



LAWS OF KENYA

LOCAL MANUFACTURES (EXPORT COMPENSATION) ACT

CHAPTER 482

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CHAPTER 482

LOCAL MANUFACTURES (EXPORT COMPENSATION) ACT

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CHAPTER 482

LOCAL MANUFACTURES (EXPORT COMPENSATION) ACT

[Date of assent: 12th June, 1974.]

[Date of commencement: 1st November, 1974.]

An Act of Parliament to provide for compensatory payments to be made in respect of certain locally manufactured goods which are exported from Kenya and for matters connected therewith and incidental thereto

[Act No. 9 of 1974, L.N. 263/1974, L.N. 264/1974, L.N. 117/1976, Act No. 11 of 1976, Act No. 8 of 1977, Act No. 12 of 1977, L.N. 86/1977, L.N. 105/1977, L.N. 16/1978, L.N. 17/1978, Act No. 8 of 1978, Act No. 13 of 1978, Act No. 10 of 1980, Act No. 14 of 1982, L.N. 82/1984, Act No. 8 of 1985, L.N. 35/1985, L.N. 252/1985, Act No. 10 of 1986, L.N. 261/1986, L.N. 75/1987, Act No. 10 of 1987, Act No. 10 of 1988, Act No. 8 of 1989, L.N. 30/1989, L.N. 152/1989, Act No. 10 of 1990, Act No. 8 of 1991, L.N. 6/1992, Act No. 9 of 1992, L.N. 12/1993, L.N. 88/1993, Act No. 4 of 1993.]

1. Short title

This Act may be cited as the Local Manufactures (Export Compensation) Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**appointed dealer**” means an authorized dealer appointed under section 3 to pay compensatory payments on behalf of the Commissioner;

“**authorised dealer**” means a person who is authorised under the Exchange Control Act (Cap. 113) to deal in foreign currency;

“**Commissioner**” means the person for the time being having charge of the Customs and Excise Department;

“**compensatory payment**” means a payment provided for by section 3;

“**eligible goods**” *deleted by Act No. 4 of 1993, s. 34(a)*;

“**export**” means to take or cause to be taken out of Kenya by air, land or water, and includes a supply to an export processing zone;

“**export processing zone**” means an export processing zone designated under the Export Processing Zones Act (Cap. 517);

“**Foreign Currency**” means currency other than that of Kenya;

“**originating in Kenya**”, in relation to goods, means that those goods—

- (a) have been produced wholly in Kenya; or
- (b) have been produced in Kenya and the total value of imported materials, or materials of undetermined origin, which have been used at any stage in the production of the goods does not exceed seventy percent of the ex-factory value of the goods.

[Act No. 8 of 1978, s. 11, Act No. 10 of 1986, s. 28, Act No. 10 of 1990, s. 34, Act No. 4 of 1993, s. 34(a).]

3. Compensatory payments

Subject to this Act, a person who exports eligible goods shall be paid by or on behalf of the Commissioner a compensatory payment:

Provided that no compensatory payment shall be paid by or on behalf of the Commissioner in respect of the exportation of eligible goods—

- (i) which by the process of their manufacture include goods, whether eligible goods or ineligible goods, specified in and for the purposes of an order made under section 138 of the Customs and Excise Act (Cap. 472) (which provides for remission of certain duties); or
- (ii) specified in and for the purpose of an order made under section 145 (1) of the Customs and Excise Act (Cap. 472) (which provides for refunds of certain duties); or
- (iii) which are manufactured under bond licensed for the purpose of exports under section 58A of the Customs and Excise Act (Cap. 472); or
- (iv) which by the process of manufacture include goods, whether eligible for export compensation or not, which have been the subject of a remission, rebate or refund of duty upon or after importation, under any provisions of the Customs and Excise Act (Cap. 472).

[Act No. 11 of 1976, s. 8, Act No. 14 of 1982, s. 15, Act No. 8 of 1991, s. 50, Act No. 4 of 1993, s. 34(b).]

4. Deduction in respect of compensatory payments

The Commissioner shall deduct the amount of all compensatory payments from the payments of customs and excise revenue falling to be paid by him into the Consolidated Fund.

[Act No. 8 of 1977, s. 5, Act No. 13 of 1978, Sch.]

5. Restriction on payment

(1) No compensatory payment shall be made in respect of the exportation of eligible goods before—

- (a) the exportation is completed; and
- (b) foreign currency due in respect of the exportation has been received in Kenya by an authorized dealer or payment has been made or settlement effected in accordance with a bilateral agreement between the Government of Kenya and any other government.

(1A) Notwithstanding subsection (1), no compensatory payment shall be made in respect of gold (non-monetary) and articles thereof, other precious and semi-precious metals or stones and their articles in semi-manufactured or fully manufactured form, before they are presented to the proper officer of customs for physical examination and certification prior to exportation.

(1B) Notwithstanding the provision of subsection (1)(b) and subject to such conditions as may be prescribed by the Minister, compensatory payment may be made before foreign currency due in respect of such exportation has been received.

Provided that compensatory payment under this subsection shall be made only if the claimant has—

- (a) undertaken to produce evidence of receipt of the relevant foreign currency in full within ninety days from the date of payment; or
- (b) furnished a bond security in such sum of money, not being less than the compensatory payment claimed, as the Commissioner may determine.

(2) For the purposes of subsection (1), exportation of goods shall be deemed to be completed—

- (a) in the case of exportation by sea or air, at the time at which the vessel or aircraft carrying the goods departs from its final berth, anchorage or position at the port or airport within Kenya at which the goods are shipped for export;
- (b) in the case of exportation by land, at the time at which the vehicle carrying the goods passes across the external frontiers of Kenya; and
- (c) in the case of exportation by parcel post, at the time the export entry document is stamped by a proper officer of customs.

(3) Where eligible goods which have been exported are subsequently, for whatsoever reason, imported into Kenya, the exportation shall be deemed not to have taken place, and any compensatory payment made in respect thereof shall be repaid to the Commissioner by the person by whom it was received.

(4) Where there is no evidence of receipt of foreign exchange in respect of goods for which export compensatory payment has been made in accordance with subsection (1B) within ninety days from the date of payment, the export compensatory payment made, together with a penalty of three percent of the compensatory payment per month or part thereof, with effect from the date of payment shall, subject to section 8, forthwith be payable to the Commissioner by the person who received the compensatory payment.

[Act No. 8 of 1978, s. 11, Act No. 10 of 1987, s. 28, Act No. 10 of 1990, s. 35, Act No. 8 of 1991, s. 51, Act No. 9 of 1992, s. 34(a).]

6. Application for payment

An application for a compensatory payment made by a person claiming to be entitled thereto shall be made to the Commissioner, through the Treasury, a person appointed by the Treasury or an appointed dealer as the case may be, in the prescribed form.

[Act No. 10 of 1987, s. 29.]

7. Action to be taken on application

(1) Where an application for compensatory payment is received by the Treasury or a person appointed by the Treasury or an appointed dealer, any of them shall, if satisfied that exportation of the eligible goods concerned is completed as required by section 5, notify the Commissioner the appropriate amount of compensatory payment due to the exporter in respect of the exports and when so authorized by the Commissioner, shall pay to the applicant on behalf of the Commissioner the appropriate amount of compensatory payment.

(2) In respect of an application for a compensatory payment, the Commissioner

- (a) if he is satisfied that the applicant is not entitled thereto, or that there has been a breach of this Act or regulations made thereunder in relation to the eligible goods concerned, or to the exportation thereof, may disallow the application in whole or in part; or
- (b) in any other case, shall allow the application.

(3) Where an application is disallowed under paragraph (a) of subsection (2), any payment made under subsection (1) in relation to that application shall be repayable to the Commissioner by the person by whom it was received to the extent required by the disallowance.

[Act No. 10 of 1987, s. 30.]

8. Offences

(1) A person who—

- (a) knowingly or recklessly makes or causes to be made a statement, whether oral or in writing, in or for the purposes of an application under section 6, which is false in a material particular; or
- (b) fails, in such an application, to disclose information material to the application which is within his knowledge; or
- (c) fails to comply with a condition applicable to the allowance of such an application,

shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both or to both.

(2) Upon the conviction of a person for an offence under subsection (1), an amount equivalent to twice the export compensatory payment made in respect of the application concerned, together with a penalty of three percent per month or part thereof, with effect from the date the compensatory payment was made, shall forthwith be payable to the Commissioner by the person who received the compensatory payment, whether such person is the person so convicted or not.

[Act No. 10 of 1986, s. 28, Act No. 10 of 1990, s. 36.]

9. Liability of employers and of officers of companies

(1) Where an offence under paragraph (a) or (b) of subsection (1) of section 8 of this Act is committed by an employee or agent, the person by whom such employee or agent is employed shall, if he is a person who has received or may have expected to receive a compensatory payment as a result of the application concerned, be guilty of the same offence unless he proves to the satisfaction of the Court that he did not know, and could not reasonably be expected to know, that the act or omission constituting the offence was taking place, and that he took all reasonable steps to ensure that the offence was not committed.

(2) Where a person convicted of an offence under this Act is a limited company, every director of the company, and every officer of the company concerned in the management thereof, shall also be guilty of the offence unless he proves to the satisfaction of the Court that the act or omission constituting the offence took place without his knowledge or consent and that he could not reasonably be expected to have that knowledge.

10. Proceedings

(1) A sum stated by this Act to be repayable to the Commissioner shall be a civil debt recoverable summarily by the Commissioner from the person responsible for the repayment.

(2) Any officer, as defined in the Customs and Excise Act (Cap. 472), shall, subject to the control of the Attorney-General, have power to conduct a prosecution for an offence against this Act and for that purpose shall have all the powers of a public prosecutor appointed under the Criminal Procedure Code (Cap. 75).

[Act No. 8 of 1978, s. 11.]

11. *Repealed by Act No. 4 of 1993, s. 34(c).*

12. Regulations

(1) The Minister may make regulations for the better carrying into effect of the purposes and provisions of this Act and, without prejudice to the generality of the foregoing, regulations may be made for the purposes of—

- (a) prescribing anything which is to be, or may be, prescribed under this Act;
- (b) regulating applications under section 6, and providing for the method of proof of any matters required to be fulfilled or proved for the purposes of any such application;
- (c) the administration and application of the provisions of this Act in relation to the production and origin of eligible goods and the application of the percentage criterion in the ex factory value of eligible goods;
- (d) prescribing the information to be supplied, by the exporter or producer, or other person concerned in the production or exportation, of eligible goods, for the purposes of the proper valuation of those goods;
- (e) providing for the production of books of account and other documents relating to the purchase, production, sale or exportation of eligible goods.

(2) Regulations may prescribe the penalties, not exceeding a fine of ten thousand shillings, which may be annexed to a breach of the regulations.

FIRST SCHEDULE

[Repealed by Act No. 4 of 1993, s. 34(d).]

SECOND SCHEDULE

[Repealed by Act No. 4 of 1993, s. 34(d).]
