIDERABLE DOWNSIZING DESPITE CONSISTENT POSTING OF MARGINAL PROFITS

EABL has not engaged in any corporate downsizing initiatives within the past decade.

EABL has channeled substantial investments exceeding USD 640M (circa KES 96 billion) during this period, facilitating significant job creation. Notable instances of such investments include:

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- 1) The allocation of USD 120 million (circa KES 14 billion) for the establishment of the new Kisumu Brewery in 2019.
- 2) A further injection of USD 42 million (circa KES 6.3 billion) in 2021 towards supply of green energy through the development of three Biomass plants in Kenya and Uganda, introducing a new business segment centered on the utilization of previously discarded biomass materials.

Despite the pronounced adverse repercussions of the COVID-19 pandemic in 2020 and 2021 on the alcohol sector, characterized by regulatory impositions leading to bar closures and sales disruptions, no layoffs were implemented, nor were there reductions in employee remunerations. Furthermore, we intensified our health insurance provisions to encompass COVID-19 related contingencies and dispensed hygiene kits for employees' families.

As a matter of fact, EABL has not downsized as alleged, and it is on a substantial growth trajectory, a trend reflected in the augmentation of the company's total asset value from KES 14 billion in 2000 to KES 110 billion in 2022. Growing in tandem, has been EABL's contribution to Government revenue and shareholder returns in terms of profits and dividends.

QUESTION FOUR - PROVIDE JUSTIFICATION FOR THE POLICY OF THE DISPOSING OFF HUGE COMPANY ASSETS AND HOW LOCAL SHAREHOLDERS HAVE BENEFITTED FROM THESE SALES.

EABL has not sold any strategic, critical or performing business assets as alleged by the Petitioner.

Our assets management strategy is directly linked with the future strategic vision of the business. This includes evaluating our asset portfolio with the outcome of identifying what is fit for purpose for the future of the business. Our focus is to invest smartly in capacity expansion to position our business for future growth and meet consumer demands effectively and efficiently. In the last 10 years, we have injected USD 640M (circa KES 96 billion) in strategic investments across the region.

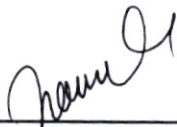
As demonstrated above, we have grown our asset base, invested smartly to cater for the changing environment and consumer landscape. As a result of these strategic decisions, our shareholders have consistently received decent returns on their invested capital.

CONCLUSION

We believe our submissions have adequately addressed your concerns and puts this matter to rest.

Yours faithfully,

For: East African Breweries PLC



Jane Karuku, MGH
Group Managing Director
Chief Executive Officer

27 June 2023

The Honourable Clerk,
The Senate of Kenya
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi, Kenya

Advance by Email
Original by recorded hand delivery

Attention: Mr Jeremiah M. Nyegenye, CBS
Email: clerk.senate@parliament.go.ke



Dear Sir,

Subject: False and malicious petition dated 30 May 2023 by Mr. Nicholas Ronald the Petitioner

Honourable Clerk, we wish to bring the following matters to your urgent attention, as relate to the Petition.

We were shocked to learn from the Parliament website that the Petition was presented to the Senate on 30th May 2023 and committed to the Senate Committee on Trade, Industrialization and Tourism ("the Committee") on 31st May 2023. We also note that the Committee met with the Petitioner on 22 June 2023 "to consider the Petition" and a further meeting has been scheduled for 29 June 2023. Both meetings appear on the Schedule of Committee Sittings published on the Parliament website.

All this has been done without any notice to EABL or any of its affiliate companies referred to in the Petition (hereinafter together referred to as 'EABL') and/or without affording EABL a right of reply to the Petition.

We have also discovered - again, from the Parliament website, that the Petition has been fixed for hearing on 31 July 2023. We are yet to be given notice of any such hearing.

Without prejudice to the above, we have reviewed the Petition and our preliminary response is that:

1. The purchase of shareholding in EABL by Diageo plc was the single largest foreign direct investment in Kenya in 2023 where a total sum of KShs 22.8 Bn was paid to the market. This was recognized by His Excellency the President Dr. Ruto on 22 March 2023 as a show of confidence in the local Kenyan market by investors. This transaction was approved by the Capital Markets Authority (CMA).

Contrary to the false and malicious assertions in the Petition, EABL did not cease to be a Kenyan company - instead it has transformed over the years into a strong local Kenyan multinational, employing thousands of Kenyans and East Africans. A local homegrown company in partnership with the finest global partners - based in Kenya with a strong value chain making it a key driver for growth and prosperity in Kenya.

The totality of the allegations in the Petition are false, defamatory, highly inflammatory, and sensational. The Petitioner is hiding behind the cloak of the Senate so as to publish false, misleading and defamatory material of and concerning EABL. We are concerned that the false and malicious allegations in the Petition have been published on the Parliament website as if they are factual, thus exposing our business and local and foreign investors to serious harm and reputation damage.

OUR REQUEST: The false and malicious allegations in this Petition be immediately removed from the Parliament website to protect the integrity, reputation and confidentiality of EABL.

2. The allegations in the Petition are the subject of ongoing legal proceedings in **High Court Constitutional Petition 249 of 2016 Bio Tosha Distributors Limited -vs- Diageo plc (Diageo), East African Breweries plc (EABL), Kenya**

B

Breweries Limited (KBL) and UDV (Kenya) Limited (UDV). This case is yet to be heard and is also the subject of several other contentious legal proceedings before the Supreme Court, Court of Appeal and the High Court.

The Petition before the Senate is therefore an abuse of the process of the Senate, aimed at interfering with the ongoing litigation and an attempt to usurp the jurisdiction of the court, by unlawful means.

OUR REQUEST: As per established precedent and the rule of law, the hearing scheduled for 31 July 2023 and all proceedings and/or Committee meetings and sessions relating to the Petition be vacated to allow for the courts to hear and determine the cases before it.

3. Finally, our view is that the Petition does not present any evidence or argument of the matters within the authority of the Senate as contemplated in Article 96 of the Constitution which clearly provides that the Senate:
- 3.1. represents the counties and serves to protect the interests of counties and county governments.
 - 3.2. participates in law making functions concerning counties.
 - 3.3. exercises oversight over national revenue allocated to county governments; and
 - 3.4. participates in oversight of state officers by considering and determining any resolution to remove the President or Deputy President from office.

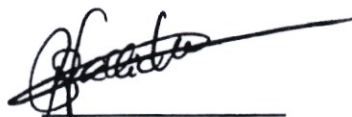
The allegations in the Petition relate to private commercial transactions and regulatory issues that are outside the purview of the Senate.

OUR REQUEST: this Petition should not be committed to the House as it does not invoke the jurisdiction of the Senate as it is not related to counties or their interests.

In conclusion, we respectfully request that you exercise your powers under Standing Order No. 1 and rule that the Senate has no jurisdiction to hear and determine the Petition as the matters raised are before competent authorities that have jurisdiction to hear and determine them. These includes the courts and the CMA. This will uphold the rule of law and respect the Constitutional limits of the Senate's jurisdiction.

We appreciate your attention and consideration of this matter.

Yours faithfully,
For East African Breweries plc



Nadida Rowlands
Group Legal Director

Cc

Hon. Amason Jeffah Kingi, EGH, MP
The Honourable Speaker,
The Senate of Kenya
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi,
Kenya

Ms. Terry Mwangi
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7. Conditions

The Tender Offer is entirely subject to and conditional on:

- approval from the CMA and the CMA granting the exemption sought pursuant to Regulation 5(1) of the Take-over Regulations; and
 - any other regulatory approvals that may be required to implement the Tender Offer, and will not commence unless and until these approvals and exemptions have been granted.
- If these conditions are met, it is expected that the Tender Offer will open at 9:00 a.m. on 30 January 2023 and will be open to holders of Ordinary Shares on the register of EABL as at 5:00 p.m. on 16 January 2023 (the **Record Date**). The Tender Offer will close in two phases:
- First Closing:** the first phase of the offer will close at 5:00 p.m. on 17 February 2023 (the **First Closing Date**); and
 - Second Closing:** the second and final phase of the offer will open at 9:00 a.m. on 20 February 2023 and close at 5:00 p.m. on 10 March 2023 (the **Second Closing Date**).

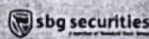
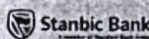
The Record Date and the dates for the First Closing and Second Closing are estimated dates and are therefore subject to change. Any changes will be communicated by Diageo Kenya in due course. A holder of Ordinary Shares will only be permitted to tender their Ordinary Shares in the Tender Offer if at the First Closing Date or the Second Closing Date, as applicable, such shares are free from all pledges, liens and other encumbrances. In accepting tenders, Diageo Kenya intends to give preference to shareholders on the register of members on the Record Date, in respect of the Ordinary Shares held by them at the Record Date, up to a maximum of 10,000 Additional Shares. In order to facilitate the settlement of the Tender Offer and ensure that ordinary shares tendered in the Tender Offer can be transferred, an application will be made for trading in EABL's ordinary shares to be suspended for a short period post Second Closing to allow for the settlement and transfer of shares.

Dated 14 October 2022

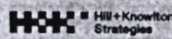
By order of the Board

Diageo Kenya Limited

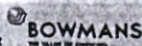
FINANCIAL ADVISOR
AND SPONSORING BROKER



COMMUNICATIONS
ADVISOR



LEGAL
ADVISOR



B

**CAPITAL MARKET AUTHORITY
(CMA)**

Embankment Plaza, 3rd Floor
Longonot Road, Upper Hill
P.O. Box 74800 - 00200, Nairobi, Kenya
Tel: +254 (0)20 2264900
Email: ceoffice@cma.or.ke
Web: www.cma.or.ke



Chief Executive's Office

Our Ref: CMA/CMD/033

Your Ref: SEN/DSEC/SCTIT/2023/74

July 7, 2023

J.M. Nyegenye, CBS
Clerk of the Senate
The Senate
Clerk's Chambers
Parliament Buildings
NAIROBI

Dear Mr. Nyegenye,

RE: PETITION ON ALLEGED FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

We acknowledge receipt of your letter dated June 30, 2023, on the above subject.

The Authority has noted the petition and the complaints by the petitioner, which he did not bring to our attention. Please find attached a report in response to the Petition.

We appreciate and value the Senate's continued oversight and engagement with us to ensure fairness, transparency, and compliance with the established laws, in relation to transactions undertaken in the Kenyan capital markets.

The Authority is available to provide any additional information or clarification with respect to this Petition.

Yours sincerely,

FCPA, Wyckliffe Shamiah
CHIEF EXECUTIVE OFFICER

Encl.

CC: Dr. Chris K. Kiptoo
The Principal Secretary
The National Treasury & Economic Planning
National Treasury Building
Harambee Avenue
NAIROBI.

FROM: Chief Executive Officer, Capital Markets Authority

TO: Hon. Chairman: Senate Standing Committee on Tourism, Trade and Industrialization.

DATE: July 6, 2023

This report outlines the key particulars of the recent acquisition of additional shares ("The Transaction") in East Africa Breweries Plc (EABL) by Diageo Kenya through a Tender Offer. The report also includes the status of compliance with applicable law and regulations by Diageo Kenya in conducting the transaction, including the rationale for the transaction from Diageo's point of view, and the likely impact of the transaction on the operations of EABL and the shareholders of the company.

The report also provides background information on past acquisitions by Diageo of EABL shares.

I. Introduction

This report aims to provide the Hon. Members of the Senate with detailed information regarding the recent transaction involving EABL and Diageo Kenya. The transaction involved the acquisition of EABL shares by Diageo Kenya through a tender offer, and subsequent to the transaction, an increased percentage shareholding by Diageo Kenya in EABL. This report will cover the highlights of the transaction, including the tender offer price, the results of the tender offer, and the compliance of the transaction with the Capital Markets Act, Cap 485 Laws of Kenya (The Capital Markets Act), and the Capital Markets Public Offers Regulations as well as the Capital Markets Takeovers and Mergers Regulations.

Capital Markets Authority (CMA) is responsible for regulating and supervising all entities and individuals involved in the capital markets. This includes market intermediaries such as stockbrokers, investment banks, and asset managers, as well as listed companies and other market participants. The regulatory objectives of CMA includes protecting the interests of investors by ensuring fair and transparent markets. The CMA also ensures compliance with disclosure requirements and is also responsible for ensuring market discipline especially in

relation to market manipulation, insider trading, and other fraudulent activities. Overall, the Capital Markets Authority of Kenya plays a pivotal role in ensuring the integrity, stability, and growth of the country's capital markets. By regulating market participants, protecting investors, and promoting market development, the CMA strives to create a robust and vibrant capital market ecosystem that contributes to Kenya's economic growth and development.

In a takeover transaction, the role of the Capital Markets Authority is limited to ensuring that the governing regulations are adhered to by the parties involved. It does not make an assessment of the merits and demerits of takeover offers as this is a matter for individual shareholders to decide by making an election to accept or decline an offer. The CMA ensures that any take-over bid of a listed company strictly meet the requirement as stipulated in the Capital Markets (Take-overs and Mergers) Regulations, 2002. The main role of the regulator include:

- a) Ensuring that detailed disclosures regarding the offer are made in the offer document to enable the affected shareholders make an informed decision;
- b) Making sure that the shareholders are provided with comprehensive details regarding operations and financial position of the Offeree;
- c) Ascertaining the existence of adequate facilities for compensation of shareholders who accept the offer;
- d) Reviewing all announcements and circulars relating to the offer for purposes of making sure that shareholders are not misled in any way; and
- e) Ensuring that all the conditions of the offer, regulatory or otherwise are met.

II. Background of East African Breweries Limited (EABL) as a Listed Company

EABL is a leading beverage company operating in Kenya and other East African countries. Diageo, a global leader in alcoholic beverages, has been a significant shareholder in EABL for many years. Diageo Plc is headquartered in London, United Kingdom, and has a primary listing on the London Stock Exchange and is a constituent of the FTSE 100 index. It has a secondary listing on the New York Stock Exchange, in USA. Through its subsidiaries, joint ventures and other investments, Diageo operates in multiple other African countries offering various alcoholic and non-alcoholic beverages to consumers.

In 1997, EABL sought to raise Kes. 1.5 billion for the expansion programme in both Uganda and Tanzania from the existing shareholders, through a rights issue. At the time, Guinness Plc (now Diageo) held 25.06% of the ordinary shares of EABL. Although it was open to all existing shareholders of the company, many local shareholders did not participate.

The transaction structure was such that Guinness Plc would act as an underwriter for the rights issue and acquire any untaken rights, to ensure full subscription for the issue and to get enough funds for the identified projects. As a result of this and low participation by local investors, the shareholding of Guinness Plc increased to 46%, thereby making it the largest single shareholder. At that time, Guinness Plc had indicated that it had no intention of making a full takeover of EABL and was willing to consider reducing its shareholding in future, subject to favourable market conditions and future business strategy. However, there was no legal or contractual obligation on Guinness Plc to reduce its shareholding in EABL.

The rights issue approval and grant of exemption from the repealed Takeovers Rules of 1992 was based on the following considerations:

1. The renounced rights were traded at the Nairobi Securities Exchange and were available to any local investor, but attracted few new investors;
2. The rights issue was meant to enhance the shareholder value and their interest as well as positioning EABL as a leading company within East Africa; and
3. The exemption of Guinness Plc from making a full takeover bid as a result of underwriting the rights issue was informed by the fact that making a full takeover bid would have placed an even larger shareholding of EABL in the hands of Guinness, with a possibility of compulsory acquisition of remaining shareholders. This would have been against public interest and with such a huge shareholding, a majority shareholder is in a position to pass a de-listing resolution.

This matter was investigated in November 2000, by the then Parliamentary Committee on Finance, Planning and Trade. The Authority made submissions to the Committee with emphasis on the following:

- a) While it is important to redefine national policy as regards local shareholding limits for privatized enterprises to encourage broad shareholding by Kenyans, it would be

undesirable to extend such a policy to privately owned companies as such a move would negate the policy on attraction of foreign investments; and

- b) There should be a balance between taking care of national interests and encouragement of foreign investments, which are also useful to the economy.

Subsequent Restructuring:

In the year 2020, Diageo Plc indirectly held 395,608,434 ordinary shares in EABL, representing 50.03% of the issued shares of the listed company. These shares were held through the following indirectly held wholly owned subsidiaries:

No.	Subsidiary	No of shares	% holding
1.	Diageo Kenya Limited	338,618,340	42.82%
2.	Guinness Overseas Limited	20,628,804	2.61%
3.	Diageo Holdings Netherlands B.V	36,361,290	4.6%

Following an internal group re-organization, the shares held by Guinness Overseas Limited and Diageo Holdings Netherlands B.V were transferred to Diageo Kenya Limited. This resulted in the consolidation of holding by Diageo Kenya Limited to 50.03%. The intention was indicated as to simplify the indirect holding structure of EABL by consolidating the shareholding of Diageo Plc to a single entity. Diageo Kenya Limited further indicated that there was no intention to take over EABL.

There was no change in ultimate beneficial ownership since Diageo Plc remained the ultimate beneficial owner of this 50.03% stake in EABL. The transfers were effected through a private transfer under regulation 57 (e) of the Capital Markets (Licensing Requirements) (General) Regulations, 2002, which allow for private transfers, not resulting in any change in beneficial ownership.

Tender Offer:

A tender offer is a bid to purchase some or all of shares in a listed company from the existing shareholders. The prospective buyer announces a tender offer, inviting existing shareholders to sell their shares to the buyer at a specific price. The person making the offer prepares a tender offer document, which is circulated to shareholders. It is conducted publicly and

invites shareholders to sell their shares for a specified price and within a particular window of time. The price offered is usually at a premium.

Shareholders can decide if they want to participate, and if they do, they tender their shares to the company. Shareholders who do not want to participate do not have to take any action and are under no obligation to tender their shares to the buyer.

Diageo Kenya, a subsidiary of Diageo PLC made a tender offer to acquire additional shares in EABL, thereby increasing its stake in the company. This was informed by Diageo's observation that the company was keen to acquire an additional stake in EABL in line with comparable stakes held by similar companies in the region and the greater African continent.

The proposed acquisition by Diageo Kenya of the Ordinary Shares in EABL was indicated to be consistent with Diageo Plc's African growth objectives and its active portfolio management. Further, Diageo noted that its indirect shareholding in EABL of 50.03% was lower than the average shareholding of approximately 66.9% held by other multinational parent companies in listed subsidiaries in Kenya. Please find Table 1 below highlighting the percentage shareholding by multinational parent companies for companies listed at the NSE. The ownership percentage was also lower than the average shareholding for other listed subsidiaries of Diageo PLC in Africa such as in Guinness Nigeria and Guinness Ghana Breweries Limited where Diageo indirectly holds a 58.02% and 80.4% stake, respectively.

Diageo Kenya assured stakeholders that it was keen on maintaining its listed status and had no plans to delist EABL from the Nairobi Securities Exchange (NSE).

Further, Diageo Kenya indicated that it did not envisage making any changes to the;

- (i) board of directors of EABL,
- (ii) executive management team of EABL, or
- (iii) current business strategy of EABL,

as a result of an increase of its shareholding in EABL pursuant to the Tender Offer.

We wish to point out that the company offered to purchase shares from willing shareholders at a premium and no shareholder was under any obligation to accept the offer.

Table 1

Percentage shareholding by multinational parent companies for companies listed at the NSE

	Company	Multinational Parent Company	% Shareholding as at May 2023
1.	East African Breweries Plc (EABL)	Diageo Kenya Limited	65%
2.	Total Energies Marketing Kenya Plc	Total Energies Marketing Afrique	92.26%
3.	Stanbic Holdings Plc	Stanbic Africa Holdings Limited (UK) which is 100% owned by Standard Bank Group Limited (South Africa)	74.92%
4.	Standard Chartered Bank	Standard Chartered Holdings (Africa) BV	73.89%
5.	Liberty Kenya Holdings Plc	Liberty Holdings Limited S.A.	73.47%
6.	Absa Bank Kenya	Barclays Africa Group	68.5%
7.	BAT	Molenssteegh Invest BV	60%
8.	BOC Kenya Plc	BOC Holdings	65.38%
9.	Limuru Tea Plc	Unilever Tea Kenya Limited	52%
10.	TPS East Africa	Aga Khan Fund for Economic Development S.A.	64.58%
11.	Kapchorua Tea Kenya	Ngong Tea Holdings Limited (UK)	23.96%
		Williamson Tea Kenya Limited	39.56%
12.	Williamson Tea Kenya	Ngong Tea Holdings Limited (UK)	51.46%
13.	Unga Group Plc	Victus Limited	50.93%
14.	WPP Scangroup	Cavendish Square Holding BV	40.94%
15.	Kakuzi Plc	Bordure Limited	26.06%
		Lintak Investments Limited	24.64%
16.	Nation Media Group Plc	Aga Khan Fund for Economic Development SA	44.66%

III. Concerns Raised in Parliament of Kenya Senate Hansard Report

1. The concerns raised in the Parliament of Kenya Senate Hansard Report of Wednesday, 31 May 2023, regarding the recent EABL transaction through a tender offer have been well noted. The concerns are addressed as follows:

Concern 1: Compliance with the Capital Markets Act and the Public Offers Regulations.

Response: The transaction was reviewed to ensure compliance with disclosures required by the Capital Markets Act and Capital Markets (Securities) (Public Offers, Listing & Disclosure) Regulations, 2002. The relevant disclosures were made in a tender offer document which was circulated to all shareholders to ensure fairness, transparency, and investor protection.

The process was as follows:

- a. Diageo Kenya Limited served a Notice of Intention on the listed company on October 13, 2022. This was also published in two newspapers of national circulation;
- b. East African Breweries Limited published a cautionary announcement on October 17, 2022 informing shareholders about the proposed tender offer;
- c. Diageo Kenya prepared a tender offer document which provided the details of the offer, terms and basis of the offer price;
- d. Tender offer document was circulated to shareholders and an abridged version published in two newspapers of national circulation; and
- e. The offer was open for acceptance by shareholders in accordance with the published offer timetable.

Diageo Kenya PLC through its financial advisers, SBG Securities wrote to the CMA to seek an exemption on behalf of Diageo Kenya from the requirement in the Capital Markets (Take-overs and Mergers) Regulations, 2002 (the Take-Over Regulations) for Diageo Kenya to make a take-over offer in relation to the proposed acquisition of up to 118,394,897 additional ordinary shares (the Sale Shares) in EABL, by means of

a tender offer made to all the shareholders of EABL. The CMA approved this application on January 23, 2023 after obtaining confirmation that Diageo Kenya intended to maintain EABL's listing on the Nairobi Securities Exchange following completion of the Tender Offer, as it believed the interests of EABL's shareholders and the broader public would be best served by EABL remaining a company listed on the Nairobi Securities Exchange and available to be invested in by the Kenyan public. In addition, Diageo and Diageo Kenya did not envisage making any changes to the board of directors of EABL, the executive management team of EABL, the current business strategy of EABL, as a result of an increase of its shareholding in EABL pursuant to the Tender Offer.

The detailed tender offer document (the Tender Offer Document) that set out the salient details of the offer was made available to all Shareholders by post, email, and other electronic means such as posting the document on Image Registrars' website. Shareholders were invited to complete and return tender offer forms (the Tender Form) to offer to sell their ordinary shares in EABL. Diageo Kenya made the Tender Form available to Shareholders through various options including electronic means where shareholders were encouraged to submit their acceptances via an online portal on Image Registrars' website and physical tender forms that were provided by post, email or downloaded from Image Registrar's website. The results of the tender offer were communicated after the closing date of the offer and shareholders paid for the shares tendered and the shares subsequently transferred to Diageo Kenya.

2. **Concern 2: Acquisition of the securities with an intention by the purchaser to transfer the shares onward to a new buyer and at a higher value.**

Response: Diageo Kenya confirmed in writing that it was not acting in concert with any person (whether pursuant to a formal or informal agreement or understanding) in relation to the acquisition of the Ordinary Shares or the consolidation of control of EABL.

Further, Diageo Kenya affirmed that there was no agreement or arrangement that had been made by which shares acquired by Diageo Kenya in pursuance of the Tender Offer would or may have been transferred to any other person.

The above notwithstanding, it is noteworthy that a shareholder is free to deal with their shares as they wish with no limitation, just like any other property, provided that they don't breach any existing laws. The Authority has no information ascertaining that the acquisition by Diageo Kenya was with the intention of transferring to another party. If this is later found to be the case, regulatory sanctions can be taken against the company for non-disclosure of material information to shareholders. Also, since the Diageo Kenya PLC now holds 66% shareholding in EABL, the Takeovers and Mergers Regulations require that any additional acquisition of shares by Diageo is subject to regulatory consideration. The CMA will ensure that Diageo Kenya upholds representations made in the Tender Offer.

3. **Concern 3: Acquisition of the securities with an intention by the purchaser to evade tax liability.**

Response: The advisers to the transaction correctly indicated that as the Ordinary Shares are listed on the Nairobi Securities Exchange, no capital gains tax would be payable in Kenya in connection with the gain accruing on the transfer of such Ordinary Shares in accordance with the relevant laws. Similarly, no stamp, registration or similar duties or taxes would be payable in Kenya in connection with the transfer of the Ordinary Shares in accordance with applicable laws. This opinion and conclusion by the advisers to the transaction does not preclude the Kenya Revenue Authority (KRA) from conducting an independent assessment to ensure compliance with the applicable tax laws in Kenya.

III. Transaction Details

1. Parties Involved:

- a. EABL: Listed On Nairobi Securities Exchange

A prominent beverage company headquartered in Nairobi, Kenya being the issuer and listed company

b. Diageo Kenya PLC- Offeror

The subsidiary of a global leader in alcoholic beverages with its headquarters in London, United Kingdom, Diageo Plc.

c. Other shareholders holding 49.7% in EABL as at the time of the transaction.

2. Salient Features of the Tender Offer:

Diageo Kenya initiated a tender offer through the Nairobi Securities Exchange, which is a public invitation to existing shareholders of EABL to sell their shares at a specified price within a specific timeframe. Shareholders who were not willing to accept the offer and the terms were not obligated to take any action(s).

The tender offer price was set at Kshs 192 per share, which was at a premium.

As at 12 October 2022, being the last trading day prior to submission of the Notice of Intention, an aggregate of 8,300 Ordinary Shares of EABL traded at an average price of Kenya Shillings 137.48 per Ordinary Share on the Nairobi Securities Exchange on an ex-dividend basis.

Historical trading and volume data showed that, over the 12-month period to 12 October 2022, EABL shares had traded on the Nairobi Securities Exchange at prices of between Kenya Shillings 129.99 and 164.72 per Ordinary Share.

The results of the tender offer indicated that 118,394,897 shares were tendered and accepted by Diageo Kenya.

As a result, Diageo Kenya acquired 118,394,897 additional ordinary shares of East African Breweries Plc by means of a tender offer. Diageo Kenya PLC also sought and was granted an exemption from making a mandatory takeover of EABL pursuant to Regulation 4 of the Capital Markets (Takeovers and Mergers) Regulations, 2002. The total value of the

transaction was Kes. 22,731,820,224. The Authority has not received any complaint from any shareholder of EABL or any other party.

IV. Compliance with Capital Markets Act and the Public Offers Regulations

The Capital Markets Act provides the legal and regulatory framework for transactions involving securities offerings in Kenya. The transaction between the shareholders of EABL and Diageo Kenya through the tender offer did not breach any provisions outlined in the Capital Markets Act and Diageo Kenya PLC was required to make the necessary disclosures to shareholders.

The transaction was reviewed and evaluated by the CMA and engagements were held with the representatives of Diageo Kenya PLC to understand the rationale for the transaction and strategic intent of Diageo Kenya PLC in the operations of EABL.

V. Financial and Economic Implications

1. Strengthened Partnership

The increased shareholding by Diageo Kenya PLC through the tender offer signifies its continued commitment and confidence in the growth potential of EABL and the East African market. The increase in shareholding by Diageo Kenya PLC may lead to enhanced collaboration between EABL and Diageo Plc, leveraging the latter's global expertise and resources to drive innovation, market expansion, and job creation in Kenya.

2. Economic Impact

The transaction demonstrates foreign direct investment (FDI) in Kenya's beverage industry, contributing to the country's economic development and job creation. It may also indicate increased investor confidence in the Kenyan market, potentially attracting more FDI in the future. It is noted that Diageo Kenya paid a premium on the traded value of EABL securities, and the total value of the transaction was Kes. 22,731,820,224, which was to the benefit of the shareholders of EABL.

VI. Evaluation and Conclusion

1. In evaluating the recent transaction between the shareholders of EABL and Diageo Kenya PLC through a tender offer, it is the conclusion of the Authority that the transaction was conducted in compliance with the Capital Markets Act, the Public Offers Regulations as well as the Takeovers Regulations. The tender offer price, the results of the tender offer, and the overall implication of the transaction were largely positive for the market;

The Competition Authority of Kenya was notified as a matter of procedure under Regulation 4 of the Capital Markets (Take-Overs and Mergers) Regulations, 2002.

In addition to its listing on the stock market in Kenya, EABL is cross-listed on the Dar es Salaam Securities Exchange stock market of the United Republic of Tanzania and the Uganda Securities Exchange in Uganda. Accordingly, notifications of the Tender Offer were made to the relevant authorities in Uganda, being the Capital Markets Authority in Uganda and the Ugandan Securities Exchange and in Tanzania being the Capital Markets & Securities Authority in Tanzania, the Dar es Salaam Stock Exchange) and owing to EABL's majority shareholding in Serengeti Breweries Limited, it was necessary to make an application to the Fair Competition Commission of ("FCC") in Tanzania). Diageo Kenya submitted its merger filing to the FCC on 28 October 2022 and obtained approval for the transaction on December 19, 2022 after the 163rd case meeting of the FCC.

2. The Capital Markets Authority is not drawn into making an assessment of the merits and demerits of takeover offers as this is a matter for individual shareholders to decide by making an election to accept or decline an offer. The CMA ensures that any take-over bid of a listed company strictly meet the requirement as stipulated in the Capital Markets (Take-overs and Mergers) Regulations, 2002.
3. In a takeover transaction or tender offer, no shareholder is forced to sell their shares if they do not wish to do so;
4. The Cabinet Secretary to the National Treasury, through the Capital Markets (Foreign Investors) (Amendment) Regulations 2015 dated 11th June 2015, dispensed with the 75% investment limit for foreign investors, that was hitherto applicable. The Cabinet

Secretary may however, by notice in the Kenya Gazette, prescribe a maximum foreign shareholding in an issuer or listed company. Currently, no such limit has been imposed on the shares of EABL;

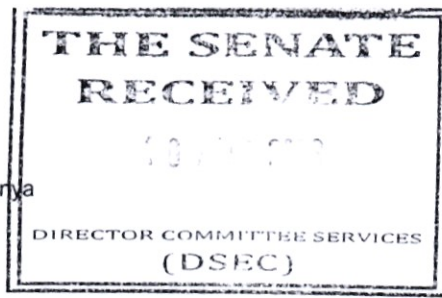
5. The Authority is currently in the process of overhauling the current Capital Markets (Takeovers and Mergers) Regulations to provide for such matters as independent valuations and to take into consideration the best practices relating to such transactions. The Authority placed the draft regulations on exposure between 16th August and 4th October 2022 and has been engaging stakeholders in face to face deliberations up to 31st May 2023. The draft Regulations have now been submitted to National Treasury and Economic Planning for further review before transmission to the Attorney General Office;
6. Considering the Government's policy of attracting foreign investments, the Authority is keen to ensure a balance between taking care of national interests and encouragement of foreign investments, which are also useful to the economy. This is more so because the country is in competition with other countries for such investments and should not be perceived as having unfavourable conditions for such foreign investments.

We appreciate the right of the petitioner to petition the Hon. Senate for appropriate remedy and for his vigilance with respect to rights of shareholders. However, we would like to highlight that the petitioner did not approach the Authority on this matter by way of a complaint or in any other manner. The Authority is mandated to consider and make a determination on complaints. If a complainant is dissatisfied with the decision of CMA, they can appeal to the Capital Markets Tribunal, which is independent and under supervision of the judiciary.

The Capital Markets Authority appreciates and values the Senate's continued oversight and engagement with relevant regulatory authorities to help ensure fairness, transparency, and compliance of such transactions, fostering a conducive business environment for future investments.

This report serves to provide the Senate with comprehensive information on the recent EABL transaction. Should you require any additional information or clarification on any aspect of this report, please do not hesitate to reach out to us.

Embankment Plaza, 3rd Floor
Longonot Road, Upper Hill
P.O. Box 74800 - 00200, Nairobi, Kenya
Tel: +254 (0)20 2264900
Email: ceoffice@cma.or.ke
Web: www.cma.or.ke



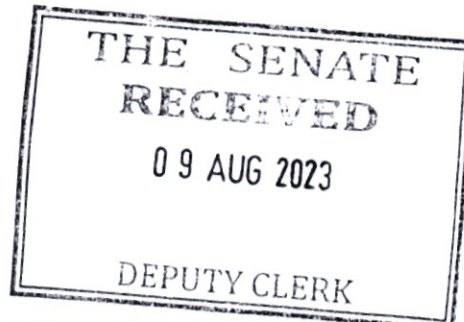
Chief Executive's Office

Our Ref: CMA/CMD/1

Your Ref: SEN/DSEC/SCTIT/CORR/2023/85

August 08, 2023

Hon. J. M. Nyegenye, CBS
Clerk of the Senate
The Senate
Committee Room 24, Bunge Towers
NAIROBI



Dear Hon. Nyegenye, CBS

RE: REQUEST FOR FURTHER INFORMATION REGARDING PETITION ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

We refer to the above matter and your letter dated August 03, 2023.

The Capital Markets Authority has noted the request for additional information in the matter of acquisition of East African Breweries Limited shares by Diageo PLC. In response, find attached a report addressing each of the areas raised, for your consideration.

The Authority is available to highlight its report before the Senate Committee on Tourism, Trade and Industrialization.

Yours sincerely

FCPA Wyckliffe Shamiah
CHIEF EXECUTIVE OFFICER

Encl.

CC: Dr. Chris K. Kiptoo
Principal Secretary
National Treasury
National Treasury Building
NAIROBI

② Hon. Ms. Kibati
Kindly deal
10/08/2023

③ Mr. Mulesi
Kindly deal
Kibati
11/08/2023

① DSEC

kindly deal

Eg
09/08/23

FROM: Chief Executive Officer, Capital Markets Authority

TO: Hon. Chairman: Senate Standing Committee on Tourism, Trade and Industrialization.

DATE: August 8, 2023

This report outlines the additional information required on the acquisition of East Africa Breweries Plc (EABL) shares by Guinness Plc that led to restructuring of shareholding ushering in Diageo Kenya as the anchor shareholder with increased shareholding. This is a response to a request for additional information by the Senate Committee on Tourism, Trade, and Industrialization (the Committee) via a letter dated August 3, 2023.

The Authority wishes to respond as follows on:

- 1. A detailed report on the initial acquisition of shares by Guinness Plc in EABL that was approved by the Authority in 2000 as follows:**
 - i. Particulars of the tender offering by Guinness Plc including the prospectus filed with the Authority; and**

We wish to confirm to the Committee that in the year 2000, the Authority did not approve any tender offer transaction with respect to Guinness Plc acquiring shares in EABL.

But in 1997, EABL sought to raise money, Kes. 1,500,000,000, through a rights issue for the expansion programme in Uganda and Tanzania. A rights issue happens where a company grants its existing shareholders right in equal proportion to their shareholding in the company that become new shares. The purchase price may be at a discount or premium to the current trading price. The rights may be traded through the market or be treated as untaken rights.

As per the prospectus documentation, the rights issue was in the ratio, 3 new shares for every 7 shares held by the existing shareholders of the company then, with the rights issue price being Kes. 53. To guarantee raising of the required funds, Guinness Plc acted as the underwriter in the rights issue in case of unsubscribed rights. The Authority's role was to ensure that adequate disclosures were made to shareholders for them to decide on whether or not to participate in the rights issue. The results of the rights issue are summarized below:

Table 1: EABL Rights Issue Result-1997(Appendix 1)

Total number of rights offered	28,080,675
Number of shares allotted	8,592,720
Excess applications	19,487,955
Total shares allotted	28,080,675
Gross proceeds	Kes. 1,488,275,775

At the time of the Rights Issue in 1997, Regulation 3(1)(b) of the Capital Markets Authority (Foreign Investors) (No. 2) Regulations, 1995 provided that the shares purchased by foreign investors would not exceed 40% in aggregate of the total shares offered. However, it also allowed locally incorporated companies, which were owned by foreign investors and individuals who were residents in Kenya to be treated as domestic investors, therefore, the company was placed in the category of *local investor* and consequently was not in violation of the Foreign Investor Regulations at the time.

Later on, an amendment was made on the 1995 Foreign Investors regulations inform of Section 3 of the Capital Markets (Foreign Investors) Regulations, 2002 (**Appendix 2**), required that at least 25% of the ordinary shares of an issuer be reserved for local investors; therefore, implying that a foreign company could hold up to 75% of the shares in an issuer. Taking this into consideration, Guinness was as at the time considered to be within the stipulated limit as their shareholding at that point in East African Breweries Limited was less than the threshold.

Subsequent Restructuring of Diageo PLC Shareholding in EABL in 2000:

In the year 2000, Diageo Plc indirectly held 395,608,434 ordinary shares in EABL, representing 50.03% of the issued shares of the listed company. These shares were held through the following indirectly held wholly owned subsidiaries:

Table 2: Diageo EABL Share Restructuring in 2000

No.	Subsidiary	No of shares	% holding
1.	Diageo Kenya Limited	338,618,340	42.82%
2.	Guinness Overseas Limited	20,628,804	2.61%
3.	Diageo Holdings Netherlands B.V	36,361,290	4.6%

- a) Following an internal group re-organization, the shares held by Guinness Overseas Limited and Diageo Holdings Netherlands B.V were transferred to Diageo Kenya Limited. This resulted in the consolidation of holding by Diageo Kenya Limited to 50.03%. The intention was indicated to simplify the indirect holding structure of EABL by consolidating the shareholding of Diageo Plc to a single entity. Diageo Kenya Limited further indicated that there was no intention to take over EABL.
- b) There was no change in ultimate beneficial ownership since Diageo Plc remained the ultimate beneficial owner of this 50.03% stake in EABL.

The justification for the approval of the transaction was based on the following reasons:

- a) the under subscription of the shares by EABL shareholders which was noted in the company’s Public Statement issued on December 11, 1997.
- b) Guinness Africa confirmed that it had no intention of launching a takeover bid for EABL.

- ii. **The justification for approval of the acquisition including any other representations made to the Authority by Guinness Plc and EABL Limited in support of the acquisition.**

It is reiterated that there was no tender offer in the year 2000. However, as mentioned in (i) above, EABL raised funds through the rights in 1997.

2. **Disclosure on any complaints received from shareholders, relevant stakeholders, and the public at large on the initial acquisition of EABL Ltd by Guinness Plc.**

In the year 2000, with anticipation that Guinness PLC would offload the shares underwritten in the 1997 rights issue, there was some public debate through the media on the same and subsequently leading to an investigation in November 2000, by the then Parliamentary Committee on Finance, Planning and Trade. The Authority was invited and made submissions to the Committee with emphasis on the following:

- a) While it is important to redefine national policy as regards local shareholding limits for privatized enterprises to encourage broad shareholding by Kenyans, it would be undesirable to extend such a policy to privately owned companies as such a move would negate the policy on attraction of foreign investments; and
- b) There should be a balance between taking care of national interests and encouragement of foreign investments, which are also useful to the economy.

The Association of Kenya Stockbrokers raised the same issue with the Authority, seeking clarifications on the following:

- a) Whether there was any intention by EABL to take-over the company, contrary to their earlier commitments;
- b) The issue that the rights issue was priced above the market price hence making it difficult for their members to participate.

Subsequently, the Authority addressed the same through a meeting with the Association, where the issues were deliberated upon.

3. **An analysis of the economic benefits that the Guinness acquisition in 2000 accrued to Capital Markets.**

The Authority in assessing the economic benefits has relied on information in public domain including the audited financial statements of EABL as summarized in Table 3.

- a) The value of total assets of EABL have increased by more than 680% from Kes. 14 billion in 2000 to Kes. 110 billion in 2022.

- b) The issuer has been consistently profitable, and it has been paying investors dividends on a regular basis. For instance, in the last ten years from 2013 to 2022, dividends paid amounted to Kes. 53 billion representing an average dividend yield of 4% and pay-out ratio of 76%.
- c) The issuer has maintained blue chip status in the market, and it is included in the NSE 20, NSE 25 and NASI indices to provide investors with a comprehensive and complementary benchmark to measure the performance of the Kenyan stock market.

The table below outlines the financial highlights of the company between 1997 and 2002.

Table 3: EABL Performance

Kes. '000	1997	1998	1999	2000	2001	2002
Turnover	22,952,678	25,778,213	25,248,788	25,448,122	26,813,674	27,734,679
Net Sales	10,849,910	12,873,000	12,840,000	12,914,000	13,969,000	14,444,000
Profit Before Tax	1,157,946	494,000	1,507,000	1,798,000	2,499,000	3,401,076
Net Profit	870,878	230,970	1,075,745	1,234,060	1,573,406	2,301,455
Tax Paid	251,348	166,476	379,032	623,308	946,793	1,099,617
Total Assets	13,429,273	13,281,433	13,938,133	14,095,809	15,134,076	17,986,236
Net Assets	8,551,672	8,558,563	8,665,454	8,738,556	10,314,701	11,121,592
Earnings Per Share*	13.29	2.82	11.49	12.91	14.88	21.27
Dividend paid	393,129	561,613	655,215	655,215	981,275	1,161,341
Dividend Per Share*	6.00	6.82	7.00	7.50	9.00	11.50
Market Price*	50	65	73	75	82	92
Dividend Yield	12%	11%	10%	10%	11%	13%

*Not in Kes'000

4. An explanation on the parameters for assessing the justification of "strategic growth objectives" in approving acquisition by foreign investors in listed companies.

When assessing the strategic objective of an investor or issuer, the CMA looks at how the stakeholders in the transaction will benefit. This can be in the form of:

- Transfer of skills;
- Sharing of expertise and experience;
- Technical assistance in operations;
- Increase in funding and market share; and
- Tax and other incentives.

In the Public Announcement circulated (**Appendix 3**) on December 11, 1997, EABL indicated that the partnership with Guinness brought immense depth of expertise and experience in brewing and distribution from one of the world's foremost brewing groups. On the other hand, Guinness

indicated that would work with EABL Management to help strengthen and protect the company's position in East Africa.

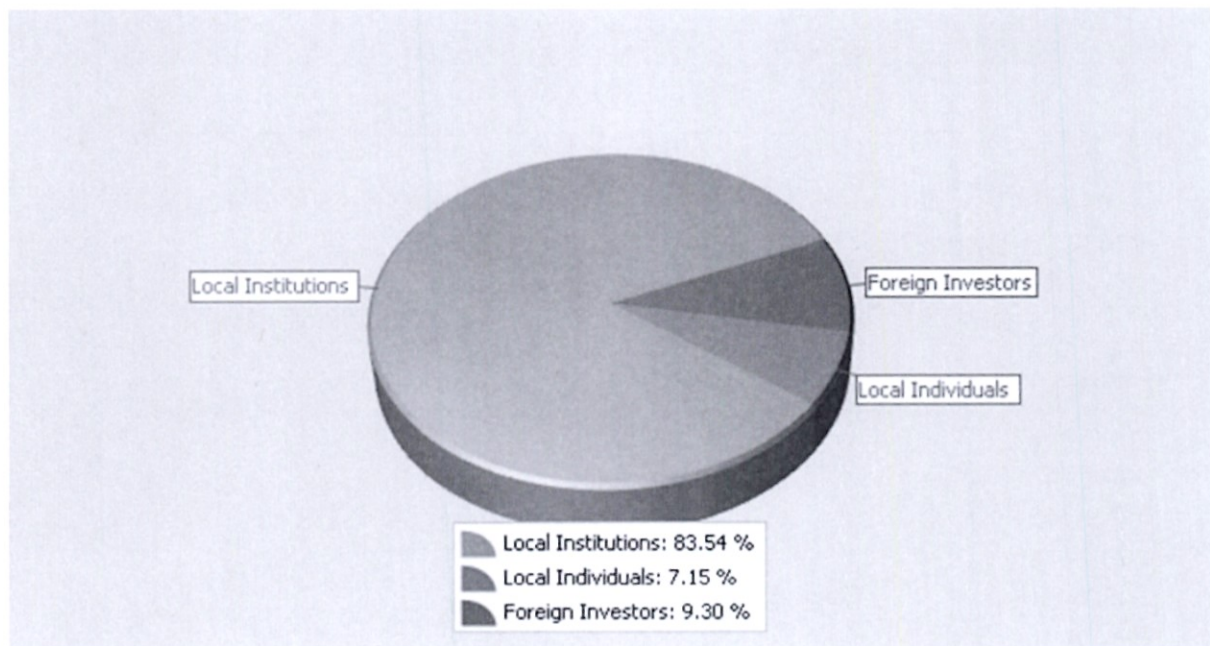
5. Whether there have there been any prospects for further acquisition of shares in EABL by any another foreign entity

Shareholder returns in EABL.

As at June 2023, we note that the foreigners held 9.304% of the total shares as illustrated below.

Summary Returns As At Friday June 30 2023

Investor Pool	Records	Shares	Percentage
Local Institutions	1,283	660,642,556	83.544%
Foreign Investors	722	73,576,174	9.304%
Local Individuals	24,017	56,555,626	7.152%
Grand Totals:	26,022	790,774,356	100.00%



Of the 9% below are the top 8 foreign shareholders in top 20 as at June 2023.

Names	Shares	Percentage
DIAGEO KENYA LIMITED	514,003,331	65.00%
CANARY WHARF LONDON E145LB UNITED,United States Of America	22,935,194	2.90%
STANDARD CHARTERED NOMINEES NON-RESD. A/C KE10085	20,804,500	2.63%
KENYA COMMERCIAL BANK NOMINEESLIMITED A/C 915B KENYA COMMERCIALBANK NOMINEES LIMITED A/C 915B	9,757,254	1.23%
STANBIC NOMINEES LIMITED R6631578	7,995,122	1.01%
STANBIC NOMINEES LTD A/C NR3530153-1	5,860,400	0.74%
STANBIC NOMINEES LIMITED A/C NR1031461	4,928,194	0.62%
SECRETARY TO THE TREASURY - "PF"ACCOUNT THE PERMANENT	4,829,436	0.61%
EAST AFRICAN BREWERIES LTD GROUPEMPLOYEE SHARE OWNERSHIP PLAN	3,816,689	0.48%
STANDARD CHARTERED NOMINEES RESDA/C KE11443	3,736,850	0.47%
SSB:SSBATC AL MEH CO IN LLC FN:AEJN,AL BAHAR TOWERS 1,United Arab Emirates	3,728,180	0.47%
THE BANK OF NEW YORK MELLON	3,383,135	0.43%
STANDARD CHARTERED NOMINEES RESDA/C KE11450	3,218,524	0.41%
STANDARD CHARTERED KENYANOMINEES LTD A/C KE22446	3,041,700	0.38%
STANDARD CHARTERED BANK (MAURITIUS),LIMITED, UNITS 6A AND 6B, 6TH FLOOR,RAFFLES TOWER, LOT 19, CY	2,800,000	0.35%
PERMANENT SECRETARY TO THETREASURY - A/C. PST-PF	2,710,704	0.34%
ODDO BHF ASSET MANAGEMENT GMBH WEGEN KILIMANJARO FRONTIER AFRICA FUND	2,542,300	0.32%
STANDARD CHARTERED NOMINEES RESDA/C KE11401	2,226,935	0.28%
JUBILEE LIFE INSURANCE LIMITED	2,044,318	0.26%
SSB:SSBATACF CH GL FR MK,LP FN:CGPA,416 NE DALLAS STREET,,SUITE 202CAMAS,98607,United States Of Amer	2,043,880	0.26%
Others	164,367,710	20.79%
Grand Totals:	790,774,356	100.00%

We have further analysed years 2019 to 2023 which shows that the foreign shareholding has been decreasing with local shareholding increasing.

This is demonstrated by having the foreign investor shareholding moving as follows:

Date	Foreign Shareholding
June 2023	9.304%
June 2022	15.250%
June 2021	18.06%
June 2020	27.26%
Dec 2020	27.96%
Dec 2019	27.96%

B

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KENYA BREWERIES RIGHTS ISSUE NOW COMPLETE

STATEMENT BY THE CHAIRMAN



Kenya Breweries is pleased to announce that all of the rights offered in the Rights Issue have been subscribed by the Company's shareholders.

The results are summarised below:

Total number of rights offered:	28,080,675
Number of shares allotted:	8,592,720 (1,928 applications)
Excess applications:	19,487,955 (347 applications)
Total shares allotted	28,080,675
Gross proceeds	Kshs 1,488,275,775

Share certificates will be posted to shareholders who accepted the Rights Issue on 19 December. Dealings in the new shares, fully paid, will commence at the Nairobi Stock Exchange on 22 December 1997.

The Board of KBL would like to express its appreciation to those shareholders who have demonstrated their faith in the company by investing in more shares. The Board is disappointed however that some of the Company's major Kenyan shareholders did not give the Rights Issue their support. In spite of this, the issue has been a success and the Company has raised the entire amount needed for the development of the new brewery at Moshi in Tanzania. Guinness support for the Rights Issue through the underwriting arrangements has resulted in some US\$ 23 million in foreign exchange coming into Kenya. Overall some KShs 1.5 billion has been raised.

Construction work on the new brewery is well underway and the Company's Tanzania brewed beers will be available in shops and bars throughout Tanzania by Christmas 1998. The final stage in the investment will be the signature, before this Christmas, of joint venture documents with the company's Tanzanian partner Mr E K Tarimo and family who will, as a result of their contributions of property and assets, have a minority stake in the new brewing company Kibo Breweries Limited.

The move into brewing in Tanzania will take the competition back to the local producers in that expanding market. This is part of the Company's overall strategy of having a significant brewing and distribution capacity in each of the three East African countries. The Board looks forward to the competitive challenges ahead in Kenya and its neighbouring countries. The Board wishes to reassure its shareholders and the Kenyan

public of its commitment to continue implementing measures to strengthen management, improve marketing, reduce costs and enhance efficiency in all the company's areas of operation.

KBL is happy to have Guinness as its partner and major shareholder. Guinness Stout is brewed in 22 African countries and is available in 150 countries world-wide. Guinness brings to KBL an immense depth of expertise and experience in brewing and distribution from one of the world's foremost brewing groups. The benefits of this are immeasurable and to have acquired it in any other way would have cost the company many millions of shillings.

The underwriting of the Rights Issue by Guinness demonstrates its commitment to KBL, to Kenya and to the regional market as a whole. There has been talk of Guinness wanting to take over KBL. This is not true. Guinness has fulfilled its commitment to take up its own rights and those not taken up by other shareholders. The result of the Rights Issue has been such that Guinness now owns about 45% of KBL. However, Guinness would have preferred not to own so much of the company. It will consider, at an appropriate time, and subject to favourable market conditions, selling some, or all of the shares it acquired through the Rights Issue in excess of its Provisional Allotment. The partnership with Guinness is good for KBL.

KBL shares still represent good value when compared to other brewing companies and its own net asset value. The reasons for the Rights Issue were sound - to raise additional funds by giving shareholders the opportunity to acquire further shares. The fact that the Rights Issue price was higher than the prevailing market price was due to a number of factors that were beyond the Board's control. The price of the new shares was set in accordance with the rules and with market practices. In response to criticism from some quarters, the Board did agree to extend the Rights Issue and offer shareholders the opportunity to acquire additional shares.

The development of KBL's presence in the region and the company's initiatives within the Kenyan market are further evidence that all shareholders, and the public at large, can have confidence in the future of KBL - East Africa's leading brewing group.

J. G. KIHEREINI
CHAIRMAN

APPENDIX 1

APPENDIX 1

THE CAPITAL MARKETS ACT (CAP 485A)

IN EXERCISE of the powers conferred by section 36 of the Capital Markets Act, the Minister for Finance makes the following Regulations:-

THE CAPITAL MARKETS (FOREIGN INVESTORS) REGULATIONS, 2002

Citation. 1. These Regulations may be cited as the Capital Markets (Foreign Investors) Regulations, 2002 and shall come into force on July 15, 2002.

Interpretation. 2. In these Regulations, unless the context otherwise requires-

Cap. 488 "Authorized Depository" means a bank licensed under the Banking Act or a financial institution approved by the Authority to hold in custody funds, securities, financial instruments or documents of title to assets registered in the name of local investors, foreign investors or of an investment portfolio;

"days" means calendar days excluding Saturdays, Sundays and public holidays;

"free float" means any shares in excess of the minimum reserved under the regulation 3 (1) and (2) of these Regulations;

"foreign investor" means any person who is not a local investor in East African Community Partner States;

"issuer" means a company or other legal entity incorporated or established under the laws of East African Community Partner States that offers securities to the public or a section thereof, whether or not such securities are the subject of an application for admission or have been admitted to listing;

"institutional investor" means a body corporate including a financial institution, collective investment scheme, fund manager, dealer or other body corporate whose ordinary business includes the management or investment of funds whether as principal or on behalf of clients;

“listed company” means an issuer any part of whose shares have been listed at a securities exchange;

“local investor” in relation to –

Cap. 486

- (a) an individual, means a natural person who is a citizen of Kenya;
- (b) a body corporate, means a company incorporated under the Companies Act in which Kenya citizens or the Government of Kenya have beneficial interest in one hundred per centum of its ordinary shares for the time being or any other body corporate established or incorporated in Kenya under the provisions of any written law;

“official list” means a list specifying all securities which have been admitted to listing on any of the market segments of a securities exchange;

“public offer” has the meaning assigned to it in Regulation 5 of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002

“reserve” means any shares of an issuer or a listed set aside for investment by local investors which are not available for investment by foreign investors except as provided under regulation 3 (4) of these Regulations.

Shares reserved for local investors and participation by foreign investors.

(1) Every issuer or listed company shall reserve at least forty per centum of its ordinary shares for investment by local investors in the issuer or listed company.

(2) In the case of –

- (a) ordinary shares of a listed company which have been listed, the shares to be reserved shall be the per centum of the ordinary shares already listed on the securities exchange;
- (b) ordinary shares of the issuer in respect of which the issuer is making a public offering and which is a subject of an application for listing, the shares to be reserved shall be the per centum of the ordinary shares being offered to the public.

(3) Any proportion of the voting shares of an issuer or listed company in excess of forty per centum reserved for local investors, shall be available for investment by the foreign investors without any restrictions in the level of holdings except as provided under the Capital Markets (Take over and Mergers) Regulations, 2002.

(4) Notwithstanding the provisions of paragraphs (1) and (2) where, in the case of public offering, the per centum reserved for local investors is not subscribed for in full by local investors, the issuer may with the prior written approval of the Authority, allot the shares so remaining to foreign investors.

Register of shareholders.

4. (1) A listed company shall maintain a register of shareholders of ordinary shares showing at all times the holding thereof by-

- (a) foreign investors;
- (b) East African Community Partner States individual investors; and
- (c) East African Community Partner States institutional investors.

(2) Every listed company shall, within thirty days from the day these Regulations come into force provide the Authority with a status report with respect to the category of shareholders specified in paragraph (1) and subsequently, within ten days following the end of each month, furnish to the Authority and to the securities exchange on which its shares are listed, a report showing details of the holding of its ordinary shares according to the categories specified in paragraph (1).

Declaration of investor status.

5. (1) A stockbroker shall-

- (a) on every application for the shares of an issuer; or
- (b) on the transfer of the shares of a listed company to an investor;

declare whether the applicant or the transferee, as the case may be, is a foreign investor, East African Community Partner States individual investor or East African Community Partner States institutional investors with supporting documentation evidencing such status.

(2) No company registrar shall effect any transfer of the

ordinary shares of an issuer or of a listed company if such transfer would result in investment in the ordinary shares of such issuer or listed company by local investors to fall below the per centum specified in paragraphs (1) and (2) of regulation 3 other than under the circumstances specified in paragraph (4) of regulation 3.

**Report by
listed Companies.**

6. (1) In relation to paragraphs (1) and (2) of regulation 3, a listed company shall immediately report to the securities exchange at which it is listed, all transactions that result in the per centum of ordinary shares held by foreign investors to reach sixty per cent or more specifying the per centum attained by each such transaction.

(2) A securities exchange shall publish a weekly report showing -

- (a) the number of shares of each listed company traded on that day; and
- (b) listed companies in which foreign investors and East African investors hold seventy per centum or more indicating the percentage so held.

(3) A securities exchange shall submit to the Authority weekly and make available to the public at its principal place of business every report prepared under this regulation.

**Deposit of share
certificates
with an authorized
depository.**

7. (1) A stockbroker shall deposit every share certificate registered in the name of a foreign investor African with an authorised depository designated by the foreign investor,.

(2) An authorized depository shall hold in its custody every share certificate for foreign investors under this regulation, which certificate shall remain so held unless shares are transferred to a local investor.

PROVIDED that if the issuer's shares are immobilized or dematerialised the shares shall be held by an authorized depository or a central depository agent.

**Report by
authorized
depository.**

8. An authorized depository shall, in respect of each month, prepare a report showing the share certificates or statement of account of the shares in its custody pursuant to the provisions of regulation 7 and shall furnish such report to the Authority within ten days

after the end of every month.

Restrictions of issued outside Kenya.

- 9.** No person shall, in Kenya, offer or cause to be shares offered to the public any shares or other capital market instrument as the Authority may specify which are listed or to be listed outside Kenya except with the prior written approval and registration of such security with the Authority.

Transitional and saving provisions.

- 10.** (1) Nothing in these Regulations shall require A foreign investor who, at the commencement of these Regulations, holds shares of an issuer in excess of the limits prescribed in these Regulations, to dispose of the excess shares.
- (2) In the event that a foreign investor who holds shares in excess of the limits prescribed by these Regulations by virtue of the provisions of paragraph (1) above, determines to dispose of any shares, no foreign investor shall be eligible to purchase the same save to the extent that the aggregate of the shares of that issuer held by foreign investors shall not exceed the limits prescribed in Regulation 3.
- (3) Nothing in these Regulations shall restrict the right of a foreign investor to acquire additional shares by way of a bonus or right or scrip dividend issue pursuant to the memorandum or articles or association or other regulations of a listed company or under the provisions of any other written law: PROVIDED that in the event of a rights or scrip dividend issue no foreign investor shall be eligible to acquire directly or indirectly additional shares as would result in the percentage reserved for local investors to fall below twenty five per centum.

L.N. 291/1995.

- 11.** The Capital Markets Authority (Foreign Investors) (No. 2) Regulations 1995, are revoked.

L.N. 109/2002.

- 12.** The Capital Markets (Foreign Investors) (Amendment) Regulations 2002, are revoked.

Made on 26th July 2002.

C. M. OBURE,
Minister for Finance.

CA

THE GUINNESS/KENYA BREWERIES PARTNERSHIP

As a result of the recent Kenya Breweries Rights Issue, Guinness now holds approximately 45% of the shares in Kenya Breweries Limited.

Commenting on the outcome, David Hampshire, Managing Director of Guinness Africa said:

“Through the Rights Issue, Guinness has invested Kshs 1.4 billion in the future of KBL and demonstrated its confidence in the future of both the company and the Kenyan marketplace.

Our decision to underwrite the issue was based solely on the need to raise the funds necessary for KBL's expansion into Tanzania and thanks to our investment, this has been achieved at minimal cost to KBL. A 45% shareholding in KBL is not what any of us desired or expected. Whilst clearly happy to have made this investment, we are disappointed that there was not more support for the issue from both individual and institutional shareholders from within Kenya.”

Looking to the future, and further to undertakings given both prior to and during the Rights Issue period, Guinness also confirms that:

- It has no intention of launching a takeover bid for Kenya Breweries.
- It will consider at an appropriate time and subject to favourable market conditions, selling some, or all of the shares it acquired through the Rights Issue, in excess of its Provisional Allotment.
- There will be no change to the current working relationship between Guinness and KBL as a result of the Rights Issue.
- As the largest minority shareholder, Guinness will continue to work with the KBL management to help strengthen and protect the company's position in East Africa.
- It believes the shareholding is a positive financial investment, and that the KBL shares are undervalued both in terms of the medium and long term plans of KBL, and when compared with the net asset value of the company.
- It will not seek any further non-executive board representation as a result of the increased shareholding.
- It will continue to offer KBL access to whatever resource is deemed appropriate and necessary by the company.

With regard to the future relationship between the two companies, David Hampshire declared: **“As we have stated many times in the past, we want to strengthen further the partnership between our two companies. KBL will continue to be the effective owner of Guinness, the world's greatest beer brand, throughout East Africa. Guinness will continue to provide whatever management, technical and marketing support which KBL requests.”**

Issued by **Guinness Africa**

For further enquiries, please contact :

Colin Church at Church Orr & Associates Ltd, Nairobi Tel: 225103 Fax: 219787
Public Relations Consultants for Guinness Africa

C

COMPETITION AUTHORITY



MEMORANDUM BY COMPETITION AUTHORITY OF KENYA TO SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM ON A PETITION ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

The Competition Authority of Kenya (“the Authority”) in response to the invitation by the Senate Committee on Trade, Industrialization and Tourism regarding Petition on fraudulent dealing at Diageo PLC, East African Breweries Limited, Kenya Breweries and UDV (Kenya) Limited, makes its submissions as follows:

A. Background

1. The Authority is a State Corporation established by Section 7 of the Competition Act No. 12 of 2010 (“the Act”). The mandate of the Authority is to enforce the Act with the objective of enhancing the welfare of the people of Kenya by promoting and safeguarding effective competition in the national economy and protecting consumers from unfair and misleading market conduct.
2. The Authority achieves the above mandate through regulation of market conduct and structure. Regulation of market conduct involves investigation into conduct such as Abuse of Dominance, Restrictive Trade practices, Abuse of Buyer Power, and Consumer issues and complaints. Regulation of market structure involves approving or disapproving of mergers after analyzing their likely effects on competition.
3. Section 31 of the Act mandates the Authority to receive and investigate complaints amounting to any conduct or proposed conduct that is alleged to constitute or may constitute an anti-competitive conduct.
4. On restrictive trade practices, section 21(1) of the Act prohibits agreements between undertakings, decisions by associations of undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part



of Kenya, unless they are exempt. Some of the collusive practices prohibited under this section include; price fixing, market allocation, collusive tendering/bid rigging and output restriction.

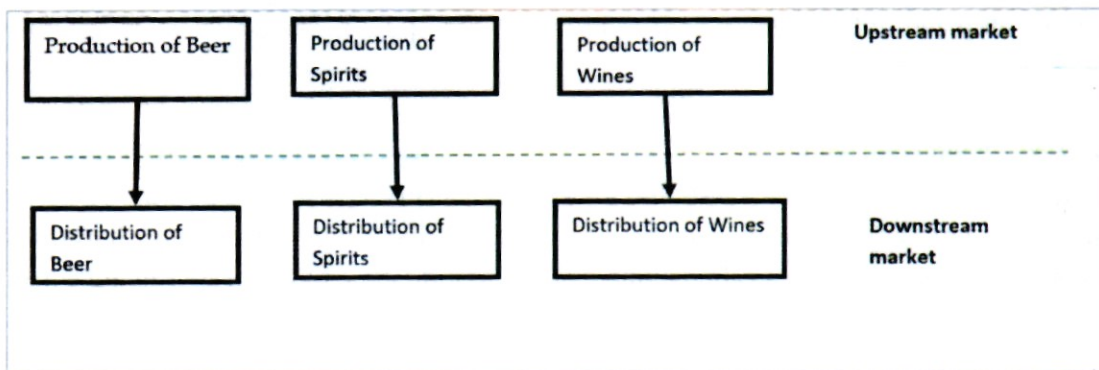
5. On the aspect of dominance, section 23 (1) of the Act provides the criteria for determining a dominant position. Specifically, an undertaking is considered dominant if:
 - a) controls not less than one-half of the total goods produced, supplied or distributed in Kenya or any substantial part of Kenya; or
 - b) controls not less than one-half of the services that are rendered in Kenya or any substantial part of Kenya.
6. Section 23 (2) further provides that notwithstanding the above an undertaking is also deemed to be dominant for the purposes of the Act where the undertaking:
 - a) though not dominant, controls at least forty per cent but not more than fifty per cent of the market share unless it can show that it does not have market power; or
 - b) controls less than forty per cent of the market share but has market power.
7. Section 24 (1) of the Act prohibits any conduct which amounts to the abuse of a dominant position. These include;
 - a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
 - b) limiting or restricting production, market outlets or market access, investment;
 - c) Predatory pricing, and
 - d) Discrimination in dealing
8. Further, section 9 of the Act elaborates on the various functions of the Authority such as; participating in deliberations and proceedings of government, government commissions, regulatory authorities and other bodies in relation to competition and consumer welfare; making representations to government, government commissions, regulatory authorities and such other bodies on matters relating to competition and consumer welfare and advising the government on matters relating to competition and consumer welfare.

B. The Alcoholic Beverages Sector in Kenya

11. The alcohol industry in Kenya is an essential sector of the economy, with a wide range of alcoholic beverages produced and consumed in the country. The manufacture of formal alcoholic drinks in Kenya dates back to 1922 when two brothers from England, George and

Charles Hurst, started brewing beer in Kenya. The two formally incorporated their business as a private company under the name of Kenya Breweries Ltd. Prior to that the alcoholic beverages market in the country was supplied by imported products and traditional liquor.

12. Alcoholic drinks manufactured, distributed and consumed in Kenya are either formal or informal. The informal alcoholic drinks will constitute the illicit brews that are manufactured and consumed without any form of regulation on quality, safety, packaging and selling therefore unlawful. Due to their availability and affordability, illicit brews appeal most to Kenyans of small means in rural areas and slum dwellers in cities and towns in disregard of the dangers posed to them by these illicit drinks.
13. The formal alcoholic sector constitutes the licensed alcoholic drinks sector which can be broadly categorized based on the method of manufacture as brewed alcoholic beverages (beer), distilled alcoholic beverages (spirits) and fortified alcoholic beverages (wines).
14. Markets for formal alcoholic beverages are therefore considered distinctively as beer market, spirits market and wines market.
15. The market can also be viewed from the value chain perspective where the manufacture of the specific formal alcoholic drinks (i.e. beer, spirits, and wines) as the upstream market and the distribution of the same downstream market as illustrated below.



16. EABL, through its subsidiaries Kenya Breweries Ltd and UDV, manufactures various brands of beer and spirits. It is currently not engaged in the manufacture of wines in Kenya.



17. Notably, there are significant barriers to entry in this market such as opening a brewery and setting distribution which is capital intensive and brand loyalty. Incumbents such as EABL and Keroche have elaborate distribution networks that guarantee their brands reach all corners of the country which is achieved through contractual arrangements with distributors. These barriers to entry hinder entry and expansion of the players in this market give the incumbents market power which can be abused to the detriment of the consumers.

C. The Major Players in the Alcoholic Beverages Market in Kenya

18. As indicated above, the alcoholic beverages market is composed of three sub-markets; the production of beer, spirits and wines as well as their distribution.

a. The brewed alcoholic beverages (beer) market

19. The Kenyan alcohol market was valued at approximately Kes. 330 billion (approximately \$3 billion) in 2021. Beer is the most popular alcoholic beverage in Kenya, accounting for about 63% of the market share of alcoholic beverages. Spirits are the second most popular alcoholic beverage in Kenya, accounting for approximately 27% of the market share.
20. The brewed alcoholic beverages market in Kenya currently has two major players, **EABL** through its wholly owned subsidiary **KBL** and **Keroche Industries**. As at 2020, KBL had a **90%** market share of this market while its closest competitor, Keroche Industries had **2%** of the market. The rest of the players; **Heineken**, **SABMiller Bacardi**, **Pernod Richard**, and **KWAL** controlled **8%** of the market share. However, with respect to the supply and distribution of alcoholic beverages market, EABL has an estimated market share of **71%**¹ according to a 2017 Euromonitor report.
21. Premised on the above, KBL being a subsidiary of EABL which controls 100% of its shareholding, enjoys dominance approximately of 90% of the market share which falls above the threshold percentage (50 +1 %) as stipulated in Section 23 of the Act.

¹ <https://edition.cnn.com/2017/03/01/africa/kenya-beer-market-mpa/index.html>.

22. As discussed above, the formal alcoholic beverages market in Kenya is composed of various major players such as East African Breweries Ltd (EABL) which is the dominant player, and its holding companies as well as subsidiaries which are located in Kenya as enumerated below.

b. East African Breweries Ltd (EABL)

i) Diageo Kenya

23. Diageo PLC is a British multinational alcoholic beverage company, with its headquarters in London, England. It operates from 132 sites around the world and has over 200 brands across beer and spirits. The company was formed from the December 1997 merger of liquor and beer giant Guinness PLC and alcohol and food power Grand Metropolitan PLC.

24. Diageo PLC operates in Kenya through its wholly owned indirect subsidiary, Diageo Kenya. Diageo PLC indirectly holds a 50.03% stake in EABL through its wholly-owned subsidiary, Diageo Kenya

ii) East African Breweries PLC (EABL)

25. EABL is the leading branded alcohol beverage business in East Africa with a wide range of beer and spirits brands. The Group's extensive network of breweries, distilleries, and distribution facilities span across the six regions within which it operates in East Africa, especially concentrated in the three core regions of Kenya, Uganda and Tanzania

26. EABL is majority owned by Diageo PLC (50.03%) through Diageo Kenya, while the rest of the shares are held by other investors in the stock market. The Group's brands are a combination of local beers and international premium spirits. These include: Tusker, Guinness, Bell Lager, Serengeti Lager, Kenya Cane, Uganda Waragi, Smirnoff and Johnnie Walker, among others.

27. The EABL Group has a network of independent distributors spread across the East African region. These distributors supply EABL Group products to outlets directly or to other stockists who then sell to outlets that interface directly with the consumers of beer and spirits



iii) Kenya Breweries Limited (KBL)

28. KBL has been a leading brewer in Kenya since it began operations in 1922. The company is wholly owned by East African Breweries PLC. The Company operates two breweries, one in Nairobi and the other was recently commissioned in Kisumu.
29. KBL is a subsidiary of EABL which has 100 % shareholding. The company's core business is **brewing of beer**, bottling and distribution of alcoholic and non-alcoholic beverages. Some of its key brands include: Tusker Lager, Tusker Malt Lager, Tusker Lite, Tusker Cider, Pilsner, White Cap, Whitecap Crisp, Senator, Guinness and Balози, among others.
30. Other players involved in the formal brewed alcohol beverages who are competitors of KBL are micro-breweries such as 254 brewing company, Ozzbeco Kenya Limited, Tona brewing Limited, Bila Shaka Craft brewery and Big Five Breweries Limited.

iv) UDV (Kenya) Limited

31. Established in 1962, UDV (Kenya) Limited is majority owned by Diageo PLC which holds 54% of its shares and East African Breweries PLC which holds 46.3% of its shares. Its core business is the manufacture, marketing and sales of spirit-based alcoholic beverages. It also imports and distributes premium spirit brands from Diageo. The brands produced and marketed in Kenya are Smirnoff, Gilbeys, Chelsea, Richot, Kenya Cane, V&A and Bond 7, Chrome and Triple Ace. Other international corporate brands which the company imports and distributes include: Baileys, Johnnie Walker range, Gordons, J&B Whisky, Captain Morgan, and VAT 69.
32. Competitors of UDV in the country include London Distillers, Patialla Distillers, Monument Distillers, Two Cousins Distillers, Elle Kenya Limited, Africa Spirits Limited and Crywan Enterprises.

v) East African Malting (Kenya) Limited

33. The company plays a vital role of supplying brewing raw materials in the form of malt, barley and sorghum to the brewing units of the EABL group in Kenya. The company is wholly owned by EABL.



vi) **Central Glass Industries Limited (CGI)**

34. It was established in 1987 in Kenya to produce glass containers. It is wholly owned by EABL. CGI is a fully integrated container glass manufacturing plant with additional printing facilities for bottle labelling with a melting capacity of 140 million tonnes per annum. The plant supplies domestic and export market.

vii) **Keroche Breweries**

35. As earlier mentioned, Keroche Breweries is second biggest player enjoying 2% market share in the beer market. The company started in 1997 as a small family business as a result of a market survey conducted by the Founders Joseph and Tabitha Karanja. Keroche had been manufacturing and distributing fortified wines until 2008 when production of Summit Lager and Summit Malt beer started.

c. **The distilled alcoholic drinks (Spirits) Market**

36. The spirits markets in Kenya is supplied by Five (5) major players and other small distilleries that operate within townships because of their limited capacities. There are also international brands in the market.

37. The five notable producers and suppliers of spirits in Kenya are; EABL through its subsidiary **UDV, Africa Spirits Ltd, London Distillers, Keroche Breweries and Kenya Wine Agencies (KWAL)**. Kenya Wines Agencies Ltd supplies its own and specified brands of spirits like Kibao Vodka, Hunter's Choice, Viceroy, amongst others. Tanzania Distillers Ltd the producer of Konyagi spirits also supplies spirits in Kenya. The other players are small distilleries and importers which are licensed and spread throughout the country.

d. **Fortified alcoholic drinks (Wines) market**

38. Wine is an alcoholic beverage made from fermented fruit juice, usually that of grapes. Wines made from other fruits are usually named after the fruit from which they are produced (for example, apple wine or elderberry wine) and are generically called fruit wine. Wine can also refer to the higher alcohol content of starch-fermented or fortified beverages such as barley wine, sake, and ginger wine.

39. The Kenyan market is served by players such as Kenya Wine Agencies Limited (KWAL), Leleshwa Wines, Keroche Industries, importers of wines (notably Nairobi Vitners Ltd and



Wines of the World Ltd), and small cottage wineries. According to Euromonitor International, imported brands have continued to be more prominent than local brands because Kenya is still fairly new to the wine manufacturing business and local brands tend to be perceived as being of inferior quality to imported brands.

40. **KWAL** is considered the major player in the wines market in Kenya. It is a state corporation and limited liability company incorporated in Kenya. The company is owned by South Africa's beverage firm, Distell Limited, which is a world renowned South African Company with a 55.44% shareholding. The other shareholder is Kenya Development Corporation (KDC) with 43.77% shareholding. Some of its wines include Cellar Cask, Caprice Wine, the Altar Wine and Drostdy Hof, amongst others. The second major player is Leleshwa Wines which is located in Naivasha. Imports from South Africa, Chile, Argentina, Italy and France also supply the local market.

D. Previous Investigations against EABL

a. East African Breweries Limited and its distributors (2003)

41. In 2003, the then Monopolies and Price Commission (the Commission) received complaints from anonymous East African Breweries Limited (EABL) distributors. Their complaints were that:
- The company was setting the wholesale price structure forcing the distributors not to sell any brands at any price different from those recommended without the Company's prior agreement;
 - The EABL could terminate its agreement with the distributor if the latter sold the company's products at prices other than the recommended prices;
 - Whereas EABL distributors could not vary prices of the products in relation to increase in transport and other related costs, EABL had provided for specific escalation clauses in their dealings with two distributors, namely; Tibbett & Britten and Express Kenya Limited in which these firms could automatically adjust their returns to cater for specific increases in their distribution costs.
42. The complaint triggered the Commission to launch an investigative study of the alcoholic beverages sector. The following are some of the practices that were deemed to have breached the Restrictive Trade practices, Monopolies and Price Control Act (Cap 504):



- a) **Territorial Allocation:** It was found that KBL and each distributor, super distributor and transporter had an arrangement defining the geographic area within which the distributor must sell/transport its products. This arrangement eliminated the possibility of any intra-brand competition because the distributor was a monopoly within the defined territory.
- b) **Exclusive Dealership:** The agreement between KBL and each Distributor and Super Distributor barred the distributor from being concerned or interested directly or indirectly in manufacturing, importation, marketing, distribution, or sale of any goods which are similar or competitive with KBL brands in the Republic of Kenya.
- c) **Price Fixing:** The Distribution Agreement between KBL and each distributor and Super Distributor empowered KBL to fix the wholesale prices for resale of its brands from time to time and the distributors could not sell at any price or prices different from the ones fixed by KBL.

43. The Commission invoked section 15 (3) of Cap 504 and required EABL to revise their distribution agreements with their distributors to **remove clauses that provided for territory allocation, exclusivity in dealing and fixing of wholesale prices**. It did not oblige and was therefore invited to negotiate a Consent Agreement in accordance with section 15(3). They refused to negotiate the Agreement prompting the Commissioner to recommend to the Minister to make an order regulating the practices in question. There is no indication in the file that the Minister took the requisite action.

b. Keroche Breweries and East African Breweries Limited (2009)

44. Keroche filed a complaint with the Commission alleging that East African Breweries Limited were:
- a. hindering promotion of Summit Lager through removal and destruction of Keroche's advertisement materials by East African Breweries (EABL)Limited,
 - b. threated and bribed bar operators to stop dealing in Keroche products, and
 - c. collude with banks to recall loans owed to banks by Keroche and its distributors.
45. Although there was no tangible evidence, oral evidence corroborating allegations (a) and (b) was overwhelming from the distributors of Keroche and retail outlets. There was also a preliminary finding on exclusivity arrangement with Senator branded bar owners not to sell competing products.



46. EABL was invited by the Commission to comment on the allegations by Keroche and findings of the Commission but denied involvement in any of the allegations. Regarding the position of the Commission that the Senator branded bar arrangement was restrictive, EABL explained that:
- a) its sales representatives were able to negotiate with bar owners who therefore agreed that the outlets be branded Senator by painting them Senator Keg brand, donning Senator Keg table mats and having Senator Keg branded chairs in the bars;
 - b) Senator branded bar owners were not prohibited from stocking/selling other competitors' brands; and
 - c) EABL could not refuse to deal with the Senator branded bar owners on account of those bars stocking/selling other competitors' brands.
47. Premised on the above clarification/explanations, the Commission concluded that the arrangement with Senator branded bars was not restrictive. The Commission therefore closed the case since there was sufficient evidence to proceed with the matter.

c. East African Breweries Limited and Maxam Limited (2010)

48. A complaint was lodged to the Commission by Maxam Limited who was a local distributor of Heineken brand of beer accusing EABL of;
- a) removal of advertising materials of Heineken from market outlets,
 - b) entering into exclusivity deals with outlets to prevent them from stocking other beers, especially Heineken,
 - c) entering into arrangement with outlets like Nakumatt Limited to accept only EABL's fridges and prevent the stocking of Heineken beer; and
 - d) offering beer outlets fridges to be exclusively used for the brands of the EABL.
49. Allegation (d) was not pursued by the Commission because an enterprise could not be encouraged to joyride on the investment of a competitor. This was because: (1) joy riders would have undue competitive advantage over the those who have invested in the coolers it has cost them nothing to provide the facilities and (2) encouraging joyriding would adversely affect innovation and investment since nobody will accept to tie capital in those ventures to be enjoyed by the competitors without incurring any cost.
50. The outcomes of the investigations were that;
- a) There was no evidence of removal of advertising materials of Maxam Ltd by EABL or its agents,



- b) There was no proof of any form of contract between EABL and outlets of alcoholic beverages which hindered stocking of Heineken, and
- c) There was evidence of an agreement between EABL and Harlequins Bar which barred the outlet from accepting fridges offered by suppliers of alcoholic beverages that compete with EABL products.

51. The Commission invoked sections 15(1) (a) and 15(2) of the Act, which required EABL to comment on the allegation and propose measures that they intended to take to bring their business practices into conformity with the Act within 14 calendar days from the date of the letter.

52. EABL agreed to review arrangement with Maxam with a view to ensuring that its provisions conformed to the provisions of CAP 504. They consequently amended, to the satisfaction of the Commission, articles of the Agreement which;

- a) hindered stocking of alcoholic beverages that competed with its products and
- b) barred the outlet from accepting fridges offered by suppliers of alcoholic beverages that compete with its products.

d. Competition Authority of Kenya v KBL (2014)

53. In March 2014, the Authority pursuant to section 31 of the Act initiated investigations into the formal alcoholic beverages sector in Kenya. Among the findings made by the Authority during the investigation was that Kenya Breweries (KBL)/EABL was engaged in territory allocation and was specifying brands to be supplied by the distributors hence undermining the intra-brand competition. A further Full investigations also established that the Distribution Agreement between KBL and its distributors was restrictive leading to the lessening of intra-brand competition because it provided for both territorial and brand exclusivity.

54. In March 2018, the Authority engaged Kenya Breweries Ltd (KBL) in a settlement process pursuant to section 38 of the Act. The settlement entered into required KBL/UDV to:

- a) Review and amend the then existing Distributorship Agreement to remove clauses on territorial and brand exclusivity;
- b) Rollout the amended Agreements to all its distributors and provide the Authority with at least two copies of the executed Agreements within two months from 13th November, 2017;



- c) Implement an Internal Competition Compliance Programme and conduct competition law training for its key personnel at least once a year; and
 - d) Review the compliance policy biennially.
55. KBL/UDV adhered to all the terms of the settlement agreement as was established by subsequent compliance checks carried out by the Authority, with the last compliance check having been undertaken this year.

e. Keroche Breweries Ltd v EABL & KBL (2019)

56. The Authority investigated allegations of abuse of dominance in the Euro Brown Beer bottle market following the receipt of a complaint from Keroche Breweries Limited (Keroche). The issues surrounding the case were also part of a court petition, *Civil Case E471 of 2019*, in which a ruling referred the matter to the Authority.
57. The complaint was pegged on allegations of abuse of dominance due to the embossing of the Universal Euro Brown beer by EABL. Keroche alleged that these actions were aimed at distorting a natural universal use bottle market to enable KBL collect more bottles from the market than was initially injected. Keroche further alleged that these actions were also aimed at imposing exclusivity which distorted the bottle exchange market.
58. Following conclusion of the investigation, the Authority noted that there was no abuse of dominance by the actions of KBL embossing Euro Brown Beer Bottles. However, the Authority noted areas of concern, though then not raising competition issues that could be a recipe for concerns in the future. Specifically, the Authority noted the following:
- a) There appeared to be a mix up of both parties' bottles in the market, considering that both parties targeted the same retail outlets; and
 - b) There seemed to be no clear mechanisms in the market on the treatment of competitors' bottles.
59. In order to cure the inefficiencies observed in the bottle management system, the Authority came up with various suggestions to the parties and invited them to come up with amicable solutions to resolve their industry issues. One of the parties however declined the invitation and with no contravention to be remedied, the Authority had no powers to impose such obligations on the parties. As such, the Authority closed the investigation.

60. This is an area that the Authority intends to consider soft regulation mechanisms such as the issuance of guidelines specific to the sector and establishing a code of practice for industries where in the Authority's opinion depict market failures, inefficiencies, supply chain integrity issues and/or problem of free riding.

E. Culpability of EABL for Anti-competitive practices

61. From the foregoing, the Authority has initiated various investigations against EABL. While in some of these investigations no contravention of the Act was established, in other cases such as **Competition Authority of Kenya v KBL (2014) and East African Breweries Limited and Maxam Limited (2010)**, the Authority had pursuant to section 36 (d) of the Act, directed for the distributorship arrangements with distributors to be amended in order to adhere to the provisions of the Act.

F. The Subject Mergers

62. One of the issues identified by the Senate that required the Authority to address was whether the defunct Price Control and Monopolies Commission investigated the acquisition of majority shares in EABL in 1997 by Guinness and the share restructuring in 2000 culminating in Diageo Kenya PLC acquiring majority shares in the Company.
63. The Authority has noted that the records pertaining to the above mergers were duly destroyed in accordance with the records management processes. As such, the Authority cannot ascertain how the above mergers were analysed and the relevant approvals granted.

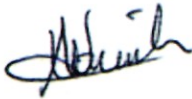
G. Conclusion and Way forward

64. The alcohol beverages market in Kenya is an essential sector of the economy, with a wide range of alcoholic beverages produced and consumed in the country. This market is composed of three sub-markets, the production of beer, spirits and wines as well as their distribution.
65. The brewed alcoholic beverages market in Kenya currently has two major players, **EABL** through its wholly owned subsidiary **KBL**, and **Keroche Industries**. As at 2020, KBL had a **90%** market share of this market while its closest competitor, Keroche Industries had **2%**



of the market. The rest of the players shared the remaining 8% of the market share. These 8% comprises of small local brewers and importers of international brands such as Heineken, SABMiller Bacardi, Pernod Richard, and KWAL.

66. There are significant barriers to entry in this market which cushion the incumbents from effective competition and *may* lead to exploitation of consumers.
67. The presence of anti-competitive conduct towards distributors is a subject that the Authority has dealt with in previous cases such as **Competition Authority of Kenya v KBL (2014)**, in which the Authority in a settlement process pursuant to section 38 of the Act directed KBL and UDV to review and amend their existing distributorship agreements to remove clauses on territorial and brand exclusivity. KBL/UDV adhered to all the terms of the settlement agreement as was established by subsequent compliance checks carried out by the Authority, with the last compliance check having been undertaken earlier this year.
68. The Authority continues to monitor the market to ensure the dominant player does not engage in abuse of its dominance to the detriment of consumers and new entrants.



Dr. Adano W. Roba
Ag. Director-General

4th October, 2023





ADENDUM

MEMORANDUM BY COMPETITION AUTHORITY OF KENYA TO SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM ON A PETITION ON FRAUDULENT DEALINGS AT DIAGEO PLC, EAST AFRICAN BREWERIES LIMITED, KENYA BREWERIES AND UDV (KENYA) LIMITED

Further to our memorandum to the Committee dated 4th October, 2023, please find the following additional information on the take overs involving East African Breweries Limited

Parties to the Merger/takeover	Nature of Merger/takeover	Year	Comment
Kenya Breweries Limited (KBL) and Tanganyika Breweries	KBL acquired shares in Tanganyika Breweries leading to the formation of East African Breweries Limited	1935 and 1936	No approval required as the target companies were outside Kenya. Also there was no Competition Law in place at the time.
EABL and Uganda Breweries	EABL acquired 60% stake in Uganda Breweries	1959	
EABL and Guinness PLC	Guinness PLC bought 25.1% stake in EABL	1997	No approval required as there was no acquisition of control.



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EABL and Guinness PLC	Guinness PLC bought more shares in EABL increasing its stake to 40.68%	1998	Acquisition of control could place when the acquiring company acquired 50%+.
EABL and Guinness PLC	Guinness PLC bought more shares in EABL increasing its stake to 46.56%	1999	
EABL and Guinness PLC	Guinness PLC bought more shares in EABL increasing its stake to 50.03%	2000	<p>Approval was required but there is no evidence of approval.</p> <p>Available information shows that the transaction leading to change of control took place in the stock exchange before the parties applied for approval pursuant to the requirement of the Restrictive Trade Practices, Monopolies and Price Control Act, CAP 504, Laws of Kenya.</p> <p>But we do not have any evidence that approval was sought and granted.</p>



Dr. Adano W. Roba
Ag. Director-General

9th October, 2023



6th September 2023



Chairman,
Trade, Industrialization and Tourism Committee,
The Senate of Kenya
Parliament Buildings
P.O. Box 41842 – 00100
Nairobi

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Through

The Honourable Clerk
The Senate of Kenya
Parliament Buildings
P.O. Box 41842 – 00100
Nairobi

Advance by Email
Original by recorded hand delivery

Attention: Mr. Jeremiah M. Nyegenye, CBS
Email: clerk_senate@parliament.go.ke / tradeindtourismcomm.senate@parliament.go.ke

Dear Sir,

Re: Clarification on the Petition Dated 30 May 2023 on Alleged Fraudulent Dealings

East African Breweries PLC (EABL) understands and deeply respects the Senate's oversight role in shaping business practices in Kenya. We are participating in these proceedings in good faith for the greater good of our nation.

ABOUT EABL

EABL is a Kenyan multinational business established in 1922 and headquartered in Nairobi. EABL operates extensively throughout the East African region and is publicly listed on the Nairobi Securities Exchange. EABL is also cross-listed on the Uganda Securities Exchange and the Dar es Salaam Stock Exchange, epitomizing a Kenyan-origin multinational with substantial regional influence.

EABL serves as a hub for Diageo's Africa and global operations and accommodates a variety of specialized business units that furnish a range of services and expertise globally, encompassing the Diageo Africa:

1. Innovation Hub
2. Procurement Centre of Excellence
3. Logistics Hub
4. Digital Marketing Hub
5. Corporate Relations Centre of Excellence
6. Digital and Technology Hub

EABL has a productive value chain across the region which covers farmers, employees, suppliers, distributors, retailers and the hospitality industry. This is directly managed by a workforce of over 1400 direct employees working in partnership with the different stakeholders. EABL also has over 156 personnel deployed in various Diageo businesses and hubs across the world either as expatriates or experts in global functions.

Finally, EABL's award winning products are responsibly marketed, exported, sold and are preferred by adult consumers across the world – as goods made in Kenya. The net result is that EABL is the largest contributor of domestic excise in Kenya and the second largest taxpayer in Kenya – contributing to the development of our nation.

A handwritten signature or set of initials, possibly 'JW', located at the bottom right of the page.

THE PETITION

We acknowledge the petition filed by Mr. Rono Nicholas on 30 May 2023, which is sponsored by the Senator for Bomet County, Mr. Hillary Sigei (the Petition). The Petition addresses concerns of alleged fraudulent activities within EABL.

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EABL submitted a written response on 27 June 2023 (enclosed herewith as **Annexure 1**) penned by our Group Legal Director, Mr. Nadida Rowlands. Subsequently, on 6 July 2023, Mr. Nadida, accompanied by a delegation from EABL and legal representatives from Coulson Harney Advocates (led by Mr. Richard Harney), convened with the Senate Standing Committee on Tourism, Trade, and Industrialization (the Committee) for a comprehensive discussion.

Our position is that the Petition lacks credibility and has no legal or solid grounds and hence we anticipated the inquiry into this matter to conclude by 31 July 2023, as stipulated by Standing Orders 238 (2), which gives a 60-day statutory deadline.

In the absence of a formal extension of time or any other legal process to extend time, we were quite surprised to receive your letter dated 21 August 2023 requesting EABL to respond to four specific questions arising from the Petition. Nonetheless, we are keen to address the concerns raised and provide additional context without any prejudice to our rights under the law in order to bring this matter to a logical conclusion.

EABL RESPONSES TO QUESTIONS

I take this opportunity to represent EABL at this committee and we have prepared these responses to the four questions.

QUESTION ONE - THE STRATEGIC BUSINESS IMPACT AND BENEFITS OF THE ACQUISITION OF AN ADDITIONAL 15% SHAREHOLDING IN EABL BY DIAGEO PLC IN 2023.

Diageo Kenya Limited (Diageo Kenya) acquired an additional 15% shareholding in EABL in 2023, by way of a Public Tender Offer to all EABL shareholders. This transaction was approved by the Capital Markets Authority (CMA) and relevant regulators. Hence Diageo Kenya increased its shareholding in EABL from 50.03% to 65%. Enclosed herewith as **Annexure 2** is the Public Tender Offer as advertised in the local dailies.

This transaction was the single largest foreign direct investment in the Kenyan stock market in 2023 where Diageo Kenya paid a total of KES 22.7Bn to EABL shareholders in the market. This was recognized by His Excellency the President Dr. Ruto on 22nd March 2023 during the bell ringing event at the Nairobi Securities Exchange, as a show of confidence in the local Kenyan market by foreign investors.

QUESTION TWO - WHETHER THE ACQUISITION BY DIAGEO PLC IS A CONSOLIDATION OF THE ALLEGED TRANSFER TO AND EVENTUAL TAKEOVER BY HEINEKEN OR CASTEL GROUP.

There is no evidence to substantiate this claim and we humbly submit that it should be treated as a false allegation.

As part of its disclosures in the 2023 Public Tender Offer, Diageo Kenya disclosed that it had made no agreement or arrangement to sell EABL shares to any other person.

We request that the Petitioner is cautioned against making false or unsubstantiated allegations as this can cause serious harm to businesses.

QUESTION THREE - WHY EABL WAS UNDERTAKING CONSIDERABLE DOWNSIZING DESPITE CONSISTENT POSTING OF MARGINAL PROFITS

EABL has not engaged in any corporate downsizing initiatives within the past decade.

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EABL has channeled substantial investments exceeding USD 640M (circa KES 96 billion) during this period, facilitating significant job creation. Notable instances of such investments include:

- 1) The allocation of USD 120 million (circa KES 14 billion) for the establishment of the new Kisumu Brewery in 2019.
- 2) A further injection of USD 42 million (circa KES 6.3 billion) in 2021 towards supply of green energy through the development of three Biomass plants in Kenya and Uganda, introducing a new business segment centered on the utilization of previously discarded biomass materials.

Despite the pronounced adverse repercussions of the COVID-19 pandemic in 2020 and 2021 on the alcohol sector, characterized by regulatory impositions leading to bar closures and sales disruptions, no layoffs were implemented, nor were there reductions in employee remunerations. Furthermore, we intensified our health insurance provisions to encompass COVID-19 related contingencies and dispensed hygiene kits for employees' families.

As a matter of fact, EABL has not downsized as alleged, and it is on a substantial growth trajectory, a trend reflected in the augmentation of the company's total asset value from KES 14 billion in 2000 to KES 110 billion in 2022. Growing in tandem, has been EABL's contribution to Government revenue and shareholder returns in terms of profits and dividends.

QUESTION FOUR - PROVIDE JUSTIFICATION FOR THE POLICY OF THE DISPOSING OFF HUGE COMPANY ASSETS AND HOW LOCAL SHAREHOLDERS HAVE BENEFITTED FROM THESE SALES.

EABL has not sold any strategic, critical or performing business assets as alleged by the Petitioner.

Our assets management strategy is directly linked with the future strategic vision of the business. This includes evaluating our asset portfolio with the outcome of identifying what is fit for purpose for the future of the business. Our focus is to invest smartly in capacity expansion to position our business for future growth and meet consumer demands effectively and efficiently. In the last 10 years, we have injected USD 640M (circa KES 96 billion) in strategic investments across the region.

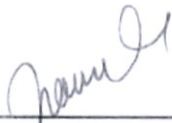
As demonstrated above, we have grown our asset base, invested smartly to cater for the changing environment and consumer landscape. As a result of these strategic decisions, our shareholders have consistently received decent returns on their invested capital.

CONCLUSION

We believe our submissions have adequately addressed your concerns and puts this matter to rest.

Yours faithfully,

For: East African Breweries PLC



Jane Karuku, MGH
Group Managing Director
Chief Executive Officer

27 June 2023

The Honourable Clerk,
The Senate of Kenya
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi, Kenya

Advance by Email
Original by recorded hand delivery

Attention: Mr Jeremiah M. Nyegenye, CBS
Email: clerk.senate@parliament.go.ke



Dear Sir,

Subject: False and malicious petition dated 30 May 2023 by Mr. Nicholas Rono ('the Petition')

Honourable Clerk, we wish to bring the following matters to your urgent attention, as relate to the Petition.

We were shocked to learn from the Parliament website that the Petition was presented to the Senate on 30th May 2023 and committed to the Senate Committee on Trade, Industrialization and Tourism ("the Committee") on 31st May 2023. We also note that the Committee met with the Petitioner on 22 June 2023 "to consider the Petition" and a further meeting has been scheduled for 29 June 2023. Both meetings appear on the Schedule of Committee Sitings published on the Parliament website.

All this has been done without any notice to EABL or any of its affiliate companies referred to in the Petition (hereinafter together referred to as 'EABL') and/or without affording EABL a right of reply to the Petition.

We have also discovered - again, from the Parliament website, that the Petition has been fixed for hearing on 31 July 2023. We are yet to be given notice of any such hearing.

Without prejudice to the above, we have reviewed the Petition and our preliminary response is that:

1. The purchase of shareholding in EABL by Diageo plc was the single largest foreign direct investment in Kenya in 2023 where a total sum of KShs 22.8 Bn was paid to the market. This was recognized by His Excellency the President Dr. Ruto on 22 March 2023 as a show of confidence in the local Kenyan market by investors. This transaction was approved by the Capital Markets Authority (CMA).

Contrary to the false and malicious assertions in the Petition, EABL did not cease to be a Kenyan company - instead it has transformed over the years into a strong local Kenyan multinational, employing thousands of Kenyans and East Africans. A local homegrown company in partnership with the finest global partners - based in Kenya with a strong value chain making it a key driver for growth and prosperity in Kenya.

The totality of the allegations in the Petition are false, defamatory, highly inflammatory, and sensational. The Petitioner is hiding behind the cloak of the Senate so as to publish false, misleading and defamatory material of and concerning EABL. We are concerned that the false and malicious allegations in the Petition have been published on the Parliament website as if they are factual, thus exposing our business and local and foreign investors to serious harm and reputation damage.

OUR REQUEST: The false and malicious allegations in this Petition be immediately removed from the Parliament website to protect the integrity, reputation and confidentiality of EABL.

2. The allegations in the Petition are the subject of ongoing legal proceedings in **High Court Constitutional Petition 249 of 2016 Big Tasha Distributors Limited -vs- Diageo plc (Diageo), East African Breweries plc (EABL), Kenya**

B

The Capital Markets Act Chapter 485A of the Laws of Kenya
Regulation 4(3) of the Capital Markets (Take-overs and Mergers) Regulations, 2002

PUBLIC ANNOUNCEMENT

Acquisition by Diageo Kenya Limited of up to 118,394,897 ordinary shares in the issued share capital of East African Breweries PLC.

DIAGEO

Pursuant to Regulation 4(3) of The Capital Markets (Take-overs & Mergers) Regulations, 2002 (the **Take-over Regulations**), we, Diageo Kenya Limited (**Diageo Kenya**), hereby announce to the public that we have on 13 October 2022 served an East African Breweries PLC (**EABL**) notice of our intention to acquire up to 118,394,897 additional ordinary shares in EABL by means of a tender offer (**Tender Offer**) made to all other shareholders of EABL.

1. The Proposed Offeror

The proposed offeror is EABL, a public limited company incorporated under the laws of Kenya with registration number C. 5/34, listed on the Main Investment Market Segment of the Nairobi Securities Exchange, whose registered office is 5th Floor, Garden City Business Park, Block A and of P.O. Box 30161-00100, Nairobi, Kenya. Further information in relation to EABL is available on its website at <https://www.eabl.com/>.

2. The Proposed Offeree

The proposed offeree is Diageo Kenya, a private limited liability company incorporated under the laws of the Republic of Kenya with registration number C.5445 and having its registered office at Land Reference Number 1870/1/176, ALN House, Eldama Ravine Close, off Eldama Ravine Road, Westlands, Nairobi, Diageo Kenya is a wholly owned indirect subsidiary of Diageo plc (**Diageo**). Diageo is headquartered in London, England and has a primary listing on the London Stock Exchange and a secondary listing on the New York Stock Exchange and, through its subsidiaries, joint ventures and other investments operates in multiple other African countries offering various alcoholic and non-alcoholic beverages to consumers around the world. Further details on Diageo, including its annual financial reports, details of directors, core activities and management can be found on its website at <https://www.diageo.com/en>. Additional reporting information is available at <https://www.diageo.com/en/investors>.

3. Current Shareholding by Diageo Kenya in EABL

As at the date of this announcement, Diageo Kenya holds 395,608,434 ordinary shares in the capital of EABL (**Ordinary Shares**), which represents 50.03% of the issued share capital of EABL. Diageo Kenya therefore currently has effective control of EABL within the meaning of the Take-over Regulations.

4. Proposed Acquisition of Additional Shares of EABL by Diageo Kenya

Diageo Kenya proposes to acquire up to an additional 118,394,897 Ordinary Shares (the **Additional Shares**) in EABL, representing no more than fourteen decimal point nine seven per cent (14.97%) of the issued share capital of EABL, through the Tender Offer. The price payable for each Ordinary Share tendered in the proposed Tender Offer is Kenya Shillings 192.00 (**Tender Price**). As will be explained in more detail in the Tender Offer Document, the Tender Price represents:

- a premium to the volume weighted average price (VWAP) at which Ordinary Shares of EABL traded on the Nairobi Securities Exchange days up to 12 October 2022 (the last day on which EABL shares traded before Diageo Kenya submitted its Notice of Intention to launch the Tender Offer) of: (i) thirty one decimal point four per cent (31.4%) to the past 30 trading days VWAP; (ii) forty two decimal point five per cent (42.5%) to the past 90 trading days VWAP; and (iii) a premium of thirty three decimal point five (33.5%) to the past 180 trading days VWAP.
- a premium of thirty nine decimal point seven per cent (39.7%) to the daily average trading price at which Ordinary Shares traded on 12 October 2022 (the last day on which EABL shares traded before Diageo Kenya submitted its Notice of Intention to launch the Tender Offer).
- an implied Price to Earnings per Share multiple of 12.8 times (for the financial year ended 30 June 2022); and
- an implied Total Enterprise Value to unadjusted EBITDA multiple of 5.7 times (for the financial year ended 30 June 2022).

Further details of the proposed Tender Offer will be set out in a detailed tender offer document, which will also be made available, subject to receipt of regulatory approvals, to each shareholder of EABL (the **Tender Offer Document**). Diageo Kenya also intends to publish, subject to receipt of regulatory approvals, an abridged version of the Tender Offer Document in two (2) national newspapers. If the Tender Offer is accepted in full, Diageo Kenya will hold 514,003,331 ordinary shares in EABL, which would represent sixty-five per cent (65%) of the issued share capital of EABL.

5. Application for Exemption from the requirement to make a Take-over Offer

Diageo Kenya (and its parent company, Diageo) regards East Africa as one of its strategic growth markets that will help Diageo to fulfil its ambition to be one of the best performing, most trusted and respected consumer products companies in the world. Diageo is a global leader in beverage alcohol with an outstanding collection of brands across beer and spirits. Diageo's strategic priorities - sustain quality growth, embed everyday efficiency, invest smartly, promote positive drinking, champion inclusion and diversity, and pioneer grain-to-glass sustainability support: the achievement of this

ambition in Africa. Diageo's strategy is to grow its beer brands fast and its spirits brands faster, through selective participation, including 'new beer', leveraging the broad range of the global Diageo portfolio. Diageo's operating model seeks to build resilience, agility and strength into its African businesses. Diageo seeks to drive smart investments through local manufacturing, innovation and partnerships to unlock growth. Local sourcing is very important to Diageo's strategy, currently at 80%, directly supporting its commercial operations whilst bringing wider economic benefits to local communities, agricultural development and farmers. The proposed acquisition by Diageo Kenya of the Additional Shares is consistent with Diageo's African growth and active portfolio management. Diageo's East African business continues to go from strength to strength and is expanding its reach in pace. In addition, a resilient and adaptive approach by the East African business through the Covid-19 pandemic combined with vibrant e-commerce growth has cemented Diageo's belief that this is an appropriate time to deepen its East African position. This transaction will enhance Diageo's exposure to the East African growth opportunity. It is a demonstration of Diageo's long-term confidence in EABL and in the East African alcoholic and non-alcoholic beverage market and economy, generally. Furthermore, Diageo's indirect shareholding in EABL of 50.03% is lower than the average shareholding of approximately 66.9% held by multinational parent companies in listed subsidiaries in Kenya. It is also lower than the average shareholding for other listed subsidiaries of Diageo in Africa such as in Guinness Nigeria and Guinness Ghana Breweries Limited where Diageo indirectly holds a 56.02% and 80.4% stake, respectively. Diageo Kenya intends to maintain EABL's listing on the Nairobi Securities Exchange following completion of the Tender Offer, as it believes the interests of EABL's shareholders and the broader public would be best served by EABL remaining a company listed on the Nairobi Securities Exchange and available to be invested in by the Kenyan public. Diageo Kenya does not intend to make a take-over offer for EABL within the meaning of the Take-over Regulations. Diageo Kenya will apply to the Capital Markets Authority (the CMA), pursuant to the provisions of Regulation 5(1) and 5(2)(a) of the Take-over Regulations, for an exemption from complying with the requirement to make a take-over offer on the basis that the proposed acquisition of the Additional Ordinary Shares is for the purpose of a strategic, long term investment reflecting Diageo Kenya's belief in the future potential of EABL within the Kenyan and regional economy, and desire to continue the governance structure of EABL as it currently stands, with continued full participation of local stakeholders. Permitting such an exemption will allow the maintenance of domestic shareholding for strategic reasons and serves the public interest.

6. Persons acting in concert

Diageo Kenya is not acting in concert with any person (whether pursuant to a formal or informal agreement or understanding) in relation to the acquisition of the Additional Shares or the consolidation of control of EABL.

7. Conditions

The Tender Offer is entirely subject to and conditional on:

- approval from the CMA and the CMA granting the exemption sought pursuant to Regulation 5(1) of the Take-over Regulations; and
 - any other regulatory approvals that may be required to implement the Tender Offer, and will not commence unless and until these approvals and exemptions have been granted.
- If these conditions are met, it is expected that the Tender Offer will open at 9:00 a.m. on 30 January 2023 and will be open to holders of Ordinary Shares on the register of EABL as at 5:00 p.m. on 16 January 2023 (the **Record Date**). The Tender Offer will close in two phases:
- First Closing:** the first phase of the offer will close at 5:00 p.m. on 17 February 2023 (the **First Closing Date**); and
 - Second Closing:** the second and final phase of the offer will open at 9:00 a.m. on 20 February 2023 and close at 5:00 p.m. on 10 March 2023 (the **Second Closing Date**).

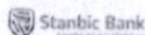
The Record Date and the dates for the First Closing and Second Closing are estimated dates and are therefore subject to change. Any changes will be communicated by Diageo Kenya in due course. A holder of Ordinary Shares will only be permitted to tender their Ordinary Shares in the Tender Offer if at the First Closing Date or the Second Closing Date, as applicable, such shares are free from all pledges, liens and other encumbrances. In accepting tenders, Diageo Kenya intends to give preference to shareholders on the register of members on the Record Date, in respect of the Ordinary Shares held by them at the Record Date, up to a maximum of 10,000 Additional Shares. In order to facilitate the settlement of the Tender Offer and ensure that ordinary shares tendered in the Tender Offer can be transferred, an application will be made for trading in EABL's ordinary shares to be suspended for a short period post Second Closing to allow for the settlement and transfer of shares.

Dated 14 October 2022

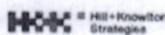
By order of the Board

Diageo Kenya Limited

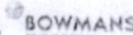
FINANCIAL ADVISOR
AND SPONSORING BROKER



COMMUNICATIONS
ADVISOR



LEGAL
ADVISOR



Breweries Limited (KBL) and UDV (Kenya) Limited (UDV). This case is yet to be heard and is also the subject of several other contentious legal proceedings before the Supreme Court, Court of Appeal and the High Court.

The Petition before the Senate is therefore an abuse of the process of the Senate, aimed at interfering with the ongoing litigation and an attempt to usurp the jurisdiction of the court, by unlawful means.

OUR REQUEST: As per established precedent and the rule of law, the hearing scheduled for 31 July 2023 and all proceedings and/or Committee meetings and sessions relating to the Petition be vacated to allow for the courts to hear and determine the cases before it.

3. Finally, our view is that the Petition does not present any evidence or argument of the matters within the authority of the Senate as contemplated in Article 96 of the Constitution which clearly provides that the Senate:
- 3.1. represents the counties and serves to protect the interests of counties and county governments.
 - 3.2. participates in law making functions concerning counties.
 - 3.3. exercises oversight over national revenue allocated to county governments; and
 - 3.4. participates in oversight of state officers by considering and determining any resolution to remove the President or Deputy President from office.

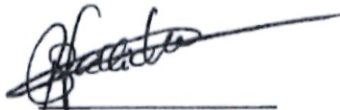
The allegations in the Petition relate to private commercial transactions and regulatory issues that are outside the purview of the Senate.

OUR REQUEST: this Petition should not be committed to the House as it does not invoke the jurisdiction of the Senate as it is not related to counties or their interests.

In conclusion, we respectfully request that you exercise your powers under Standing Order No. 1 and rule that the Senate has no jurisdiction to hear and determine the Petition as the matters raised are before competent authorities that have jurisdiction to hear and determine them. These includes the courts and the CMA. This will uphold the rule of law and respect the Constitutional limits of the Senate's jurisdiction.

We appreciate your attention and consideration of this matter.

Yours faithfully,
For East African Breweries plc



Nadida Rowlands
Group Legal Director

Cc
Hon. Amason Jeffah Kingi, EGH, MP
The Honourable Speaker,
The Senate of Kenya
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi,
Kenya

Ms. Terry Mwangi
Partner
Bowmans Law
5th Floor, West Wing, ICEA Lion Centre
Riverside Park, Chirimo Road, Nairobi
PO Box 10643-00100, Nairobi, Kenya
www.bowmanslaw.com

Please find attached a copy of the Petition for your further action.

D

**KENYA REVENUE
AUTHORITY**



**REPORT TO THE SENATE STANDING COMMITTEE ON TRADE,
INDUSTRIALIZATION AND TOURISM**

MARCH 2024

KENYA REVENUE AUTHORITY
Confirmed
P. O. Box 48240 - 00100, NAIROBI
Date: 15.3.2024
Sign: 

1.0 Introduction

The Kenya Revenue Authority (KRA) appeared before the Senate Standing Committee on Trade, Industrialization, and Tourism on Thursday, 7th March 2024. During the meeting, KRA provided insights regarding the Petition on Fraudulent Dealings at Diageo PLC, East African Breweries Limited (EABL), Kenya Breweries Limited (KBL) and UDV (Kenya) Limited. The outcome of the meeting was for KRA to provide additional information regarding the matter. The information to be provided included the following;

- i. A list of all the KRA personnel attached to EABL plants since 2017 and the reasons for their re-calling;
- ii. The co-relation of tax collections and variances as occasioned by the decisions made in (a) above;
- iii. Alternative dispute resolutions (ADR) between KRA and EABL, in particular, full disclosures of the settlement of ADR 2;
- iv. The current total amount of taxes in dispute;
- v. The tax bonds issued to EABL by KRA; and
- vi. Any preferential tax waivers granted to EABL.

I wish to submit as follows:

2.0 KRA's Responses

2.1 A list of all KRA personnel attached to EABL plants since 2017 and the reasons for their re-calling;

The **Table 1** below shows the list of officers posted to the various EABL plants and their reasons for recalling. **See Annex 1** for the deployment letters.

Table 1 List of Resident Officers deployed and their reasons for recalling

#.	Officer Name	Start Date	End Date	Duration	Duty station	Reasons for Recalling
1	Joel Kibaki	Aug-17	Dec-18	1year 2months	EABL Nairobi	Internal Re-organization
2	David Wekesa	Jul-18	Jul-22	4 years	EABL Nairobi	Internal Re-organization
3	Soila Kasero	Dec-18	Feb-19	3 months	EABL Nairobi	Internal Re-organization

#.	Officer Name	Start Date	End Date	Duration	Duty station	Reasons for Recalling
4	Kennedy Macharia	Oct-19	Jan-21	1 year 3 months	EABL Nairobi	Internal Re-organization
5	Simon Adede	Nov-19	Jul-23	3 years 9months	EABL Kisumu	Internal Re-organization
6	Tobias Ogendo	Mar-21	Aug-22	1 year 6 months	EABL Nairobi	Internal Re-organization
7	Jacinta Mumo	Jun-22	Dec-22	7 months	EABL Nairobi	Internal Re-organization
8	Godfrey Munga	Aug-22	Apr-23	8 months	EABL Nairobi	Internal Re-organization
9	Irene Barkitoch	Nov-22	Apr-23	6 months	EABL Nairobi	Internal Re-organization
10	Felix Asuka	May-23	To date	9 months	EABL Nairobi	Internal Re-organization
11	Moses Mutiso	May-23	To date	9 months	EABL Nairobi	Internal Re-organization
12	Dan Igunza	May-23	To date	9 months	EABL Kisumu	Internal Re-organization
13	John Kinuthia	Jul-23	To date	7 months	EABL Nairobi	Internal Re-organization

2.2 The co-relation of tax collections and variances as occasioned by the decisions made in (a) above:

The data provided in **Table 2** represents the revenue performance during the tenure of the officers posted to the EABL plants. Regarding the variances in revenue performance, it is notable that:

1. The Revenue performance is affected by the change in Excise Duty rates.
2. Taxes for the years 2020 and 2021 were affected by the prevalence of the COVID-19 pandemic, especially for beer.
3. Monthly taxes vary on account of seasonal consumption patterns. For example, December is always high due to the holiday season.
4. The revenue collected is based on the taxes remitted by the particular EABL plant and not the amounts collected by individual officers.
5. Both KBL Kisumu and KBL Nairobi have a single PIN, and hence the payment of taxes is through a unified PIN thus the collections cannot be separated.

Table 2: Revenue Performance during Officers' Tenures

#.	Name of Officers	Company & Collections in (Kshs)	
		KBL	UDV
<i>July 17 - Dec 18</i>			
1.	Joel Kibaki	54,729,369,967	11,767,192,855
<i>Dec 18 - Feb 19</i>			
2.	Soila Kasero	9,564,666,577	1,970,928,932
3.	David Wekesa		
<i>Oct 19 - Jan 21</i>			
4.	Kennedy Macharia	37,879,800,363	13,783,679,052
5.	David Wekesa		
<i>Mar 21 - Jul 22</i>			
6.	Tobias Oendo	48,485,729,388	18,085,027,929
7.	David Wekesa		
<i>Jun 22 - Aug 22</i>			
8.	Jacinta Mumo	5,547,753,664	2,509,844,987
9.	Tobias Oendo		
<i>Jun 22 - Dec 22</i>			
10.	Irene Barkitoch	22,483,863,279	9,797,686,617
11.	Godfrey Munga		
12.	Jacinta Mumo		
<i>Aug 22 - Apr 23</i>			
13.	Irene Barkitoch	31,249,042,323	13,640,632,059
14.	Godfrey Munga		
<i>May 23 - Date</i>			
15.	John Kinuthia	28,197,318,218	12,132,506,198
16.	Moses Mutiso		
17.	Felix Asuka		

2.3 Alternative dispute resolutions (ADR) between KRA and EABL, in particular, full disclosures of the settlement of ADR 2

The Commissioner issued a notice of assessment amounting to **Kshs. 4,314,325,436** on 27th September 2022 and the taxpayer objected to the assessments 28th October 2022.

The Objection Decision was communicated to KBL on 22nd December 2022. The Taxpayer was dissatisfied and appealed to the Tax Appeals Tribunal (TAT) on 3rd February 2023 and opted to resolve the dispute through Alternative Dispute Resolution (ADR) on 7th July 2023. See **Table 3** and **Table 4** below listing details of the dispute.

NB: The assessment was revised from **Kshs. 4,314,325,436** to **Kshs. 186,684,483** (Kshs. 84,626,817 agreed at objection and Kshs. 102,057,666 agreed at ADR).

Table 3: Summary of confirmed taxes at assessment, objection, and TAT/ADR

Tax Head	Issue	Taxes Assessed (Kshs)	Taxes Confirmed at Objection	Taxes Confirmed at ADR
Corporation tax	Expenses Cost of Sales (COS) claimed against taxable profits	542,104,736	542,104,736	Revised to Nil
Value Added Tax (VAT)	Sales per VAT vs Income Tax Returns	13,148,970	Undisputed taxes paid	Ksh 13,148,970 Undisputed taxes paid at objection
	Prohibited Input VAT	55,231,608	Undisputed taxes paid	Ksh 55,231,608 Undisputed taxes paid at objection
	Penalty on withholding VAT not remitted	49,072,438	Revised to Nil	Revised to Nil at objection
	VAT on Excise Duty due from unsupported exports	428,401,150	Revised to Kshs. 424,803,758	Revised to Nil
Withholding Tax	Management fees and related party recharges	518,705,302	Revised to Kshs. 196,253,527	Revised to Kshs. 102,057,666
Excise Duty	Excise duty rebates on Exports	2,691,414,993	Revised to Kshs. 2,668,943,575	Revised to Nil
	Prepaid excise duty claimed attributed to sales made to DEFCO	16,246,239	Undisputed taxes paid	Ksh 16,246,239 Undisputed taxes paid at objection
Total tax payable		4,314,325,436	3,832,093,316	186,684,483

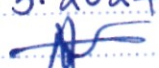
KENYA REVENUE AUTHORITY
 Confirmed
 P.O. Box 48240 - 00100, NAIROBI
 Date: 15.3.2024
 Sign: 


Table 4: Matrix of Disputed Issues

Tax head	Issue	Basis of Assessment	Basis of Objection Decision	Basis of ADR Agreement
Corporation tax	Expenses (COS) claimed against taxable profits	<p>KRA charged tax on variances identified between the raw materials cost claimed by the taxpayer computed using the standard costing method and the expected raw materials cost arrived at by KRA using the conventional method (COGS=Opening Inventory+ Purchases- closing Inventory).</p> <p>*KRA's purchases were derived from KRA's internal records (VAT Returns).</p>	<p>KBL provided documents including the purchases ledger, sample invoices and their cost of sales computation in support of the standard costing method.</p> <p>The review established some gaps in the documents provided such as inadequacy of the sample invoices (they did not cover all the periods assessed). The assessment was therefore confirmed as issued.</p>	<p>KBL provided a wider sample of invoices for all the periods assessed. KRA's review of the purchase ledgers and invoices noted that KBL had omitted some exempt purchases in their VAT returns as they had no impact on the VAT input claimed. KBL also demonstrated that the 2 methods of costing arrived at the same net cost of sales position.</p> <p>Based on the above the assessed taxes were revised to NIL</p>
Value Added Tax	Sales per VAT vs Income Tax Returns	KRA charged tax on variances identified between aggregated 12 months VAT sales and Income Tax Company turnover. Income Tax turnover was higher than VAT sales and the variance was construed to be undeclared sales for VAT purposes.	The taxpayer agreed and paid assessed taxes of Ksh 13,148,970	The taxpayer agreed and paid assessed taxes of Ksh 13,148,970
	Prohibited Input VAT	KRA disallowed VAT input claimed on prohibited inputs as per section 17(4) of VAT Act 2013. The input disallowed related to staff gym services, office events, office consumables, hired vehicles and commercial cars' fuel.	The taxpayer agreed and paid assessed taxes of Ksh 55,231,608	The taxpayer agreed and paid assessed taxes of Ksh 55,231,608

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Tax head	Issue	Basis of Assessment	Basis of Objection Decision	Basis of ADR Agreement
	Penalty on withholding VAT not remitted	KRA had computed withholding VAT not remitted after taking into account all purchases including from suppliers who are exempt from withholding VAT. KRA charged a penalty at 10% of the unremitted WHVAT as per section 39A of the Tax Procedures Act (TPA), 2015.	<p>KBL objected that KRA had not factored purchases from exempt suppliers where WHVAT is not deductible.</p> <p>KBL also argued that KRA erred by disregarding the WHVAT penalty of Kshs. 49,072,438 is only chargeable upon conviction as provided under Section 42A(4D) of the TPA.</p> <p>KRA's review established that exempt suppliers had been allowed at the assessment.</p> <p>Further, KRA noted that the penalty for the years 2016 and 2017, was time bared (assessed beyond a 5-year period as provided under section 31(4) of TPA.</p> <p>Excluding 2016 and 2017 KRA recomputed the cumulative variance which resulted to an overstatement of the WHVAT paid by KBL.</p> <p>Based on the above the assessed taxes were revised to NIL</p>	Assessment dropped at objection.
	VAT on Excise Duty due from unsupported exports	KRA computed variances between rebates claimed by KBL on exported finished goods in their excise returns and the quantity of exports obtained from customs data. KRA charged VAT on the established variance.	KBL objected stating that, while raising the assessment KRA failed to put into consideration all the exports and transfers made by KBL in the customs data used. KBL provided a listing of the missing items in KRA's customs data.	<p>KBL provided a listing of the missing items in KRA's customs data and sample exports documents including exit documents in support of the missing SCT export customs data.</p> <p>KRA's review noted that there were omitted single customs</p>

Tax head	Issue	Basis of Assessment	Basis of Objection Decision	Basis of ADR Agreement
			<p>KBL also objected that KRA's assessments for the years 2016 and 2017 were time bared.</p> <p>KRA noted that the assessments for the years 2016 and 2017, were time bared (assessed beyond 5-year period as provided under section 31(4) of TPA. The assessed taxes relating to these periods were vacated.</p> <p>Excluding 2016 and 2017 KRA confirmed the assessed taxes on basis that KBL did not provide adequate primary documents such as export documents in support of the missing exports/single customs territory (SCT) transfers.</p> <p>KRA retaliated the need to confirm the missing entries with its internal Customs and Border Control Department(C&BCD).</p> <p>Based on the above the assessed tax was revised to Kshs.424,803,758.</p>	<p>territory (SCT) exports especially for Uganda in the list relied upon by KRA in its assessments and objection decision.</p> <p>KRA re-computed the adjusted variance after factoring the net omitted SCT Uganda entries which resulted to under claimed export rebates compared to the actual exported quantities.</p> <p>Based on the above the assessed taxes were revised to NIL</p>
Withholding Tax	Management fees and related party recharges	KRA computed variances between withholding tax on expenses claimed as management fees & royalties between related parties and withholding income tax remitted by KBL on the same and charged withholding tax.	<p>KBL objected that KRA charged WHT on goods and did not consider all the taxes remitted by KBL under the Voluntary Tax Disclosure Programme (VTDP) over the periods under review.</p> <p>Further, KBL argued that KRA did not have the legal basis to collect WHT for the periods between 9th June 2016 and 7th November 2019 following the repealing of Section 35(6) of the Income Tax Act (ITA) CAP 470 by the Finance Act 2016.</p>	<p>KBL provided detailed reconciliations of the related party transactions, accompanying invoices, and a breakdown of transactions declared under VTDP.</p> <p>KRA reviewed the records provided and noted that part of the amount brought to WHT had been declared under VTDP and taxes thereon paid.</p>

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Confirmed
P. O. Box 48249-00100, NAIROBI
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Sign: 

Tax head	Issue	Basis of Assessment	Basis of Objection Decision	Basis of ADR Agreement
			<p>KRA reviewed the assertion that WHT had been charged on good and in vain requested KBL to provide primary records. Additionally, evidence of payment of WHT under VTDP including a breakdown of the affected transactions was not availed.</p> <p>KRA also reviewed the repealed law in line with the High Court Ruling in the case of <i>Commissioner of Domestic Taxes Department -vs- Pevans East Africa Limited and Shop and Deliver Limited and 5 Others (HCCOMMITA/E003/2019)</i> and revised the assessed taxes to Kshs. 196,253,527 to the extent supported by law.</p>	<p>The review also noted transactions that related to the sale of goods and reimbursements.</p> <p>Based on the above the assessment was revised to Kshs.102,057,666</p>
Excise Duty	Excise duty rebates on Exports	KRA computed variances between rebates claimed by KBL on exported finished goods in their excise returns and the quantity of exports obtained from customs data. KRA charged excise duty on the established variance.	<p>KBL objected stating that, while raising the assessment KRA failed to put into consideration all the exports and transfers made by KBL in the customs data used. KBL provided a listing of the missing items in KRA's customs data.</p> <p>KBL also objected that KRA's assessments for the years 2016 and 2017 were time bared. The assessed taxes relating to these periods were vacated.</p> <p>Excluding 2016 and 2017 KRA confirmed the assessed taxes on basis that KBL did not provide adequate primary documents such as export documents in support of the</p>	<p>KBL provided a listing of the missing items in KRA's customs data and sample exports documents including exit documents in support of the missing SCT export customs data.</p> <p>KRA's review noted that there were omitted single customs territory (SCT) exports especially for Uganda in the list relied upon by KRA in its assessments and objection decision.</p> <p>KRA re-computed the adjusted variance after factoring the net omitted SCT Uganda entries which resulted to under claimed export</p>

Tax head	Issue	Basis of Assessment	Basis of Objection Decision	Basis of ADR Agreement
			<p>missing exports/single customs territory (SCT) transfers.</p> <p>KRA retaliated with the need to confirm the missing entries with its internal Customs and Border Control Department (C&BCD).</p> <p>Based on the above the assessed tax was revised to Kshs. 2,668,943,575.</p>	<p>rebates compared to the actual exported quantities.</p> <p>Based on the above the assessed taxes were revised to NIL</p>
	<p>Prepaid excise duty claimed attributed to sales made to DEFCO</p>	<p>Review of the KBL's excise returns KRA indicated that KBL claimed pre-paid excise duty on all the raw materials including that which were attributable to exempt sales made to DEFCO. KRA therefore disallowed the prepaid excise duty on DEFCO sales.</p>	<p>The taxpayer agreed and paid assessed taxes</p>	<p>The taxpayer agreed and paid assessed taxes</p>

2.4 The Current total amount of taxes in dispute;

See *Annex 2* listing the current ongoing tax disputes with KBL and UDV (Kenya) Limited.

2.5 The tax bonds issued to EABL by KRA;

KRA granted excise bonds to Kenya Breweries Limited and UDV (Kenya) Limited worth **Ksh. 2.98 B** and **Ksh. 800 Mn** respectively as shown in *Table 5* below. See *Annex 3*.

Table 5: Bonds issued to EABL

#.	Entity	Date of Bond	Amount (Kshs)
1.	Kenya Breweries Ltd	27 th October 2023	9,828,360
2.		18 th November 2021	2,000,000,000
3.	UDV (Kenya) Limited)	18 th November 2021	800,000,000

2.6 Any preferential tax waivers granted to EABL

The details of the case of tax abandonment allowed to KBL are presented in *Annex 2* case no. 2.

3.0 Conclusion

KRA is committed to complying with all the laws in place as it executes its mandate of tax administration and trade facilitation. We also wish to state that we are willing to provide the committee with any other relevant information that will be requested.

KENYA REVENUE AUTHORITY
Confirmed
P. O. Box 48240 - 00100, NAIROBI
Date: 15.3.2024
Sign: 



**KENYA REVENUE
AUTHORITY**

ISO 9001:2015 CERTIFIED

INTERNAL

**DOMESTIC TAXES DEPARTMENT
Enforcement Division
MEMO**

TO: Tobias Ogendo (P/No 9941)
CC: Manager, Factory Controls
Manager, DTED Operations
FROM: Deputy Commissioner, Enforcement Division
DATE: 2nd August, 2022
REF: KRA/DTD/ED/OP/197/2022

RE: INTERNAL RE-ORGANISATION

Reference is made to the ongoing re-organization of the Division.

You are hereby deployed from **Factory Controls, EABL-Resident** to **Factory Controls, Nairobi** with immediate effect.

The deployment is designed to improve team performance and effective implementation of the Divisions strategies.

Arrange to report to **Manager, Factory Controls**, immediately for instructions and allocation of duties.

Kindly ensure proper handover is done. I wish you well in your new assignment.

N. Mutembei

Tulipe Ushuru Tujitegemee!



**KENYA REVENUE
AUTHORITY**
ISO 9001:2015 CERTIFIED

Ref: 9941

5th March, 2021

Tobias Ogendo
Officer
Domestic Taxes Department



Thro' Commissioner - Domestic Taxes Department

Dear Tobias

RE: TRANSFER

We wish to inform you that you have been transferred from **West of Nairobi - TSO** to **Resident Officer - EABL**.

Please arrange to report to the **Deputy Commissioner - DTED** not later than **1st April 2021** for further instructions. However, you are required to initiate a hand over process from your current station and give a copy of the hand over notes to the Human Resources, Records Management unit for your file.

Yours faithfully,

Mukuni Kithonga
For: Deputy Commissioner - Human Resources

/zsc

Cc: *Deputy Commissioner – DTED*
Head TSO – West of Nairobi
Manager Operation - DTD
Assistant Manager – HRIM



Tulipe Ushuru, Tujitegemee!





**KENYA REVENUE
AUTHORITY**

ISO 9001:2015 CERTIFIED

PUBLIC

Ref: KRA/DTD/ED/OP/21/2021

6th April 2021

Managing Director
Kenya Breweries Ltd
P.O. Box 30161 - 00100
NAIROBI



RE: DEPLOYMENT OF RESIDENT OFFICER.

1. Kenya Maltings office at National Cereals and Produce Board Nairobi
2. Nairobi EABL Plant

Kenya revenue Authority has deployed Mr. Tobias Ogando to your company as reflected above. He will operate at both East Africa Breweries Ltd and Kenya Maltings Ltd office where raw materials for Keg Beer production are received.

The role of the officer will be the following in addition to any other role the Commissioner may assign to them:

- 1) Confirm source of quantities of the raw materials received for Keg Beer production received by Kenya Maltings Ltd for Kenya Breweries Ltd.
- 2) Take stock of raw materials received for Keg Beer production at East Africa Breweries Ltd from all sources.
- 3) Confirm the amount daily production of Keg Beer.

The above posting of the officers is one of the conditions Commissioner has required under Regulation 3(h) of Keg Beer production to ensure that the Keg Beer is produced with the conditions given for Remission.

We therefore request East Africa Breweries Ltd to facilitate our officer's settle at Kenya Maltings Ltd offices in Nairobi to carry out their roles.

Thank you for your continued support to our Resident Officer as they carry out their duties.

Attached find the letters posting the Resident Officers to your Group of Companies.

Isaac Gachoka

FOR: COMMISSIONER DOMESTIC TAXES DEPARTMENT

Cc: Kenya Maltings Ltd
: Resident Officer



**KENYA REVENUE
AUTHORITY**

ISO 9001:2015 CERTIFIED

Ref: K00011678

25th November 2019

**Simon Otieno Adede
Officer**

Dear Sir,

**RE: DEPLOYMENT TO EAST AFRICA BREWERIES LTD KENYA
KISUMU PLANT/KENYA MALTING LTD OFFICE AT KENYA CEREALS
AND PRODUCE BOARD OFFICE**

Please note that you have been deployed to Kenya Breweries as a Resident Officer, Kisumu Plant.

You will be Resident at Kenya Maltings office situated at Kenya Cereals and Produce Board Kisumu. Your role will be as follows:

- i. Take record of all raw Materials received by Kenya Maltings for EABL Ltd
- ii. Confirm raw materials transferred from Kenya Maltings to Kisumu plant or Nairobi Plant if any for Keg Beer Production
- iii. Confirm raw materials received by EABL Kisumu plant for Keg Beer Production
- iv. Confirm daily production of Keg Beer and quantities dispatched for sale.

The above role will be in addition to all other duties of a Resident Officer given from time to time.

Please report to EABL Manager at Kisumu plant who will arrange to have you settle at Kenya Maltings Ltd office at Kenya Cereals and Produce Board, Kisumu

We wish you success in your new role.

**Elizabeth Meyo (Mrs)
Commissioner Domestic Taxes Department**



Tulipe Ushuru, Tujitegeme!

Times Tower Building - Hurlingham Avenue - Nairobi

KENYA





KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

Ref: KRA/DTD/ED/GEN/118/2019

31st October, 2019

Managing Director
Kenya Breweries Ltd
P.O. Box 30161 - 00100
NAIROBI

RE: DEPLOYMENT OF RESIDENT OFFICERS.

1. East Africa Breweries Ltd
2. Kenya Maltings office at National Cereals and Produce Board
Kisumu
3. Nairobi EABL Plant and Kenya Maltings Ltd office Industrial Area.

Kenya revenue Authority has deployed two additional Resident Officers to your company as reflected above. They will operate at both East Africa Breweries Ltd and Kenya Maltings Ltd office where raw materials for Keg Beer production are received.

The role of the officers will be the following in addition to any other role the Commissioner may assign to them:

- 1) Confirm source of quantities of the raw materials received for Keg Beer production received by Kenya Maltings Ltd for Kenya Breweries Ltd.
- 2) Take stock of raw materials received for Keg Beer production at East Africa Breweries Ltd from all sources.
- 3) Confirm the amount daily production of Keg Beer.

The above posting of the officers is one of the conditions Commissioner has required under Regulation 3(h) of Keg Beer production to ensure that the Keg Beer is produced with the conditions given for Remission.

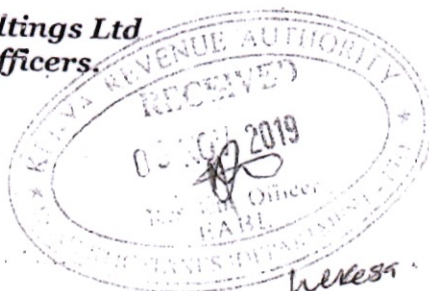
We therefore request East Africa Breweries Ltd to facilitate our officer's settle at Kenya Maltings Ltd offices both in Kisumu and Nairobi to carry out their roles.

Thank you for your continued support to our Resident Officers as they carry out their duties.

Attached find the letters posting the Resident Officers to your Group of Companies.

Elizabeth Meyo (Mrs)
Commissioner Domestic Taxes Department

Cc: Kenya Maltings Ltd
: Resident Officers.



Received by: Stella Raitma
KENYA BREWERIES LTD.
P. O. Box 30161 - 00100
NAIROBI
TEL: 8644000

Wetness
Tulipe Ushuru, Tujitegeme!





ISO 9001:2015 CERTIFIED

ENFORCEMENT-DIVISION
MEMO

TO : Moses Mutiso (P/No. 10276)

C.C : Manager – Factory Controls & Licensing

FROM : Deputy Commissioner - DTED

DATE : 27TH April 2023

Ref : KRA/DTD/ED/OP/114/2023

**RE-DEPLOYMENT TO FACTORY CONTROLS – ZHENG HONG (K)
LIMITED.**

Following the recent staff re-organization in the Division, you were deployed to Factory Controls & Licensing, Sector.

You will be the resident officer for Zheng Hong (K) Limited.

Kindly report to the Manager, Factory Controls & Licensing, for allocation of duties.

I wish you well in your new assignment.

N. Mutembei



**KENYA REVENUE
AUTHORITY**
ISO 9001:2015 CERTIFIED

CONFIDENTIAL

fla

Date: 23rd May 2023

Our Ref: KRA/DTD/DTED/GEN/80/2023

The Managing Director
East African Breweries Ltd
P.O. Box 30161 - 00100
NAIROBI



Dear Sir/Madam,

RE: DEPLOYMENT OF RESIDENT OFFICER

This is to inform you that we have assigned your company a new resident officer by the name Moses Mutiso with effect from 3rd May 2023. The officer is to replace Godfrey Munga who has since been deployed to another section.

Kindly accord Mr. Mutiso all the necessary cooperation as he carries out his duties to ensure smooth operation at the factory.

We thank you for your continued cooperation in respect to factory compliance.

[Signature]

Philip Kapkai
For: Deputy Commissioner - DTED



Tulipe Ushuru, Tujitegemeel



Tulipe Ushuru, Tujitegemeel

Times Tower Building - Haile Selassie Avenue - P.O. Box 48240-00100 GPO, Nairobi, Kenya, Tel: 020-281 0000





**KENYA REVENUE
AUTHORITY**
ISO 9001:2015 CERTIFIED

Ref: K00011141

31th October, 2019

**Kennedy Macharia
Officer - DTED**

Dear Sir,

**RE: DEPLOYMENT TO EAST AFRICA BREWERIES LTD NAIROBI PLANT
KENYA MALTINGS OFFICE AT KENYA CEREALS AND PRODUCTS BOARD
INDUSTRIAL AREA**

Please note that you have been deployed to Kenya Breweries Ltd as a Resident Officer Nairobi Plant Kenya Maltings Office Industrial Area.

You will be Resident at Kenya Maltings office situated at Industrial Area Nairobi.

Your role will be as follows:

- (i) Take record all Raw Materials received by Kenya Maltings for EABL Ltd
- (ii) Confirm raw materials transferred from Kenya Maltings Ltd to EABL Nairobi Plant for Keg Beer Production.
- (iii) Confirm raw materials received by EABL Ltd Nairobi plant for Keg Beer production.
- (iv) Confirm daily production of Keg Beer and quantities dispatched for sale.

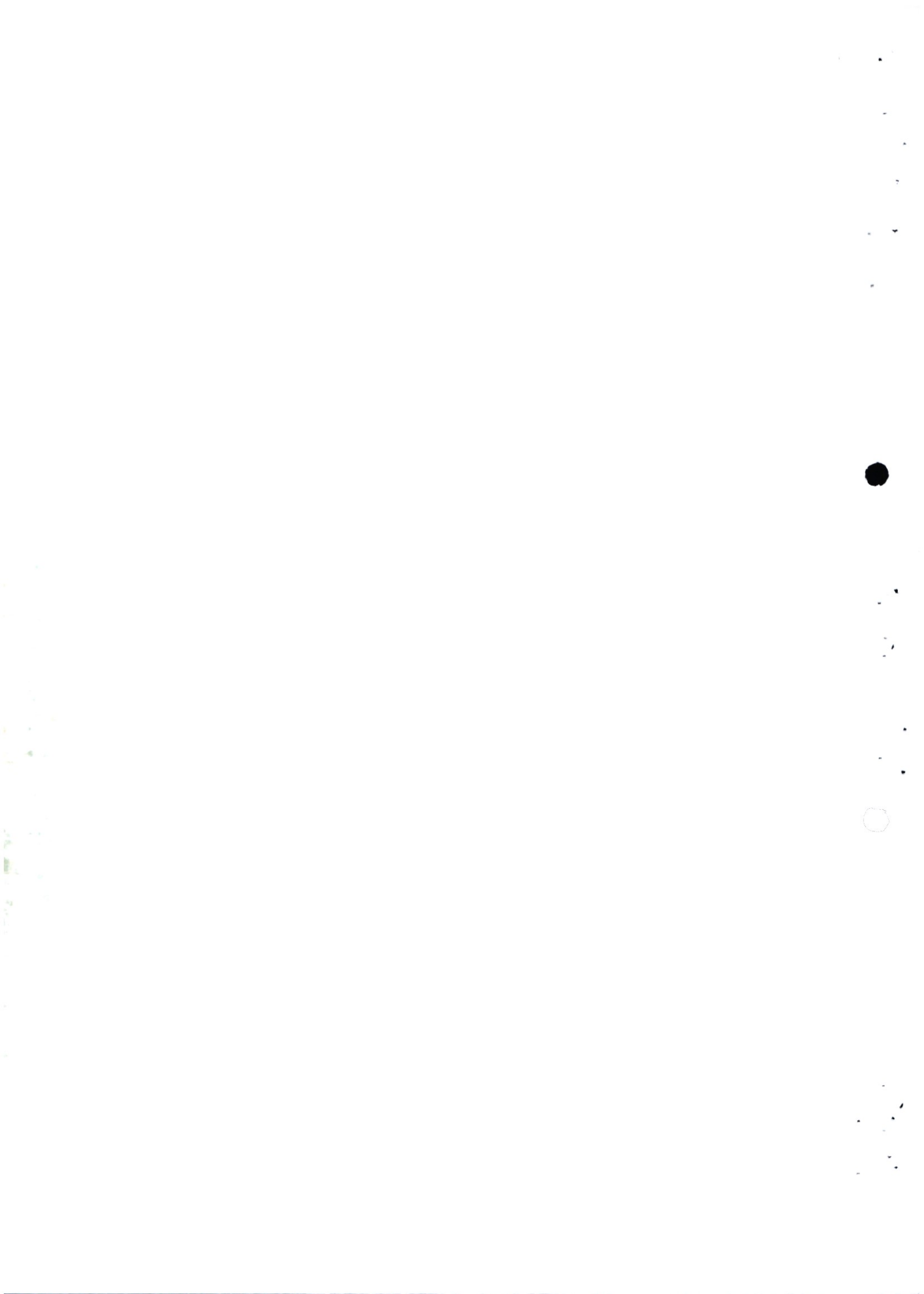
The above role will be in addition to all other duties of a Resident Officer given from time to time.

Please report to the EABL Ltd Manager at Nairobi plant who will make arrangements to have you settle at the Kenya Maltings office at Industrial Area Nairobi.

We wish you success in your new role.

**Elizabeth Meyo (Mrs)
Commissioner, Domestic Taxes Department**







**KENYA REVENUE
AUTHORITY**
ISO 9001:2015 CERTIFIED

Ref: KRA/DTD/ED/GEN/118/2019

31st October, 2019

**Managing Director
Kenya Breweries Ltd
P.O. Box 30161 - 00100
NAIROBI**

RE: DEPLOYMENT OF RESIDENT OFFICERS.

1. East Africa Breweries Ltd
2. Kenya Maltings office at National Cereals and Produce Board
Kisumu
3. Nairobi EABL Plant and Kenya Maltings Ltd office Industrial Area.

Kenya revenue Authority has deployed two additional Resident Officers to your company as reflected above. They will operate at both East Africa Breweries Ltd and Kenya Maltings Ltd office where raw materials for Keg Beer production are received.

The role of the officers will be the following in addition to any other role the Commissioner may assign to them:

- 1) Confirm source of quantities of the raw materials received for Keg Beer production received by Kenya Maltings Ltd for Kenya Breweries Ltd.
- 2) Take stock of raw materials received for Keg Beer production at East Africa Breweries Ltd from all sources.
- 3) Confirm the amount daily production of Keg Beer.

The above posting of the officers is one of the conditions Commissioner has required under Regulation 3(h) of Keg Beer production to ensure that the Keg Beer is produced with the conditions given for Remission.

We therefore request East Africa Breweries Ltd to facilitate our officer's settle at Kenya Maltings Ltd offices both in Kisumu and Nairobi to carry out their roles.

Thank you for your continued support to our Resident Officers as they carry out their duties.

Attached find the letters posting the Resident Officers to your Group of Companies.

**Elizabeth Meyo (Mrs)
Commissioner Domestic Taxes Department**

**Cc: Kenya Maltings Ltd
: Resident Officers.**

Received by: *Stella Kaimo*
KENYA BREWERIES LTD.
P.O. Box 30161 - 00100
NAIROBI
TEL: 8644000



Julie Ushuru, Fujitayamoo



**KENYA REVENUE
AUTHORITY**

ISO 9001:2015 CERTIFIED

INTERNAL

**DOMESTIC TAXES DEPARTMENT
ENFORCEMENT DIVISION**

MEMO

TO: John Kinuthia (P/No.11651)
FROM: Deputy Commissioner - Enforcement
DATE: 12th July 2023
REF: KRA/DTD/ED/OP/006/2023/24

DEPLOYMENT TO UDV KENYA LIMITED

The division has sought to enhance efficiency and effectiveness in the monitoring of factories. To this end, you have been re-deployed as the resident officer for UDV Kenya Limited.

Kindly report to the Assistant Manager, Factory Controls, for allocation of duties.

This deployment is with immediate effect.

I wish you well in your new assignment.

N. Mutembei

c.c. Assistant Manager – Factory Controls

Tulipe Ushuru, Tujitegemee!



Kenya Breweries Limited | UDV (Kenya) Limited
Subsidiaries of the EABL Group



18-Nov-21

The Deputy Commissioner
Domestic Taxes Enforcement Division
Kenya Revenue Authority (KRA)
Ushuru Pension Plaza
Muthangari Drive,
Nairobi, Kenya



UDV (KENYA) LIMITED (UDV) – PIN: P000592830Q
EXCISE BOND SECURITY FORM

We refer to your letter dated 12 November 2021 and referenced KRA/DTT/ED/FC/430/2021 which is attached herein (the KRA Letter).

The KRA Letter instructed UDV to provide a Excise Security Bond amounting to **KES 800 Million** as provided for under Section 37 of the Excise Duty Act, 2015 and Section 36 of the Tax Procedures Act, 2015.

Please find enclosed an original counterpart of a duly executed Excise Bond Security Form for KES 800 Million Only dated 18th November 2021 which has been issued by East African Breweries PLC (EABL) as Guarantor for UDV in the form prescribed under Regulation 19(4) and the First Schedule of the Excise Duty Regulations, 2020.

Kindly acknowledge receipt of the Excise Security Bond by stamping the acknowledgment copy of this letter.

Should you require any additional information or clarification on this, please contact the undersigned.

Yours faithfully,

For: UDV (Kenya) Limited

Nadida Rowlands
Legal Director

cc: Josephine Muraya,
Relationship Manager,
Domestic Excise Sector,
Large Taxpayers Office
Domestic Taxes Department
Kenya Revenue Authority.



KENYA REVENUE AUTHORITY

DOMESTIC TAXES DEPARTMENT

FIRST SCHEDULE (r 19(4))

EXCISE BOND SECURITY FORM BOND FOR PROTECTION OF EXCISE DUTIES

I/We UDV (KENYA) LIMITED
 Of (Address) P.O. BOX 30161-00100, NAIROBI PIN# P000592850Q
 and (Guarantor) FAST AFRICAN BREWERIES plc
 Of P.O. BOX 30161-00100, NAIROBI - PIN # P000591095W
 Hereby acknowledge that I/we am/are bound to the Commissioner of Domestic Taxes in the sum of KES 800 MILLION shillings to be paid to the Commissioner of Domestic Taxes for which payment I/we bind myself/ourselves jointly and severally and also my/our heirs, executors, administrators and assigns and each of them in respect of EXCISE DUTIES

Dated this 18TH day of NOVEMBER, 2021

WHEREAS the above named UDV (KENYA) LIMITED has/have been granted a licence to manufacture excisable goods and whereas the above named UDV (KENYA) LIMITED is/are required to pay the excise duty thereon in accordance with the provisions of the Excise Duty laws not later than the twentieth day of the month next succeeding that in which the duty becomes due or within such other time as may be determined by the Commissioner.

Now the condition of this obligation is such that if the above named UDV (KENYA) LIMITED shall pay the full duties due or charged within that time then this obligation shall be void but otherwise shall be and remain in full force.

Signed, sealed and delivered by
 The above named RISPER EMILY AOKU GENGA OHAGA
 In the presence of _____
 of _____

Signed, sealed and delivered by
 The above named JANE WAMBUI KARUKU
 In the presence of _____
 of _____

Approved _____
Commissioner





REPUBLIC OF KENYA

Company Reg No. **C.5/34**

Application ID. **CN-LZSPJ3**

CERTIFICATE OF CHANGE OF NAME

I hereby **CERTIFY**, that-

EAST AFRICAN BREWERIES LIMITED

having, with the sanction of the SPECIAL RESOLUTION of the said Company, and with the approval of the REGISTRAR OF COMPANIES, changed its name, and is now called:-

EAST AFRICAN BREWERIES PLC

and I have entered such new name in the Register accordingly.

Given under my hand at Nairobi this **1 October 2021**

.....
Registrar Of Companies

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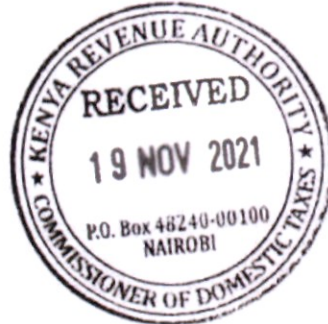


Kenya Breweries Limited | UDV (Kenya) Limited
Subsidiaries of the EABL Group



18-Nov-21

The Deputy Commissioner
Domestic Taxes Enforcement Division
Kenya Revenue Authority
Ushuru Pension Plaza
Muthangari Drive,
Nairobi, Kenya



**KENYA BREWERIES LIMITED (KBL) - PIN: P000593584F
EXCISE BOND SECURITY FORM**

We refer to your letter dated 12 November 2021 and referenced KRA/DTD/ED/FC/430/2021 which is attached herein (the KRA Letter).

The KRA Letter instructed KBL to provide a Excise Security Bond amounting to **KES 2 Billion** as provided for under Section 37 of the Excise Duty Act, 2015 and Section 36 of the Tax Procedures Act, 2015.

Please find enclosed an original counterpart of a duly executed Excise Bond Security Form for KES 2 Billion Only dated 18th November 2021 which has been issued by East African Breweries PLC (EABL as Guarantor for KBL in the form prescribed under Regulation 19(4) and the First Schedule of the Excise Duty Regulations, 2020.

Kindly acknowledge receipt of the Excise Security Bond by stamping the acknowledgement copy of this letter.

Should you require any additional information or clarification on this, please contact the undersigned.

Yours faithfully,

For: Kenya Breweries Limited

**Nadida Rowlands
Legal Director**

cc: Josephine Muraya,
Relationship Manager,
Domestic Excise Sector,
Large Taxpayers Office
Domestic Taxes Department
Kenya Revenue Authority.



KENYA REVENUE AUTHORITY

DOMESTIC TAXES DEPARTMENT

EXCISE BOND SECURITY FORM BOND FOR PROTECTION OF EXCISE DUTIES

FIRST SCHEDULE (r. 19(4))

I/We **KENYA BREWERIES LIMITED**

Of (Address) **P.O. Box 30161-00100, NAIROBI and PIN # P000593584F**

and (Guarantor) **EAST AFRICAN BREWERIES plc**

Of **P.O. Box 30161-00100, NAIROBI and PIN # P000591095W**

Hereby acknowledge that I/we am/are bound to the Commissioner of Domestic Taxes in the sum of **KES 2 BILLION** shillings to be paid to the Commissioner of Domestic Taxes for which payment I/we bind myself/ourselves jointly and severally and also my/our heirs, executors, administrators and assigns and each of them in respect of **EXCISE DUTIES**

Dated this **18TH** day of **NOVEMBER** **2021**

WHEREAS the above named **KENYA BREWERIES LIMITED** has/have been granted a licence to manufacture excisable goods and whereas the above named **KENYA BREWERIES LIMITED** is/are required to pay the excise duty thereon in accordance with the provisions of the Excise Duty laws not later than the twentieth day of the month next succeeding that in which the duty becomes due or within such other time as may be determined by the Commissioner.

Now the condition of this obligation is such that if the above named **KENYA BREWERIES LIMITED** shall pay the full duties due or charged within that time then this obligation shall be void but otherwise shall be and remain in full force.

Signed, sealed and delivered by

The above named **RISPER EMILY AOKU GENGA OHAGA**

In the presence of

of

Signed, sealed and delivered by

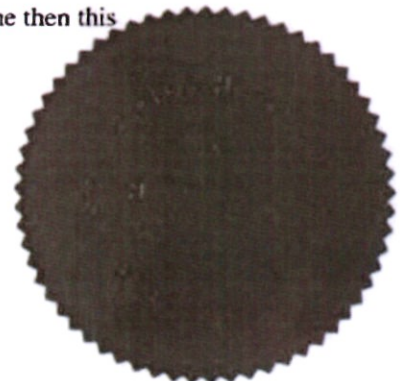
The above named **JANE WAMBUI KARUKU**

In the presence of

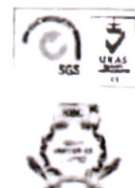
of

Approved

Commissioner



EBSF (EXECUTED IN DUPLICATE)





REPUBLIC OF KENYA

Company Reg No. **C.5/34**

Application ID. **CN-LZSPJ3**

CERTIFICATE OF CHANGE OF NAME

I hereby **CERTIFY**, that-

EAST AFRICAN BREWERIES LIMITED

having, with the sanction of the SPECIAL RESOLUTION of the said Company, and with the approval of the REGISTRAR OF COMPANIES, changed its name, and is now called:-

EAST AFRICAN BREWERIES PLC

and I have entered such new name in the Register accordingly.

Given under my hand at Nairobi this **1 October 2021**

.....
Registrar Of Companies

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KENYA REVENUE
AUTHORITY

INTERNAL

ISO 9001:2015 CERTIFIED



Ref: 11320

4th July 2022

David Wekesa
Supervisor
Domestic Taxes Department

Thro' Commissioner – Domestic Taxes

Dear David,

RE: TRANSFER

We wish to inform you that you have been transferred from DTED - Nairobi to DTED - Kakamega.

Please arrange to report to **Manager DTED – Western Region** not later than **1st August 2022**.

You are required to initiate a handover process from your current station and be appraised by your supervisor for the period served. Thereafter, signed hand over notes and validated appraisal report should be forwarded to the Human Resources, Records Management unit, for your file.

Meanwhile, arrangements are underway to pay you the transfer and transport allowances as per the Transfer Policy.

We wish you success in your new assignment.

Yours sincerely,


Grace Mwangi

For: Chief Manager- Organization Development & HR Administration

/LL

Cc: *Regional Coordinator - Western Region*
Deputy Commissioner – DTED
Chief Manager Operations - DTD (confirm when the officer is released)
Manager DTED - Western Region (confirm when the officer reports)
Supervisor HR - Western Region (confirm when the officer reports)
Supervisor - HRIM

Tulipe Ushuru, Tujitegemee!



KENYA REVENUE AUTHORITY

DOMESTIC TAXES DEPARTMENT

EXCISE BOND SECURITY FORM BOND FOR PROTECTION OF EXCISE DUTIES

FIRST SCHEDULE (r. 19(4))

I/We **KENYA BREWERIES LIMITED**

Of (Address) **P.O. Box 30161-00100, NAIROBI and PIN # P000593584F**

and (Guarantor) **EAST AFRICAN BREWERIES plc**

Of **P.O. Box 30161-00100, NAIROBI and PIN # P000591095W**

Hereby acknowledge that I/we am/are bound to the Commissioner of Domestic Taxes in the sum of **KES 9,828,360** shillings to be paid to the Commissioner of Domestic Taxes for which payment I/we bind myself/ourselves jointly and severally and also my/our heirs, executors, administrators and assigns and each of them in respect of **EXCISE DUTIES**

Dated this **27TH** day of **OCTOBER**, **2023**

WHEREAS the above named **KENYA BREWERIES LIMITED** has/have been granted a licence to manufacture excisable goods and whereas the above named **KENYA BREWERIES LIMITED** is/are required to pay the excise duty thereon in accordance with the provisions of the Excise Duty laws not later than the twentieth day of the month next succeeding that in which the duty becomes due or within such other time as may be determined by the Commissioner.

Now the condition of this obligation is such that if the above named **KENYA BREWERIES LIMITED** shall pay the full duties due or charged within that time then this obligation shall be void but otherwise shall be and remain in full force.

Signed, sealed and delivered by

The above named **RISPER EMILY AOKU GENGA OHAGA**

} In the presence of

of **FRIDA W. MBUGUA**
ADVOCATE
Commissioner for Oaths
NOTARY PUBLIC
P.O. Box 104847 - 00101, NAIROBI

Signed, sealed and delivered by

The above named **JANE WAMBUI KARUKU & NOTARY PUBLIC**

In the presence of

of } **Approved**

Commissioner



Tulipe Ushuru Tujitegemee

EBSF (EXECUTED IN DUPLICATE)





REPUBLIC OF KENYA

Company Reg No. **C.5/34**

Application ID. **CN-LZSPJ3**

CERTIFICATE OF CHANGE OF NAME

I hereby **CERTIFY**, that-

EAST AFRICAN BREWERIES LIMITED

having, with the sanction of the SPECIAL RESOLUTION of the said Company, and with the approval of the REGISTRAR OF COMPANIES, changed its name, and is now called:-

EAST AFRICAN BREWERIES PLC

and I have entered such new name in the Register accordingly.

Given under my hand at Nairobi this **1 October 2021**

.....
Registrar Of Companies

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FRIDA W. MBUGUA
ADVOCATE
Commissioner for Oaths
& NOTARY PUBLIC
P. O. Box 104847 - 00101, NAIROBI

*Certified True Copy of the
Original.*

