

CHAPTER 480

STAMP DUTY ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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**CLASSES OF INSTRUMENTS DIRECTED TO BE EXEMPTED
FROM THE PROVISIONS OF THE ACT UNDER SECTION 106**

[L.N. 461/1958, L.N. 10/1959, L.N. 67/1959, L.N. 254/1960.]

Exemptions of individual instruments or individual series of instruments are not referenced

1. Charges of land (both legal and equitable) and discharges of charges and reconveyances of mortgaged land, executed in the following circumstances—

- (a) the land has been surrendered to the Crown for the purpose of a regrant of the same (subject to any adjustment of area resulting from resurvey, relinquishment of land for public purposes or addition of adjoining Crown land), and the land has been so regranted; and
- (b) the land was the subject of a charge or mortgage (legal or equitable), and the discharge or reconveyance thereof was made to enable the chargor or mortgagor to surrender the land and on condition that a charge should be imposed on the same land (subject as aforesaid) between the same parties and to secure the same amount in replacement of the earlier charge or mortgage, and the charge has been so reimposed.

2. Subleases of land and surrenders of subleases executed in the following circumstances—

- (a) land has been surrendered and regranted in manner specified in paragraph 1 (a) above; and
- (b) the land was the subject of a sublease, and the surrender thereof was made to enable the sublessor to surrender the land to the Crown and on condition that a sublease should be granted in respect of the same land (subject as aforesaid) between the same parties and at the same rent in replacement of the earlier sublease, and the sublease has been granted:

Provided that where the new sublease contains an addition of adjoining Crown land, in execution of a duly stamped agreement to sublease such addition, this exemption shall extend to the new sublease, notwithstanding that the rent thereunder has been increased beyond that reserved by the earlier lease, if it has been increased by the amount of the rent agreed to be paid for the additional land.

3. Mortgage bonds issued by the Nairobi City Council.

[L.N. 10/1959.]

4. Grants of land in the municipality of Nairobi to the Governing Council of the University College, Nairobi.

[L.N. 67/1959.]

5. Transfer documents in connexion with any stock or bonds, interest warrant or other document required for the purposes of any stock or bonds issued made or created under the provisions of section 97 of the Municipalities Ordinance (now repealed) (Cap. 136 [1948]).

[L.N. 254/1960.]

6. Instruments executed by the Commissioner of Lands declaring the rents payable, in pursuance of the provisions of section 29 of the Government Lands Act, in respect of agricultural land for the second period prescribed by section 28 of the Government Lands Act (Cap. 280).

7. Bills of exchange or promissory notes drawn or expressed to be payable or actually paid or endorsed or in any manner negotiated in Kenya for the purpose of financing within Kenya the marketing (including the processing for marketing) of coffee, cotton, pyrethrum, tea, sisal or cloves, and which are—

Stamp Duty

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- (a) payable otherwise than on demand or at sight or on presentation or within three days after date or sight; and
 - (b) denominated in East African shillings; and
 - (c) payable in the East African currency area; and
 - (d) drawn on or payable to a bank licensed to operate in the East African currency area and with the prior approval of that bank.
8. Promissory notes drawn by the Land Development and Settlement Board.
9. Instruments to which Lands Ltd. is a party.
10. Discharges of charges, reassignments of mortgages and discharges of memoranda of equitable mortgages or charges by deposit if title made or given by the Commissioner of Income Tax.
11. Instruments to which the Kenya Tea Development Authority or its tea factory companies are a party.
12. Instruments to which the Coffee Research Foundation is a party.
13. Instruments to which the Royal Tropical Institute is a party.
14. Mortgages and charges made between the Land and Agricultural Bank of Kenya and the Agricultural Development Corporation.
15. Bills of exchange or promissory notes drawn or expressed to be payable or actually paid or endorsed or in any manner negotiated in Kenya for the purpose of financing within Kenya the marketing (including the processing for marketing) of hides and skins, and which are—
- (a) payable otherwise than on demand or at sight or on presentation or within three days after date or sight; and
 - (b) denominated in Kenya Shillings; and
 - (c) payable in Kenya; and
 - (d) drawn on or payable to a bank licenced to operate in Kenya and with the prior approval of that bank.
16. Lease and tenancy agreements under which the United States Agency for International Development is the tenant or lessee.
17. Instruments pertaining to indemnities taken by the Government in respect of cheques reissued by the Government.
18. Promissory notes drawn by the Agricultural Finance Corporation for the purpose of financing maize or wheat production in Kenya.
19. Instruments to which Kenyare Properties Ltd. is a party.
20. Loan agreements, covenants, bonds, debentures, mortgages or other instruments under which the Government is the primary debtor.
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STAMP DUTY REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

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- 2A. Unstamped receipts.
- 3. Revenue franking machines.
- 4. Denoting stamps.
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- 9. Marketable securities
- 10. Certificate on unstamping instrument.
- 11. Procedure for obtainable allowance for spoiled and misused stamps.
- 12. No allowance for spoiled stamps in certain cases.

SCHEDULES

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- SECOND SCHEDULE — FORMS
- THIRD SCHEDULE —
- FOURTH SCHEDULE — INSTRUMENTS UPON WHICH STAMP DUTY MAY BE PAID AND DENOTED BY MEANS OF REVENUE STAMPS IMPRESSED BY A FRANKING MACHINE



[Subsidiary]

Regulations under section 119

STAMP DUTY REGULATIONS

[L.N. 368/1958, L.N. 471/1958, L.N. 159/1959, L.N. 239/1967, L.N. 18/1993, L.N. 96/2009.]

1. Citation

These Regulations may be cited as the Stamp Duty Regulations.

2. Duties, how to be paid

The stamp duty with which any instrument specified in the First and Fourth Schedules is chargeable may be paid and denoted by an adhesive revenue stamp affixed, or (subject to the provisions of regulation 3) by means of a revenue stamp impressed by a franking machine, on the instrument; but save as aforesaid, the stamp duty with which instruments are chargeable shall be paid and denoted by an embossed stamp which shall be embossed on the instrument under the direction of a collector in such manner as he may require.

[L.N. 18/1993.]

2A. Unstamped receipts

(1) Notwithstanding anything contained in regulation 2, the Senior Collector of Stamp Duties may enter into an agreement with a banker for the composition of the stamp duty on unstamped receipts in respect of withdrawals from savings bank accounts on the following conditions—

- (a) that the receipts shall be given on forms to be supplied or adopted by the banker;
- (b) that the banker shall levy upon or charge to the person by whom the receipts are given the stamp duty mentioned in the Schedule to the Act;
- (c) that the banker shall pay on or before the last day of each month to the Senior Collector of Stamp Duties the amount due and collected as duties on the unstamped receipts given during the immediately preceding month, and shall render with each payment an account in such form as the Senior Collector of Stamp Duties may require;
- (d) that the banker shall deposit with the Senior Collector of Stamp Duties, as security for the due payment of any moneys payable under paragraph (c), such sum (if any) as the Senior Collector of Stamp Duties may direct.

(2) Receipts given on forms supplied or adopted by a banker in accordance with this regulation shall be deemed to be duly stamped.

[L.N. 239/1967.]

3. Revenue franking machines

(1) The Senior Collector of Stamp duties may, by licence under his hand, authorize any person to impress revenue stamps on any instrument specified in the First Schedule by means of a revenue franking machine.

(2) A licence issued under this regulation shall be subject to such conditions as the Senior Collector of Stamp Duties may impose.

(3) An impression indicating the payment of duty made by a revenue franking machine used under a licence under this regulation shall contain the true date of the making of the impression.

(4) The franking of any instrument specified in the First Schedule by any duly authorized person as provided for in this regulation, if done in accordance with the terms of this regulation and of the licence, shall have the same effect as cancelling an adhesive revenue stamp on the date and to the value indicated by the franking.

(5) Any person, other than a person to whom a licence has been issued under this regulation, who impresses or causes to be impressed a revenue stamp on any instrument, and any person, being a person to whom a licence has been issued, who fails to comply with any condition of the licence, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

4. Denoting stamps

All instruments which are required to be denoted under section 16 of the Act shall be so denoted by having affixed thereto or impressed thereon, in addition to the proper stamp or stamps, a particular stamp, on which a collector shall denote the amount of the duty paid in respect of the principal instrument.

5. Adjudication of stamp duty

(1) An executed instrument, the adjudication of which is desired under either section 17 or subsection (3) of section 52 of the Act, shall be submitted to the collector, and in all cases a plain copy of the instrument shall accompany the original instrument.

(2) Where a number of transfers of stocks, shares or marketable securities between the same parties are presented for adjudication, then, notwithstanding the provisions of paragraph (1), a copy of one transfer may be furnished and a list of the others, showing for each the consideration and the number and description of the shares or securities or the amount and description of the stock.

(3) An application for adjudication shall be in Form A in the Second Schedule to these Regulations, and if made under section 17 of the Act shall be accompanied by the fee therein specified.

(4) Copies supplied with the application will not be returned.

(5) The collector may require such further information to be given to him as he may deem necessary in any particular case.

(6) When the duty has been assessed, a notice of provisional assessment shall be sent to the applicant, who, if he agrees to the amount, shall pay the duty in the manner directed by the notice.

(7) The instrument shall then be stamped with the duty assessed and with the adjudication stamp, and shall be returned to the applicant.

(8) If the collector considers that the instrument is already duly stamped, or is not liable to any duty, he shall cause the adjudication stamp to be impressed and shall return the instrument to the applicant.

(9) If the applicant dissents from the proposed assessment, he may submit to the collector a statement of his reasons for dissenting and his view of the basis upon which the instrument should be stamped.

6. Certificates of time

An instrument first executed at any place out of Kenya shall bear a certificate endorsed on the face thereof, signed by the person presenting it, in the following form—

“Certified that this instrument was first received in Kenya on the day of, 20”

7. Stamping out of time

An instrument presented for stamping by leave under section 20 of the Act shall be accompanied by an application in Form B in the Second Schedule to these Regulations.

[Subsidiary]

8. Contracts chargeable as conveyances on sale

An instrument chargeable with duty under section 49 of the Act or as an instrument of dissolution of partnership shall be accompanied by a statutory declaration as to the apportionment of consideration in Form C in the Second Schedule to these Regulations.

9. Marketable securities

A transfer of a marketable security not quoted on any stock exchange shall be accompanied by a certificate of value in Form D in the Second Schedule to these Regulations.

10. Certificate on unstamping instrument

Where an instrument being a security for the payment or repayment of an unlimited amount of money has been stamped ad valorem and is later presented for payment of further ad valorem duty in accordance with section 70 of the Act, there shall at the same time be lodged a certificate in the following form –

I certify that the amount at any time owing by

..... to

(a) did not exceed £ until the
 day of 20

(b) has not at any time exceeded the sum of £ ;
 and I request that further stamp duty may be impressed on the instrument on the
 day of 20
 to cover a total advance of £

*Signature
 Address
 20Date

The Collector of Stamp Duties, Nairobi/Mombasa.

* To be signed by the mortgagee or by the manager of the bank making the advance.

- (a) If the amount has not yet been exceeded cancel these words.
- (b) If the advance has already been exceeded cancel these words.

11. Procedure for obtainable allowance for spoiled and misused stamps

(1) The owner of spoiled or misused stamps, namely, the person for whose use and business the stamps were purchased, shall apply in writing in Form E in the Second Schedule to these Regulations within the appropriate period set out in Part V of the Act.

(2) The spoiled instrument shall be surrendered to the collector for destruction or for disposal in such manner as he may direct.

(3) In all cases of bills of exchange signed by both drawer and acceptor and in cases where signed cheques, receipts, promissory notes, bills at sight or on demand, and accepted bills have been out of the possession of the signers, allowance shall be made upon production of duly stamped and completed substituted instruments correcting some error or omission in the spoiled instruments.

(4) Spoiled instruments shall be presented in a complete state without mutilation.

(5) No refund shall be made in respect of stamps which have been cut or otherwise removed from material.

[L.N. 159/1959.]

12. No allowance for spoiled stamps in certain cases

No allowance shall be made for any spoiled adhesive revenue stamp representing a fee paid in pursuance of the provisions of any Act specified in the Third Schedule to these Regulations or of any rules or regulations made under any such Act, being a fee collected by means of stamp affixed to any form prescribed by any such Act, rules or regulations.

FIRST SCHEDULE

[Reg. 2, L.N. 96/2009, r. 2.]

INSTRUMENTS UPON WHICH STAMP DUTY MAY BE PAID AND
DENOTED BY MEANS OF ADHESIVE REVENUE STAMPS OR
REVENUE STAMPS IMPRESSED BY A FRANKING MACHINE.

Agreement or any Memorandum of an Agreement under hand only and chargeable with duty of Sh. 1.

Bill of exchange payable on demand or at sight or on presentation or within three days after date or sight.

Bill of Exchange and Promissory Note, if drawn out of Kenya.

Bond, etc., chargeable with duty not exceeding Sh. 10.

Cancellation, Instrument of.

Cheque.

Contract Note.

Copy or Extract.

Duplicate or Counterpart.

Instrument registrable under the Chattels Transfer Act (Cap. 28).

Lease for a term of one year or less granted under the Trust Land Act (Cap. 288).

Letter of Credit.

Letter of Guarantee.

Letter of Indemnity.

Policy of Insurance, except any policy chargeable with duty as an annuity.

Receipt.

Instruments registrable under, or drawn and executed under the provisions of the Companies Act (Cap. 486).

Stamp Duty

[Subsidiary]

SECOND SCHEDULE

FORM A

[Reg. 5.]

To: The Collector of Stamp Duties, P.O. Box 30089, Nairobi. or P. O. Box 80053, Mombasa.

APPLICATION FOR ADJUDICATION OF STAMP DUTY

I hereby apply for the adjudication of the stamp duty payable on the under-mentioned instrument(s), a plain copy of which is enclosed (together with the fee of Sh. 100*):—

Table with 3 columns: Date, Description of Instrument, Parties

2. I certify that, except as set forth in the attached memorandum, all the facts and circumstances affecting the liability of the instrument(s) to duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein in pursuance of the provisions of section 10 of the Act.

Date Signature Name in block capitals Address

Note.- The nature of the further information usually required is set out in the following pages and must be given where appropriate.

* Delete if application is made under section 52(3) of the Act.

AGREEMENT FOR SALE

Where applicable, complete Form C in the Second Schedule to the Stamp Duty Regulations.

CONVEYANCE ON SALE

Where the property is sold subject to a mortgage State the amount owing for principal (and interest, if any, if the purchaser undertakes payment thereof) at the date of the conveyance.

Generally, if property is sold subject to, or in consideration of, the taking over or release of any debt or pecuniary liability. State the amount thereof.

CONVEYANCE OR TRANSFER (INCLUDING SETTLEMENT, DECLARATION OF TRUST, ETC.) OPERATING AS A VOLUNTARY DISPOSITION INTER VIVOS

Where the subject matter is land. Furnish a full description of the land with any improvements thereon and particulars of all sub-leases and tenancies with rents and estimated outgoings and names of tenants. The question of the value will be referred to the Government Valuer.

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Where the subject matter is stocks, shares or other marketable securities.

Furnish a valuation as indicated below under the heading "Settlement". With a voluntary settlement, produce duly stamped transfers by deed subject to stamp duty executed by the settlor in favour of the trustees. Where the securities have been vested in the trustees otherwise than by direct transfer from the settlor, particulars should be given.

Where the subject matter is property of any other description, e.g. reversions, life policies, furniture.

Furnish details and reasonable evidence of value and give the ages of the parties concerned where the subject matter is a version or a life interest.

CONVEYANCE OR TRANSFER ON ANY OCCASION EXCEPT
SALE, MORTGAGE OR VOLUNTARY DISPOSITION

If the conveyance or transfer is made on the occasion of the appointment of a new trustee of an existing trust.

Produce the deed of appointment,

If the conveyance or transfer is made for effectuating a settlement.

Produce the settlement.

INSTRUMENT OF DISSOLUTION OF PARTNERSHIP,
WHETHER AGREEMENT OR CONVEYANCE

In all cases.

Produce a copy of the balance sheet or statement of account as at the date of dissolution between the partners, showing—
(a) the amount of the liabilities (separating mortgages from current trade liabilities);
(b) the liquid assets (stock in-trade, cash and book debts);
(c) (If the fact is not disclosed by the instrument) the share of the outgoing partner in the partnership assets; and
(d) any immovable property held by or on behalf of the partnership.

MORTGAGE, ETC.

Note.- A security for advances without limit cannot be adjudicated.

Where a trust deed secures payment of debentures.

Produce the debentures executed and duly stamped.

Where it is claimed that collateral, auxiliary, additional or substituted security duty only is payable.

Produce the principal or primary security, or other evidence that it is stamped with full duty.

TRANSFER OF MORTGAGE

If the transfer is made on the occasion of the appointment of a new trustee of an existing trust.

Produce the deed of appointment.

In all cases.

State the amount of interest in arrear (if any) at the date of transfer.

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SETTLEMENT (IF NOT WITHIN HEADING III)

Where stocks and/or securities are settled, whether in possession or reversion, and whether the interest settled is contingent or vested.

Furnish particulars of the stocks and securities if not specified in the settlement and in any case produce a statement of the value of each of the several items as at the date of settlement—
(a) from prices quoted in any recognized stock and share list;
(b) where there is no quotation, complete and attach Form D in the Second Schedule to the Stamp Duty Regulations.

Where a share only in a reversionary interest in a trust fund is settled.

In addition to the above particulars of the investments of the fund at the date of settlement, state the settlor's interest therein.

Where a settlor covenants to settle other property which he may then have, but which is not specifically mentioned.

State whether the settlor was at the date of the settlement entitled in possession or reversion, or in default of the exercise of a power of appointment, to any money, stocks or shares not specified in the deed, and give as above particulars and value of such property.

Where the settled fund comprises a policy of life insurance—

- (a) If the settlement (or any other instrument) contains provision for keeping the policy on foot;
(b) If there is no such provision;

- (a) State the amount of any bonuses added.
(b) Produce a certificate of the surrender value from the insurance company.

Note.- Particulars of the value of unsold immovable property brought into settlement, whether subject to a trust for sale or not, need not be furnished.

SPECIAL EXEMPTIONS

Where it is claimed that an instrument is not chargeable with duty by reason of an exemption not arising under the Stamp Duty Act.

State the section of the particular Act conferring the exemption, and give an explanation of the grounds for claiming that the instrument falls within it.

FORM B

[Reg. 7.]

To: The Collector of Stamp Duties
P. O. Box 30089.
Nairobi.

P.O. Box 80053,
Mombasa.

APPLICATION FOR LEAVE TO STAMP OUT OF TIME

(Parties) to

I hereby certify that the annexed instrument was first executed on the day of, 20

Stamp Duty

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The reason(s) why this instrument was not presented for stamping in due time is/are:—

Signed
Name of Applicant in block capitals
Postal Address
Date

FOR OFFICIAL USE ONLY

Table with 5 columns: Leave Granted/Refused, Duty Sh, Penalty Assessed Sh., Date, Collector's Signature

FORM C

[Reg. 8.]

STATEMENT APPORTIONMENT OF CONSIDERATION

Table with 4 columns: Particulars of Consideration, Amount of Consideration (Sh. cts), Asset to be Transferred, Apportioned Consideration (Sh. cts). Rows include Cash, Shares, Debentures, Liabilities, and Other consideration.

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[Subsidiary]

- respect of which no further instrument evidencing the sale will be produced
- (h) Goodwill
- (i) Benefit of contracts
- (j) Patents, designs, trade marks, licenses, etc
- (k) Book debts due to the vendor
- (l) Cash on deposit
- (m) Other property, viz

NOTE.- Every question must be answered. If the answer is "Nil", this fact must be stated.

STATUTORY DECLARATION

(To be made by any party to the instrument, or, in the case of a Company, the Secretary)

I, (Secretary of Ltd.) of do solemnly and sincerely declare that the particulars shown above are in every respect fully and truly stated, and that no part of the value apportioned to loose plant and machinery represents plant or machinery which was not in a state of actual severance at the date of the sale or dissolution.

I make this Declaration conscientiously believing the same to be true and according to the Oaths and Statutory Declarations Act.

Declared at

This day of 20 Before me

FORM D

[Reg. 9.]

To: The Collector of Stamp Duties
P. O. Box 30089.
Nairobi. or P.O. Box 80053, Mombasa.

CERTIFICATE ON TRANSFER OF CERTAIN MARKETABLE SECURITIES

I hereby certify that to the best of my knowledge and belief—

(a) the transaction effected by the transfer of shares in dated 20 between and represents a bona fide sale between a willing vendor and a willing purchaser;

(b) the value of one ordinary/preference share in on the 20 was Sh.

Date

Signature of Company Auditor

Name in block capitals

Postal Address

.....

Stamp Duty

[Subsidiary]

FORM E

[Reg. 11.]

(To be submitted in duplicate)

To: The Collector of Stamp Duties
P. O. Box 30089. P.O. Box 80053,
Nairobi. or Mombasa.

APPLICATION FOR ALLOWANCE FOR SPOILED OR MISUSED STAMPS

I HEREBY APPLY for an allowance for stamps in respect of the instruments set out below.

2. I HEREBY CERTIFY that I am the owner of the stamps and that they were purchased by me.

Table with 3 columns: List of Instruments (One per line) (Notes (1) and (2)), Value of Stamp, (For Official use only) Collector's Remarks (Note (3)). Rows 1-12.

Notes:

- (1) Each instrument must be numbered in red with the number given to it above.
(2) Where a bank submits a number of blank cheques, they may be entered as one item.
(3) References in this column are to sections of the Stamp Duty this Act (Cap. 480), which, for ease of reference, are reproduced on the back of this form.

Date Signed
Name in capital letters
Name of Firm in capital letters
Postal Address

FOR OFFICIAL USE ONLY

The instruments in respect of which the application has been refused are returned herewith. A remittance for those approved will follow in due course.

Date
Collector of Stamp Duties

Stamp Duty

[Subsidiary]

THIRD SCHEDULE

[Reg. 12.]

1. The Trustees (Perpetual Succession) Act (Cap. 164).
2. The Government Lands Act (Cap. 280).
3. The Land Titles Act (Cap. 282).
4. The Registration of Titles Act (Cap. 281).
5. The Registration of Documents Act (Cap. 285).
6. The Mining Act (Cap. 306).
7. The Water Act (Cap. 372).
8. The Public Roads and Roads of Access Act (Cap. 399).

FOURTH SCHEDULE

[Reg. 2.]

INSTRUMENTS UPON WHICH STAMP DUTY MAY BE PAID AND DENOTED
BY MEANS OF REVENUE STAMPS IMPRESSED BY A FRANKING MACHINE

1. Any instrument requiring or capable of registration, being an instrument relating to the registration of transactions or devolution affecting land registered under any law relating to the registration of land.
 2. Bills of Exchange and Promissory Notes if drawn within Kenya.
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