

THE STRATEGIC GOODS CONTROL BILL, 2024

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THE STRATEGIC GOODS CONTROL BILL, 2024

A Bill for

AN ACT of Parliament to provide for the control of trade in strategic goods, technology and related services, to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery, and for connected purposes

ENACTED by the Parliament of Kenya as follows —

PART I- PRELIMINARY

Short title.

1. This Act may be cited as the Strategic Goods Control Act, 2024, and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires—

“broker” means a person that provides brokering services related to conventional arms or if such services are offered in connection with weapon of mass destruction or their means of delivery or if destined to military end-use in an embargoed destination or to prohibited restricted users;

“brokering” means the selling or buying of strategic goods that are located in foreign countries for their transfer to another foreign country;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to internal security;

“certificate” means the certificate of registration issued under section 9(4);

“chairperson” means the chairperson of the Committee;

“Committee” means the Strategic Goods Control Committee established under section 5;

“military goods” include—

(a) weapons, munitions, bombs, explosives, armaments, vessels, vehicles and aircraft designed or produced manufactured for use in war, warlike operations or security operations and any other articles of war;

(b) any component, equipment, system, processes, Software and

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technology of whatever nature capable of being used in the design, development, production, upgrading, refurbishment or maintenance of anything contemplated in paragraph (a);

“Director” means the Director appointed under section 8;

“dual-use good” means an item, software or technology, which can be used for both civil and military applications or in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of weapons of mass destruction or their means of delivery;

“end-user” means a person who is the owner of a strategic good;

“end-use control” means a procedure authorising the establishment of controls over any item, software or technology, not listed in the National Control List, that is based on concerns related to weapons of mass destruction, their means of delivery, or military end-use in destinations subject to United Nations Security Council embargo, for prohibited and restricted end uses and end-users;

“export” means to take or cause to be taken a strategic good out of Kenya including transmission of technology and software by electronic means;

“financing” means making available or providing funds or assets in connection with any uses related to weapons of mass destruction or their means of delivery, for military end-use in a destination subject to United Nations Security Council;

“general licence” means an authorisation to enable a person to engage in strategic trade with one or more countries under the conditions specified in the licence;

“global licence” means an authorisation to enable a person engage in strategic trade regarding one category of dual-use goods which may be valid for one or more specific end-uses or in one or more countries;

“import” means to bring or cause a strategic good to be brought into Kenya, including the transmission of computer data by electronic means;

“in-country transfer” means the reallocation of a strategic good previously exported from Kenya, from one person to another within a single foreign country by any means, including the electronic transmission of software or technology;

“individual licence” means an authorisation to enable a person to engage in strategic trade with respect to one end-user, consignee or

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covering one or more dual-use goods;

“inspector” means a person appointed under section 26;

“licence” means a licence issued under section 13;

“means of delivery” means missiles, rockets and other manned or unmanned systems capable of delivering nuclear, biological or chemical weapons and are specifically designed for such use;

“military end-use” means the —

- (a) incorporation into conventional weapons and arms;
- (b) use of production, test or analytical equipment and its components for the development, production or maintenance of conventional weapons and arms; or
- (c) use of any unfinished products in a plant to produce conventional weapons and arms;

“nationally controlled goods” means strategic goods, and technology, tangible or intangible, that are placed under unilateral controls for reasons of national security, foreign policy, anti-terrorism, crime control or public health and safety;

“National Control List” means the list published by the Cabinet Secretary under section 4;

“National Security Organ” means a national security organ under Article 239(1) of the Constitution;

“re-export” means the exportation of a strategic good that was previously imported from a foreign country;

“register” means the register maintained in accordance with section 10;

“related service” means brokering, financing, transportation or the provision of technical services;

“service provider” means a broker, a person who funds, transporter or technical services provider;

“Secretariat” means the Secretariat of the committee established under section 7;

“software” means a collection of one or more programs or micro programs recorded, stored or embodied in any device;

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“strategic goods” means military goods, dual use-goods, weapons of mass destruction and their means of delivery and nationally controlled goods and includes any component used in their production, means of delivery and their related service;

“strategic trade” means the production, sale, export, import, re-export, in-country transfer, transit and transshipment of strategic goods and the provision of related services;

“technical services” means technical support, including repairs, development, manufacture, assembly, testing, maintenance, overhaul or any other service, which may take such forms as instruction, training, transmission of working knowledge or skills or consulting services provided in relation to a strategic good;

“technical service provider” means a person providing technical services in connection with weapon of mass destruction or their means of delivery, or to military end-use in an embargoed destination, or to prohibited restricted users;

“transmission” means making software and technology available in an electronic form to persons within and outside Kenya as well as the oral and written transmission of technology including when technology is described over a voice transmission medium;

“transit” means the movement of strategic goods through the territory of Kenya from a foreign country to another foreign country;

“transshipment” means the transfer, either directly or indirectly, of a strategic good from an aircraft, vehicle or vessel arriving in Kenya from a foreign country to an aircraft, vehicle or vessel departing to a foreign country;

“transportation” means the act of transferring, or undertaking to transfer, a strategic good, a supporting service being provided to a transport provider, and any act calculated to promote the delivery of a strategic good;

“transporter” means a person who provides transportation services in accordance with this Act, including transportation between foreign countries;

“visiting forces” means a member of the armed forces of a designated country which for the time being is lawfully present in Kenya—

- (a) under a treaty or agreement to which the Government is party;
or
- (b) during peacekeeping or a government humanitarian mission;

and

“weapon of mass destruction” means a weapon designed to kill, harm or infect people, animals or plants, through nuclear explosion, dispersion of the toxic properties of a chemical weapon, or the infectious or toxic properties of a biological weapon, and includes a means of delivery designed, adapted or intended for the deployment of such a weapon.

Application.

3. (1) This Act shall apply to —

- (a) any natural or juridical person operating within Kenya who engages in strategic trade;
- (b) any person who handles a strategic good; or
- (c) a citizen of Kenya who provides related services outside Kenya.

(2) This Act shall not apply to—

- (a) the importation, storage, use, exportation, transit and transshipment of strategic goods and related services by a national security organ or its agencies or by a service or force established under Article 239(4) of the Constitution; or
- (b) the transit, transshipment and temporary exportation and importation of conventional arms by visiting forces:

Provided that such conventional arms shall be approved for clearance by the ministry responsible for defence.

The National Control List.

4. (1) The Cabinet Secretary shall, on the recommendation of the Committee, publish the National Control List.

(2) The National Control List shall—

- (a) specify the strategic goods that are subject to the provisions of this Act; and
- (b) be in conformity with the international and regional commitments of Kenya.

(3) The National Control List shall be published in the *Gazette*.

(4) The Cabinet Secretary may, on the recommendation of the Committee, update the National Control List.

PART II —THE STRATEGIC GOODS CONTROL COMMITTEE

Establishment of the Strategic Goods Control Committee.

5. (1) There is established the Strategic Goods Control Committee.

(2) The Committee shall consist of the—

- (a) Principal Secretary responsible for matters relating to internal security, who shall be the chairperson;
- (b) Principal Secretary responsible for matters relating to foreign affairs;
- (c) Principal Secretary responsible for matters relating to Defence;
- (d) Principal Secretary responsible for matters relating to finance;
- (e) Principal Secretary responsible for matters relating to Information, Communication and Technology;
- (f) Principal Secretary responsible for matters relating to health;
- (g) Principal Secretary responsible for matters relating to agriculture;
- (h) Principal Secretary responsible for matters relating to trade;
- (i) Principal Secretary responsible for matters relating to mining;
- (j) Solicitor General;
- (k) Chief of the Defence Forces;
- (l) Director General of National Intelligence Service;
- (m) Inspector General of the National Police Service;
- (n) Commissioner General Kenya Revenue Authority; and
- (o) Director, who shall be an *ex officio* member and secretary to the Committee.

(3) The chairperson shall preside at every meeting of the Committee at which he is present, but in the absence of the chairperson the members present may elect a chairperson from among their number to preside.

(4) The quorum for a meeting of the Committee shall be eight members.

(5) Except as provided in this Act, the Committee shall regulate its own procedure.

(6) The Committee may co-opt any other person to attend its meetings and participate in its deliberations, but that person shall not vote.

Functions of the Committee.

6. The Committee shall —

- (a) provide oversight in the control of trade in strategic goods and related services;
- (b) develop standards and procedures for the effective implementation of this Act;
- (c) formulate and review the National Control List;
- (d) approve, monitor and evaluate the budget proposals provided by the Secretariat;
- (e) establish and maintain the coordination, cooperation, assistance and sharing of information within government agencies, the academia, private institutions, any other person, and other countries for the effective implementation of this Act;
- (f) report to the Cabinet Secretary on matters relating to the control of strategic goods and services or related services;
- (g) issue, suspend or revoke a licence or a certificate for purposes of this Act;
- (h) establish and operate end-use controls and compliance checks; and
- (i) perform such other functions necessary for the effective implementation of this Act.

The Secretariat.

7. (1) There shall be a secretariat of the Committee which shall consist of such public officers as may be appointed or seconded to the Secretariat.

(2) The Secretariat shall —

- (a) establish and maintain a comprehensive database on strategic goods and related services;
- (b) implement the provisions of this Act in collaboration with other agencies;
- (c) conduct administrative investigations under this Act;
- (d) coordinate, collaborate and share relevant information with other government agencies in the implementation of this Act;
- (e) prepare and submit budget proposals for consideration by the Committee;
- (f) monitor strategic trade and end user controls;
- (g) inspect end-use activities and end-user controls for strategic goods;

- (h) submit quarterly reports on matters relating to the control of strategic goods or related services to the Committee; and
- (i) perform such other functions that are necessary for the effective implementation of this Act.

The Director.

8. (1) The Secretariat shall be headed by a Director who shall be a public officer appointed by the Cabinet Secretary on the recommendation of the Committee.

(2) The Director shall—

- (a) be the head of the Secretariat and be responsible for the day to day management of the Secretariat;
- (b) keep all records of the Committee;
- (c) communicate the decisions of the Committee; and
- (d) perform such other functions as may be assigned by the Committee.

(3) The Director shall be appointed on such terms and conditions as may be determined by the Cabinet Secretary, in consultation with the Salaries and Remuneration Commission.

PART III—REGISTRATION AND LICENSING

Registration.

9. (1) A person who intends to engage or engages in strategic trade shall register with the Committee.

(2) A person who intends to register with the Committee in accordance with subsection (1) shall apply for registration in the prescribed form, upon payment of the prescribed fees.

(3) The Committee may, on consideration of an application made under subsection (2) approve or refuse to grant the application.

(4) Where the Committee approves an application, the Committee shall issue a certificate of registration to the applicant and enter the details of the applicant in the Register.

(5) The Committee may refuse to approve an application made under subsection (2) if —

- (a) the applicant falsely represents or conceals any material fact or submits misleading information, including submitting a forged document;
- (b) the applicant was found liable for violating an international embargo or sanction that binds Kenya;
- (c) the applicant is the subject of ongoing national security

related civil or criminal proceedings; or

(d) there are prevailing national security concerns.

(6) A registration under this section shall remain valid unless cancelled or suspended by the Committee.

Cancellation,
suspension or
restoration of
registration.

10. (1) The Committee may suspend the registration of a person engaged in strategic trade where it has reasonable grounds to suspect a contravention of this Act by that person.

(2) The Committee may restore a suspended registration if the suspicion of contravention of this Act is not established.

(3) The Committee may cancel a registration if —

(a) the registered person—

(i) so requests in writing;

(ii) contravenes this Act, or any other law relating to national security;

(iii) violates an international sanction or embargo that binds Kenya;

(iv) dies;

(v) is adjudged bankrupt;

(vi) is a body corporate that has been dissolved;

(vii) fails to engage in strategic trade for a period of three years;

(b) new facts emerge which would have resulted in a denial of the application for registration at the time when the application was made;

(c) an entry has been incorrectly or fraudulently made;

(d) there is a change of shareholders, directors or signatories of the body corporate without written notification to the Committee; or

(e) any other national security concerns arise.

(4) The Committee shall remove, from the Register, the name of a person whose registration has been cancelled under subsection (3).

(5) A person whose name has been removed from the Register shall cease, from the date of such removal, to engage in strategic trade, and any licence or certificate issued under this Act shall be

revoked.

Register.

11. (1) The Director shall maintain a Register of persons engaged in strategic trade.

(2) The Register maintained under subsection (1), shall contain, in respect of each application a copy of —

- (a) the application received;
- (b) the certificate or licence issued under this Act; and
- (c) any other information the Committee may consider necessary.

End-use control.

12. (1) The Committee shall impose end-use controls on strategic goods on the National Control List.

(2) The Committee may impose end-use controls on strategic goods that are not on the National Control List

(3) Where the Committee imposes end use control on strategic goods, the end user of the strategic good shall sign an end user certificate.

(4) The end user certificate under (3) shall specify the end user, the quantity, value and purpose of the strategic good.

(5) The Committee shall certify the end-user certificate.

(6) A person who intends to change the end user, shall within forty-eight hours notify the Committee in writing, of any change concerning the end-user or another party to an export, import, transit, use, storage, transshipment of strategic goods or provision of related services.

(7) The Committee shall, upon receipt of the notification under sub section (6) approve a change of end-user in accordance with the class of licence held by the applicant within ninety days from the date of receipt of the notification.

(8) A person who engages in strategic trade shall comply with the end user undertakings.

Shipment of goods specified in the National Control List.

13. (1) The Committee may prohibit the export, re-export, transit, transfer, transmission and transshipment of a good not specified in the National Control List or the provision of a related service if the goods or services in question are or may be intended, in their entirety or in part, for use in connection with weapons of mass destruction, their means of delivery, or for military applications to a destination which is subject to a United

Nations Security Council sanction or embargo, prohibited or restricted end uses and end users-

(2) The Committee may stop a shipment of goods specified in the National Control List or the provision of related services at any stage in order to verify that the shipment of the goods or the provision of the related services has been approved under this Act.

(3) If a shipment is already in transit, the Committee may direct that the shipment be returned or unloaded at any port of call.

Licensing.

14. (1) A person shall not engage in the trade of a strategic good specified in the National Control List or provide a related service unless the person is the holder of a licence issued under this Act.

(2) A person who intends to engage in strategic trade shall apply for a licence in the prescribed form, upon payment of the prescribed fee.

(3) The Cabinet Secretary may grant an exemption from licensing on the recommendation of the Committee.

(4) No person, other than a national security organ shall engage in strategic trade for military applications.

Conditions for the issuance of a licence.

15. (1) The Committee may issue a licence to an applicant subject to such conditions as set out under this Act.

(2) In deciding whether to issue a licence under subsection (1), the Committee shall consider the following —

- (a) the national security of Kenya and international obligations and commitments under United Nations Security Council Resolutions and African Union Peace and Security Council Resolutions or relevant international treaties and agreements;
- (b) the preservation of regional peace, security and stability;
- (c) the internal tensions or armed conflict in the destination country;
- (d) human rights and international humanitarian law;
- (e) terrorism or organized criminal activities;
- (f) the security interests of a country which is an ally to Kenya;
- (g) the risk of diversion to an unauthorized end user or end-

use; and

(h) any other relevant national security consideration.

- (3) The Committee shall refuse to issue a licence, if —
- (a) the applicant does not fulfil the conditions and requirements under this Act;
 - (b) the applicant submitted false documents, made misleading representations or concealed material facts in the application;
 - (c) the applicant has contravened any legal provision relating to national security;
 - (d) the applicant has violated an international embargo or sanction that binds Kenya;
 - (e) the applicant is subject to ongoing criminal or civil proceedings related to national security;
 - (f) the goods for which the licence is being sought are the subject of a police investigation or court proceedings;
 - (g) the proposed strategic trade is in breach of a United Nations Security Council sanction or embargo;
 - (h) the proposed strategic trade will impede the fulfilment of other international commitments or obligations of Kenya;
 - (i) there is credible information that the proposed strategic trade may endanger national or international security, regional stability, or contribute to terrorist acts;
 - (j) there is credible information that the proposed strategic trade may result in the diversion of the strategic good or service to an unauthorized end-use or end-user; or
 - (k) there are any other national security concerns.

Validity of licence.

16. (1) The validity period of a licence issued under this Act shall be as follows—

- (a) an individual licence shall be valid for a period of three years from the date of issue;
- (b) a global licence shall be valid for a period of five years from the date of issue; and
- (c) a general licence shall be valid for a period of five years from the date of issue until the same is revoked.

(2) The Cabinet Secretary shall, by notice in the *Gazette*, notify the public of the issuance of a general licence under this Act.

Notification of lost

17. Where a licence is lost or destroyed, the holder of the licence

or destroyed licence.

shall notify the Committee of the loss or destruction, within seven days of the occurrence.

Fair hearing.
Cap.7L

18. In determining whether to revoke or suspend a licence, the Committee shall, where applicable, comply with Article 47 of the Constitution and the Fair Administrative Action Act.

Suspension of
licence

19. 1) Where the Committee suspects that the strategic trade or provision of a related service is being conducted in contravention of existing conditions of a licence, the Committee may suspend the licence.

(2) The Committee shall, in writing, inform the holder of the licence of the failure to comply with the conditions of the licence and shall specify the corrective action to be taken by the holder of the licence.

(3) Where the holder of the licence does not take the corrective measures specified by the Committee under subsection (2), the Committee may suspend the licence until the holder of the licence complies with the corrective action recommended by the Committee.

(4) The Committee may suspend a licence for a shipment of goods specified in the National Control List or the provision of related services to countries experiencing a deterioration in security.

(5) The Committee shall, in writing, notify the holder of a licence of the suspension of the licence and the period of such suspension.

(6) Where at the end of the period specified in subsection (5), the grounds for suspension are still valid, the period of suspension may be extended, and the holder of the licence shall be notified of such extension in writing.

(7) The suspension of the licence may be lifted where the Committee considers it appropriate to do so

Revocation of
licence.

20. (1) The Committee may revoke a licence if —

- (a) the holder of the licence so requests, in writing;
- (b) new facts emerge, which had they been known or existed at the time of making the application, would have resulted in the Committee refusing to issue the licence;
- (c) a substantive change in the information specified in the licence occurs;
- (d) the holder of the licence fails to comply with the obligations, terms or conditions of the licence;

- (e) the holder of the licence contravenes this Act or any other law relating to national security;
- (f) the holder of the licence does not comply with a request of the Committee for additional information relating to the activities conducted under the licence;
- (g) the holder of the licence dies;
- (h) the registered person is a body corporate that is dissolved;
- (i) there is a change of shareholders, directors or signatories of the body corporate;
- (j) the Committee becomes aware of any other reasons related to national security; or
- (k) Any other reason.

(2) The Committee shall revoke a licence if the holder of the licence is removed from the Register.

Publication of revocation of General licences

21. The Committee shall, by notice in the *Gazette*, notify the public of the revocation of a General licence under this Act.

Notification to government agencies.

22. The Committee shall notify relevant government agencies or departments immediately it revokes or suspends a licence issued under this Act.

Administrative Appeals.

23. (1) Any person who is aggrieved by a decision of the Committee shall have the right to appeal to the Cabinet Secretary within thirty days of being notified of the decision.

(2) The appeal lodged under sub-section (1) will be heard and be determined within ninety days

(3) Where at the end of the appeal period specified in subsection (2), the grounds for appeal are still valid, the period of suspension and, or revocation may be extended, and the holder of the licence shall be notified of such extension in writing.

(4) The right to appeal to the Cabinet Secretary shall be in addition to any other remedy available in law.

PART IV—ENFORCEMENT

Compliance requirements.

24. A person who engages in strategic trade shall —

- (a) comply with the conditions upon which the licence was issued and inform the Committee immediately of any change that occurs in an export, import, transit, transshipment of

strategic goods as well as provision of related services;

- (b) inform the Committee of the finalisation of the activity for which the licence was issued, and submit the relevant documents to the Committee;
- (c) notify the Committee of the grounds for suspecting that strategic goods are or may be used, partly or entirely, for any of the uses related to weapons of mass destruction, their means of delivery for military end-use in an embargoed destination by restricted persons, or for suspecting that the related service which he intends to provide would facilitate that use;
- (d) confirm the delivery and receipt of the strategic goods;
- (e) indicate clearly in relevant commercial documents including any sales contract, order confirmation, invoice or dispatch note relating to domestic transfers of goods in the National Control List produced in Kenya, that those strategic goods are subject to controls, if exported from Kenya;
- (f) notify the Committee within twenty four hours of any loss or theft of strategic goods or nationally controlled goods in their possession;
- (g) put in place internal compliance programmes for effective compliance with the provisions of this Act; and
- (h) comply with other obligations, terms and conditions of a licence or certificate issued under this Act.

Verification of compliance..

25. (1) The Secretariat shall, in consultation and cooperation with other regulatory authorities and enforcement agencies, be responsible for verifying compliance of all persons engaged in strategic trade.

(2) The verification of compliance shall be conducted before, during, and after the issuance of a licence.

(3) During the verification of compliance, the Committee may, in collaboration with other regulatory authorities—

- (a) request for necessary information from the applicant or holder of a licence for purposes of compliance control;
- (b) inspect the documents of an applicant or holder of a licence and the business premises, including offices, production facilities, warehouses, and distribution centres, related to strategic goods and nationally controlled goods as well as the goods themselves;
- (c) audit the internal compliance programs

- (d) request for information from other institutions and, or organizations necessary for the implementation of the supervision;
- (e) request for assistance from competent authorities of other countries in order to collect additional information necessary for the fulfilment of the supervision;
- (f) monitor compliance of the holder of the licence with the obligations, terms, and conditions of the issued licence;
- (g) monitor the end-users of the strategic good; and
- (h) undertake enforcement activities within their respective mandate.

Inspector(s).

26. (1) The Cabinet Secretary may, on the recommendation of the Committee, by notice in the Gazette, appoint a suitably qualified person to be inspector.

(2) An inspector may —

- (a) investigate an administrative violation committed under this Act;
- (b) undertake the enforcement of this Act in cooperation with other agencies; and
- (c) perform such other functions as may be assigned by the Director.

(3) No person appointed under subsection (1) shall, while being so appointed, engage in strategic trade.

(4) An inspector shall be furnished with a certificate of his appointment as an inspector and on entering any place or premises for purposes of subsection (2) shall be required to provide the certificate to the person in charge thereof.

Access to places or premises.

27. (1) An inspector shall, with a warrant, have full and free access to any building, place, property, documents, network or data storage device for the purposes of administering this Act.

(2) Where an inspector enters any place or premises for purposes of this Act, the inspector may —

- (a) require any person therein to produce any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, or items which such

person is required to keep under the provisions of this Act;

- (b) examine any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, facility, apparatus, equipment, device or item and make copies of or take extracts from any such books, accounts, documents or records;
- (c) seize or detain any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, facility, apparatus, equipment, device or item which contains or is reasonably suspected to contain information relating to any offence suspected to have been committed under this Act;
- (d) require any person therein to answer questions relating to—
 - (i) any book, data, document or other record, or item;
 - (ii) any entry in any book, data, document or other record; or
 - (iii) any other item that the inspector may deem necessary.
- (e) require, at the expense of any person therein, to open and examine any container, envelope, package or other items and materials in any such place or premises; or
- (f) take a sample of any item, good or thing for analysis and testing.

(3) If by reason of its nature, size or amount, it is not practicable to remove any item, books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, seized or detained under this section, the inspector shall, by any means, seal such item, book, accounts or other documents, including computerized data, or other record in the place or premises or container in which it is found.

(4) Where the inspector is unable to obtain free access to any place or premises or to any container in that place or premises, the inspector may, at any time, enter such place or premises and open such container in such manner, if necessary by force, as the inspector may deem necessary.

(5) Where, on the entry upon any place or premises under the provisions of this Act, any strategic goods are found in relation to which an offence has been committed, such strategic goods shall be liable for forfeiture.

Power to search conveyances.

28. (1) An inspector may, with a warrant —

- (a) board any conveyance;

- (b) require the master of a vessel, the pilot of an aircraft or person in control of any other conveyance to give such information relating to the conveyance, cargo, stores, crew, passengers or voyage as he may consider necessary;
- (c) search all parts of such conveyance for strategic goods;
- (d) examine all items on board and all items being loaded or unloaded;
- (e) demand all documents of items which ought to be on board; and
- (f) require all or any such document to be submitted to him for inspection.

(2) A master of a vessel, pilot of an aircraft or person in control of any conveyance who refuses to allow an authorised officer to board or search such conveyance or refuses to give such information or to produce such documents on demand commits an offence and shall, on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

(3) If any place, box or chest on board in such conveyance is locked and the key withheld, the inspector may break open any such place, box or chest at the expense of the other party.

Entry and search of premises without warrant.

29. An inspector may without a warrant exercise any power referred to in section 27 and 28 where—

- (a) a person who is competent to do so consents: or
- (b) a delay in obtaining the warrant would defeat the object of the warrant.

List of items seized or detained.

30. Where any strategic good and any container, package, conveyance or other article in which the strategic good is stored, kept or found, record, book, account, document or electronic data are seized, the inspector seizing the items shall prepare a list of the items seized and shall thereafter deliver a copy signed by the inspector to the owner or person in charge of the place, premises or conveyance which has been searched, or to such owner's or person's agent or servant, at that place, premises or conveyance.

Disposal of seized strategic goods.

31. (1) The Committee may at any time it considers appropriate, obtain a court order for the disposal of the strategic goods together with any container, package, conveyance or other article in which the strategic goods are stored, kept or found, record, book, account, document or electronic data seized subject to the following procedures being complied with —

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- (a) an inventory specifying the description, markings and other particulars which clearly identify the items seized prepared by an inspector;
- (b) photographs of the items seized taken in the presence of the inspector, and the said inspector has certified that the photographs are true; and
- (c) copies of any record, book, account, document or electronic data seized are duly certified by an inspector.

(2) The disposal of goods under subsection (1) shall be carried out at the expense of the owner of the goods.

(3) The disposal will be undertaken in accordance with further provisions stipulated under the Disposal of Uncollected Goods Act Cap 38 and the Environmental Management and Co-ordination Act, Cap 387

(4) The Cabinet Secretary shall develop regulations for disposal of the strategic goods.

Forfeiture of strategic goods when there is no prosecution.

32. (1) Where there is no prosecution or conviction in respect of any strategic goods or electronic data seized in the exercise of any power conferred under this Act, such items shall be held for a period of ninety days from the date of seizure and at the end of that period shall be deemed forfeited, unless a written claim thereto is received within such period.

(2) Any person claiming ownership of any strategic goods, container, package, conveyance, article, records, books, accounts, documents, or computerized data seized under this Act and that the strategic goods, container, package, conveyance, article, records, books, accounts, documents, or electronic data are not liable to forfeiture may personally or by his agent authorised in writing, give written notice to the inspector who made the seizure of his claim.

(3) On receipt of the written notice under subsection (2), the inspector shall refer the matter to the Director.

(4) The Committee shall conduct an inquiry on such claims and the person making the claim shall be entitled to appear and to be heard in person or to be represented by an advocate.

(5) For purposes of proceedings at any inquiry held under this Act, the Committee shall have power —

- (a) to administer oaths;
- (b) to summon persons to attend and give evidence; and
- (c) to order the production of documents.

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(6) All summons and orders issued under the hand of the Director shall be deemed to be issued by the Committee.

(7) The Director shall record or cause to be recorded a summary of any oral evidence given at any inquiry held by the Committee.

(8) The Committee shall regulate its own procedure at an inquiry held under this Act.

(9) Whenever there is proof that an offence has been committed under this Act and that such strategic goods, container, package, conveyance, article, records, books, accounts, documents, or computerized data that were the subject matter of or were used in the commission of such offence, the Committee shall order that the strategic goods, container, package, conveyance, article, records, books, accounts, documents or computerized data be forfeited or may, in the absence of such proof, order the release of such strategic goods, container, package, conveyance, article, records, books, accounts, documents or computerized data to the person entitled to them.

Cost of holding
seized strategic goods.

33. Where any strategic good, or any container, package, conveyance or other article in which the strategic goods are stored, kept or found, record, book, account, document or electronic data seized under this Act, is held in the custody of the Government pending completion of any proceedings in respect of an offence under this Act, the cost of holding such strategic goods, container, package, conveyance, article, record, book, account, document or electronic data in custody shall, in the event of any person being convicted of an offence, be a debt due to the Government by such person and shall be recoverable accordingly.

No costs or damages
arising from seizure
to be recoverable.

34. A person shall not, in any proceedings before any court in respect of any strategic goods, or any container, package, conveyance or other article in which the strategic goods are stored, kept or found, record, book, account, document or electronic data seized in the exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Obstruction of an
inspector.

35. (1) A person shall not obstruct, impede or interfere with an inspector in the performance of his functions under this Act.

(2) A person shall not impersonate an inspector.

(3) A person who contravenes subsections (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

Offences.

36. (1) A person who —

- (a) makes false or misleading representations or conceals any material fact, in any submission to the Committee;
- (b) fails to act in accordance with any order or instructions issued by the Committee;
- (c) fails to report to or notify the Committee, as required by this Act;
- (d) fails to comply with the record keeping requirements under this Act;
- (e) causes, aids or abets a contravention of this Act or any order or conditions of a licence issued under this Act;
- (f) attempts to contravene a provision of this Act or any order or licence issued under this Act;
- (g) conspires or acts in concert with one or more persons to contravene the provisions of this Act;
- (h) obstructs or hinders the Committee, its representatives, any government agency or any inspector in the execution of its powers conferred under this Act; or
- (i) forges or alters any registration, licence, end-use certificate, or any other document issued under the provisions of this Act,

commits an offence.

(2) A person who commits an offence under subsection (1) shall on conviction, be liable to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding ten years or to both.

(3) A person who —

- (a) engages in strategic trade or provides related services without being registered and licenced under this Act;
- (b) fails to furnish any information as required under this Act;
- (c) uses any confidential information for any purpose not authorised under this Act;
- (d) uses strategic goods in a manner inconsistent with registration certificate and licence issued under this Act; or
- (e) obstructs or fails to assist the Committee or an inspector in the performance of their duties under this Act,

commits an offence and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding ten years, or to both.

(4) A person who knowingly facilitates or finances the handling of strategic goods, if this endangers public safety and security, commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

(5) A person who is in possession of conventional weapons prescribed in the National Control List of components thereof without a licence or certificate issued under this Act commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

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(6) A person who knowingly offers to provide or provides strategic goods to be used for terrorism purposes commits an offence as pursuant to section 11 of the Prevention of Terrorism Act, 2012 and shall, on conviction, be liable to penalty stipulated thereunder.

Reference to enforcement agencies.

37. The Committee may refer any matter that falls within its jurisdiction to the relevant law enforcement agencies or the Director of Public Prosecutions.

PART V—MISCELLANEOUS PROVISIONS

General penalty.

38. A person who contravenes any of the provisions of this Act for which no penalty is provided shall, on conviction, be liable to a fine not exceeding five million shillings, or imprisonment for a term not exceeding five years or to both.

Confidentiality.

39. (1) Any confidential information obtained under this Act shall not be disclosed to any other party except in the furtherance of justice and law enforcement or national security, as may be determined by the Committee, or unless the party providing such information has consented to its disclosure.

(2) The Committee shall keep confidential, trade and production secrets.

Voluntary disclosure.

40. (1) The Committee shall encourage voluntary self-disclosure, by any person who may have contravened the provisions of this Act.

(2) Voluntary self-disclosure to the Committee shall be a mitigating factor in determining the administrative sanctions, if any, that may be imposed by the Committee.

Protection from personal liability.

41. (1) No action or thing done by a member of the Committee or by any inspector, employee or agent of a government authority shall, if the action or thing is done in good faith for executing the functions, powers or duties under this Act render the member, officer, employee or agent or any person acting on their direction personally liable to any action, claim or demand whatsoever.

(2) Where the Committee suspends or revokes a licence or registration issued under this Act, the Committee shall not be liable for any damages that may be caused by such acts.

Regulations.

42. (1) The Cabinet Secretary shall, in consultation with the Committee, make regulations for the better carrying out of the objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary shall make regulations—

(a) prescribing—

- (i) the safety, storage, transportation, disposal and security of strategic goods;
- (ii) the fees payable under this Act;
- (iii) procedures for voluntary self-disclosure;
- (iv) the forms to be used under this Act;
- (v) the manner of record keeping by persons registered under the Act; and

(b) any other matter necessary for the implementation of this Act.

PART VI –CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

Amendment of Cap 114.

43. The Firearms Act is amended —

(a) in section 2 by inserting the following definition in proper alphabetical sequence—

“armoured vehicle” means a vehicle which is armour-plated for protection against bullets or any other munition and includes components for armour plating.

(b) in section 3 —

(i) in subsection (5) (b) by inserting the words “certificate of approval” immediately after the word “licence”

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(ii) by inserting the following new subsection immediately after sub section (5) —

(6) Notwithstanding the provisions of subsection (5) (b), where a licence, certificate or permit relates to a strategic good listed on the National Control List under the Strategic Goods Control Act, the Board shall issue the licence, certificate of approval or permit under sub section (5)(b) with the approval of the Strategic Goods Control Committee.

Amendment of Cap 244.

44. The Pharmacy and Poisons Act is amended by inserting the following new section immediately after section 3B—

Approval for medicinal substance or poison listed under the National Control List.

3C. Notwithstanding the provisions of section 3B (2) (e), where a medicinal substance or poison to be licensed under section 3B(2) (e) relates to a medicinal substance or poison listed on the National Control List under the Strategic Goods Control Act, the Board shall issue the licence with the approval of the Strategic Goods Control Committee.

Amendment of section 2B of Cap. 345.

45. Section 2B of the Fertilizer and Animal Foodstuffs Act is amended—

(a) by re-numbering the existing provision as (1);

(b) in subsection (1)—

(i) in paragraph (a) by inserting the words “exportation, transshipment” immediately after the word “importation”;

(ii) in paragraph (f) by inserting the words “exporters, importers” immediately after the word “manufacturers”;

(iii) by inserting the following new paragraph immediately after paragraph (h) —

“(i) implement administrative strategies and measures to ensure that persons do not use fertilizers in a manner prejudicial to national security.”

(c) by inserting the following new sub section immediately after sub section (1) —

(2) Notwithstanding the provisions of sub section (1), fertilizer and animal food stuffs that are listed in the National Control List shall be regulated in accordance with the provisions of the Strategic Goods Control Act.

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Amendment of
section 2C Cap. 345.

46. Section 2C of the Fertilizer and Animal Foodstuffs Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (h) —

(ha) one person representing the National Intelligence Service.

Amendment of
section 2E of Cap.
345.

47. Section 2E of the Fertilizer and Animal Foodstuffs Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b) —

(ba) to prescribe the concentration of the ingredients in a fertilizer in consultation with the Kenya Bureau of Standards.

Amendment of
section 9 of Cap.
345.

48. Section 9 of the Fertilizer and Animal Foodstuffs Act is amended in subsection (1) —

(a) in paragraph (a) by inserting the word “exportation” immediately after the word “importation”; and

(b) in paragraph (b) by inserting the word “exportation” immediately after the word “importation.

Amendment of
section 6 of Cap 346.

49. The Pest Control Products Act is amended in section 6 by—

(a) renumbering the existing provision as (1);

(b) inserting the following new sub section immediately after sub section (1)—

(2) Notwithstanding the provisions of section 6, a pest control product that is listed under the National Control List Control Act shall not be registered by the board except with the approval of the Strategic Goods Control Committee.

Amendment of
Section 8 of Cap
115
License necessary to
deal in explosives

50. The Explosives Act is amended by inserting the following new section immediately after section 8(3)—

8A. The provisions of this Act relating to permits, licenses and regulatory compliance shall be subject to further regulatory control under the Strategic Goods Control Act.

Amendment of
Section 20 of Cap
306

51. The Mining Act is amended by inserting the following new phrase immediately after the word Act in section 20 (1) (e)—

Functions of the
Director of Mines

and the Strategic Goods Control Act.

Ammendment of
Section 4 of Cap
243

52. The Nuclear Regulatory Act is amended by inserting the following new sub-section immediately after the Section 4(2)—

Application of the
Act

Notwithstanding the provisions of this Act, any person dealing with nuclear or radioactive material, activities or facilities shall further comply with the provisions of the Strategic Goods Control Act.

Savings.

53. (1) Any registration, licence, certificate or written authority engage in strategic trade issued under any written law immediately before the commencement of this Act shall be deemed to have been issued under this Act:

Provided that the person who is registered or is the holder of a licence, certificate or written authority shall apply to the Committee for registration within a period of twelve months after the commencement of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The Principle object of the Bill is to provide for the control of trade in strategic goods and related services, to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery.

Part I (Clauses 1-4) of the Bill provides for the preliminary matters, clause 3 provides for the Act to apply to any person who engages in strategic trade and a person who handles a strategic good. Clause 4 provides for the Cabinet Secretary to publish a National Control List which will specify the strategic goods that are subject to the provisions of the Act.

Part II (Clauses 5-8) of the Bill establishes the Strategic Goods Control Committee, sets out the functions of the Committee in relation to the management of trade in strategic goods and related services and puts in place a Secretariat of the Committee which shall be headed by a Director. The functions of the Committee include: oversight in the control of trade in strategic goods and related services, formulation and review of the National Control List, issuance, suspension or revocation of licences or a certificate issued under the Act and establishment and operation of end-use controls and compliance checks.

Part III (Clauses 9-23) of the Bill sets out the procedures related to registration and licensing under the Act. It provides for registration of persons intending to engage in strategic trade, a register of persons engaged in strategic trade, cancellation, suspension or restoration of registration, licencing and conditions for the issuance of the license among others. The part also provides for end use controls on strategic goods on the National Control List.

Part IV (Clauses 24-37) of the Bill provides for enforcement measures. It sets out the compliance requirements for persons engaged in strategic trade, the appointment of Inspectors to ensure compliance with the Act, disposal of seized strategic goods, among other things. The Part also sets out offences which include: fraudulent misrepresentation obstruction of the Committee or its representatives, forgery of registration, licence or any

other document issued under the Act, engagement in strategic trade or provision related services without being registered and licenced by Committee and use of strategic goods in a manner inconsistent with the registration certificate and licence issued by the Committee.

PART V (Clauses 38-42) of the Bill contains miscellaneous provisions that provide for the general penalty, confidentiality, voluntary disclosure and the power of the Cabinet Secretary to make regulations.

PART VII (Clauses 43-53) of the Bill contains consequential amendments to the Firearms Act, the Pharmacy and Poisons Act, the Fertilizer and Animal Foodstuffs Act, the Pest Control Products Act, the Nuclear Regulatory Act, the Mining Act, and the Explosives Act.

STATEMENT ON THE DELEGATION OF LEGISLATIVE POWERS AND LIMITATION OF FUNDAMENTAL RIGHTS AND FREEDOMS

The Bill confers on the Cabinet Secretary the powers to make regulations under the Act for the purposes of operationalizing the Act in order to implement the objectives. The Bill does not limit any fundamental rights and freedoms.

FINANCIAL CONSIDERATIONS

The enactment of this Bill shall occasion limited additional expenditure of public funds which shall be provided for in the annual estimates.

STATEMENT OF HOW THE BILL CONCERNS COUNTY GOVERNMENTS

The Bill does not affect the functions of the County Governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties. Section 6 of Part 1 of the Fourth Schedule to Constitution provides that National defence and the use of the national defence services, is a function of the National Government.

STATEMENT THAT THE BILL IS NOT A MONEY BILL WITHIN THE MEANING OF ARTICLE 114 OF THE CONSTITUTION

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Datedof.....2024.

PROF. KITHURE KINDIKI,
Cabinet Secretary for Interior and National Administration