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**SPECIAL ISSUE**

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LEGAL NOTICE NO. 117

THE ANTI-COUNTERFEIT ACT

(No. 13 of 2008)

IN EXERCISE of the powers conferred by section 37 of the Anti-Counterfeit Act, 2008, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Regulations—

THE ANTI-COUNTERFEIT (AMENDMENT) REGULATIONS, 2021

1. These Regulations may be cited as the Anti-Counterfeit (Amendment) Regulations, 2021. Citation.
2. The Anti-Counterfeit Regulations, 2010, in these Regulations referred to as the “principal Regulations”, are amended in regulation 2— Amendment of regulation 2 of L.N No. 126 of 2010.
  - (a) in the definition of the word “approved laboratory”, by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”;
  - (b) in the definition of the word “Board”, by deleting the word “Agency” and substituting therefor the word “Authority”; and
  - (c) in the definition of the word “Executive Director”, by deleting the word “Agency” and substituting therefor the word “Authority”.
3. Regulation 3 of the principal Regulations is amended by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”. Amendment of regulation 3 of L.N 126 of 2010.
4. Regulation 6 of the principal Regulations is amended in paragraph (2) by deleting the word “Agency” and substituting therefor the word “Authority”. Amendment of regulation 6 of L.N 126 of 2010.
5. Regulation 8 of the principal Regulations is amended in paragraph (2) by deleting the expression “sub-rule (1)” and substituting therefor the expression “paragraph (1)”. Amendment of regulation 8 of L.N 126 of 2010.
6. Regulation 13 of the principal Regulations is amended in paragraph (2)(c) by deleting the word “Agency” and substituting therefor the word “Authority”. Amendment of regulation 13 of L.N 126 of 2010.
7. Regulation 15 of the principal Regulations is amended in paragraph (1) by deleting the word “Agency” and substituting therefor the word “Authority”. Amendment of regulation 15 of L.N 126 of 2010.
8. Regulation 16 of the principal Regulations is amended by inserting the following new paragraph immediately after in paragraph (4) — Amendment of regulation 16 of L.N 126 of 2010.

(5) Upon destruction of any seized goods, the Executive Director shall issue a Destruction Certificate in Form ACA 16 set out in the First schedule.

9. The principal Regulations are amended in regulation 17(a) by deleting the word “Agency” and substituting therefor the word “Authority”. Amendment of regulation 17 of L.N. 126 of 2010.

10. The principal Regulations are amended by deleting regulation 18 and substituting therefor the following new regulation— Amendment of regulation 18 of L.N. 126 of 2010

Appointment of an agent.

18. (1) The owner of an intellectual property right may appoint an agent to act on his behalf by completing Form ACA 15 set out in the First Schedule and payment of the fee specified in the Second Schedule.

(2) An applicant who ordinarily resides outside Kenya or has a principal place of business outside Kenya may be represented by an agent.

(3) A person seeking to operate as an agent under this regulation shall apply, to the Authority, for admission as an agent in the Form ACA 17 set out in the First Schedule and accompanied by the fee specified in the Second Schedule.

(4) The admission granted under paragraph (3) shall be renewed annually.

(5) An application for renewal of admission as an agent shall be made to the Authority in form ACA 18 set out in the First Schedule and accompanied by the fee specified in the Second Schedule.

(6) The Authority shall maintain a register of all agents admitted under this regulation.

(7) The owner of an intellectual property may, at any time, revoke the appointment of an agent under this regulation and shall immediately notify the Authority in writing of such revocation.

No. 13 of 2016.

(8) An agent, other than those that are members of any statutory professional body, appointed under this regulation shall, in addition to the conditions imposed by the Authority, meet the requirements set out under the Private Security Regulation Act, 2016.

Code of Conduct.

18A. The Authority shall develop a Code of Conduct and any other manual for all agents admitted under these Regulations.

De-registration of an agent.

18B. (1) The Authority may de-register an agent on the following grounds.

- (a) gross misconduct;
- (b) failure to comply with the provisions of the Act or the Code of Conduct;
- (c) non-performance for a continuous period of at least six months;
- (d) in the interest of the public; or
- (e) such other reasonable cause.

(2) Before de-registration, the Executive Director shall grant the agent a reasonable opportunity to be heard.

(3) An agent de-registered by the Authority may apply to the High Court for judicial review of the decision and the decision of the High Court shall be final.

Exemption from certain requirements or conditions.

18C. (1) An agent may apply to the Authority to be exempted from any of the requirements or conditions imposed on agents under these Regulations.

(2) An application for exemption under paragraph (1) shall be made in the Form ACA 19 set out in the First Schedule and accompanied by the fee specified in the Second Schedule.

(3) The Authority may grant an exemption if satisfied that there are compelling and sufficient reasons to exempt the agent from the requirements or conditions of these Regulations.

11. The principal Regulations are amended by inserting the following new regulation immediately after regulation 20—

Amendment of regulation 20 of L.N.126 of 2010.

Application for compounding of offences.

20A. (1) An application for compounding of an offence in accordance with section 34A of the Act shall be made in the Form ACA 20 and accompanied by the fees specified in the Second Schedule.

(2) Upon receipt of an application under paragraph (1), the Executive Director may—

- (a) approve the application and make an order in Form ACA 21 set out in the First Schedule; or
- (b) reject the application and notify the applicant, in writing, within fourteen days of such decision.

(3) Where a complainant and a suspect likely to be charged with any offence under the Act reach an out of court settlement, the said agreement shall not be valid unless the settlement agreement is reached with the concurrence of the Authority.

(4) Notwithstanding the provisions of these Regulations, the Executive Director may, in appropriate circumstances, allow the payment by instalment of any fees emanating directly out of any alternative dispute mechanism provided that such instalments shall not extend to a period of more than twelve months.

12. Regulation 21 of the principal Regulations is amended in paragraph (2) by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

Amendment of regulation 21 of L.N. 126 of 2010.

13. Regulation 22 of the principal Regulations is amended by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

Amendment of regulation 22 of L.N. 126 of 2010.

14. The First Schedule to the principal Regulations is amended by inserting the following new forms immediately after Form ACA 15—

Amendment of the First Schedule to L.N. 126 of 2010.

Form ACA 16

(r. 16(5))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority  
DESTRUCTION CERTIFICATE

1	Name of the owner of seized goods	
2	Telephone number, postal and physical address of owner	
3	Name of agent if any	
4	Telephone number, postal and physical address of agent	
5	Type and quantity of seized goods	
6	Type and quantity of goods destroyed	
7	Name of the destroying company	
8	Telephone number, postal and physical address of destroying company	
9	Method of destruction	
10	Remarks	

This is to certify that the above stated goods were destroyed in compliance with the applicable environmental laws of Kenya on this ..... Day of ..... 20.....

Witnessed by:

Name ..... Signature ..... Date .....

OWNER/AGENT

Name ..... Signature ..... Date .....  
INSPECTOR

Name ..... Signature ..... Date .....  
DEPOT MANAGER

FORM ACA 17

(r. 18(3))

THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

APPLICATION FOR ADMISSION AS AN AGENT

The Executive Director,

The Anti-Counterfeit Authority

1	Name of the Applicant	
2	Telephone number, postal, physical and email addresses of Applicant	
3	Remarks	

I, the applicant identified above, apply to be admitted to practice before the Authority.

(i) I attach a copy of my identity card.

(ii) I attach evidence that I satisfy the requirements of Regulation 18

Dated this ..... day of ..... 20.....

Name..... Signature .....

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

.....  
EXECUTIVE DIRECTOR

NOTES;

1. If space provided is not sufficient, please use a separate sheet of paper
2. This form shall be accompanied with a certified copy of the Power of Attorney.

FORM ACA 18

(r. 18(5))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority

APPLICATION FOR RENEWAL OF REGISTRATION AS AN AGENT

The Executive Director,  
The Anti-Counterfeit Authority

1	Name of the Applicant	
2	Telephone number, postal, physical and email addresses of Applicant	
3	Period when last registered	
4	Remarks	

I, the applicant identified above, apply to be admitted to practice before the Authority.

- (i) I attach a copy of my identity card.
- (ii) I attach evidence that I satisfy the requirements of Regulation 18 (3)

Dated this ..... day of ..... 20.....

Name.....Signature .....

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

.....  
EXECUTIVE DIRECTOR

NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper
2. This form shall be accompanied with a certified copy of the Power of Attorney.

FORM ACA 19

(r. 18C(2))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority

APPLICATION FOR EXEMPTION BY AN AGENT

The Executive Director,  
The Anti-Counterfeit Authority

1	Name of the Applicant	
2	Telephone number, postal, physical and email addresses of Agent	
3	Condition against which the Agent seeks exemption	
4	Justification for exemption	
6	Additional information (if any)	

Dated this ..... day of ..... 20.....

Name..... Signature .....

For official use only

THIS APPLICATION IS APPROVED/NOT APPROVED

EXECUTIVE DIRECTOR

NOTES;

1. If space provided is not sufficient, please use a separate sheet of paper
2. This form shall be accompanied with a certified copy of the Power of Attorney.

FORM ACA 20

(r. 20A (1))

THE ANTI-COUNTERFEIT ACT, 2008  
The Anti-Counterfeit Authority  
APPLICATION FOR COMPOUNDING OF AN OFFENCE

The Executive Director,  
The Anti-Counterfeit Authority

1	Name of the owner of the seized goods	
2	Telephone number, postal, physical and email addresses of owner	
3	Name of agent if any	
4	Telephone number, postal, physical and email addresses of agent	
5	Description of seized goods	
6	Quantity of seized goods	
7	Retail value of seized goods	
8	Physical location of the premise where the goods were seized	
9	Date and time when the goods were seized	
10	Remarks	

I hereby admit that I have committed the offence of .....  
..... And hereby request the Executive Director to deal with the offence under  
Section 34 A (1) of the Anti-Counterfeit Act.

Dated this ..... day of ..... 20.....

Name of Applicant..... Signature .....

For official use only

## THIS APPLICATION IS APPROVED/NOT APPROVED

EXECUTIVE DIRECTOR

## NOTES:

1. If space provided is not sufficient, please use a separate sheet of paper.
2. This Form shall be completed in quadruplicate. Upon approval of the application, a copy will be given to the applicant, the original to be filed in the relevant file of the compounding committee, one copy to be given to the Inspector and one copy to be filed in the relevant file.
3. This application shall be accompanied by the Inventory of Seized Goods and an affidavit in support of the application.

FORM ACA 21

(r. 20A (2)(a))

## THE ANTI-COUNTERFEIT ACT, 2008

The Anti-Counterfeit Authority

## COMPOUNDING ORDER

.....(1) having admitted that goods seized on .....  
 ..... (2) at .....(3) by the Authority from it/his/her (4)  
 are counterfeit and having therein requested the Executive Director to deal with the  
 matter under section 34A of the Act, this is therefore to order that  
 .....(5) pays a fine of Ksh.....  
 within a period of ..... from the date of this Order.

Given under my hand at (6).....on this ..... day of ..... 20.....

Executive Director

## NOTES:

1. Enter name of the person admitting to the offence.
2. Enter date of seizure
3. Indicate place of seizure
4. Indicate as appropriate
5. Enter name as in note 1 above
6. Indicate place of issuance of order

12. The Second Schedule to the principal Regulations is amended in the table of fees by inserting the following new items on fees immediately after item 7—

Amendment of the  
Second Schedule to  
L.N 120 of 2010

No.	Forms	Purpose	KSh.
8.	FORM ACA 17	Application for admission as an agent	10,000
9.	FORM ACA 18	Application for renewal of admission as an agent	5,000
10.	FORM ACA 19	Application for exemption of as an agent	1,000
11.	FORM ACA 20	Application for compounding of an offence	5,000

Made on the 30th June, 2021.

BETTY MAINA,  
 Cabinet Secretary, Ministry of Industrialization,  
 Trade and Enterprise Development.