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UPDATE ON STAKEHOLDER ENGAGEMENT ON THE FINANCE BILL, 2022

On 4th May 2022, the East Africa Law Society (EALS) through the EALS Trade and Regional Integration Committee (the EALS Committee), chaired by Faith Macharia-Okaalo, submitted a memorandum to the National Assembly on the Finance Bill, 2022, focusing on a potential breach by the Kenyan Government of the Treaty for the Establishment of the East African Community (the EAC Treaty) through the proposed amendment that seeks to introduce a mandatory pre-condition for taxpayers to deposit with the Kenya Revenue Authority 50% of disputed taxes in a special account at Central Bank of Kenya before filing an appeal at the High Court from a decision of the Tax Appeals Tribunal (the proposed amendment).

The EALS Committee, represented by Faith Macharia-Okaalo and Ikoha Muhindi (member) appeared before the Departmental Committee on Finance and National Planning (the Departmental Committee) on 10th May 2022 and gave its views on the potential impact of the proposed amendments, in particular, the inhibition of taxpayers' rights to (a) equality before law and freedom from discrimination; (b) access to justice; (c) a fair trial; and (d) the promotion of rule of law principle—contrary to the express provisions of both the Constitution of Kenya, 2010 and the EAC Treaty, which Kenya is party to.

After hearing and considering the EALS Committee's views, which were also echoed by several other stakeholders, the Departmental Committee observed that the requirement to deposit 50% of the disputed amount before filing an appeal in the High Court will reduce working capital for businesses and also deny justice to taxpayers where they cannot raise the amount. The Departmental Committee has therefore made a recommendation that the proposed amendment be deleted.

The EALS welcomes the recommendation by the Departmental Committee and hopes that the National Assembly will adopt the recommendations in the pending stages of the legislative process that will lead to the Finance Act, 2022.

David Sigano

Ag. Chief Executive Officer, East Africa Law Society

Notes to Editors

The East Africa Law Society (EALS) is the umbrella regional bar association of the respective national law societies in East Africa (the Law Society of Kenya, Tanganyika Law Society, Uganda Law Society, Zanzibar Law Society, Rwanda Bar Association, Burundi Bar Association and the South Sudan Bar Association) together with their individual members. It is one of the apex bodies of the East African Community and has Observer Status officially conferred upon it by the East African Community.

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