

LEGAL ALERT

Mandatory Requirement for Certificate of Origins on All Imports into Kenya: Legal & Fiscal Impact

The Finance Act, 2025 - effective 1 July 2025, has fundamentally reshaped Kenya's import ecosystem by amending Section 44A of the Tax Procedures Act 2015. This mandates a valid Certificate of Origin (CoO) for every import, irrespective of origin or trade agreement status, positioning it as a non-negotiable requirement to be enforced by the Kenya Revenue Authority (KRA).

Historically, CoOs were optional and reserved for instances where the importer wished to claim preferential tariff treatment under trade agreements such as the EAC, COMESA and AfCFTA. Standard imports relied solely on core documentation: an Import Declaration Form, commercial invoices, bills of lading or airway bills, and any applicable permits. The Finance Act, 2025, therefore expands the scope by making a valid CoO a blanket requirement for all imports into Kenya, regardless of origin or tariff preference.

A CoO authenticated by a competent authority in the exporting country certifies the origin of the goods. A CoO is regarded as valid where it includes the exporter and importer's details, the port of origin, an accurate description of goods, and the countries of origin and destination. Failure to present a valid CoO constitutes an offence and may result in forfeiture or seizure of goods by the KRA.

Through a public notice dated 23 September 2025, KRA issued exemptions applicable to imports impacted by the CoO requirement, effective 1 October 2025. The list includes imports from privileged persons and institutions as provided in the Fifth Schedule to the East African Community Customs Management Act 2004 (EACCMA), used motor vehicles, personal baggage and effects, and individual packages that do not exceed the weight and value provided under Regulation 119 (30) of the EACCMA, imported through a registered courier. Other goods include mailbags and postal parcels imported by post, human remains, imported samples of no commercial value and small packages of medicaments under a doctor's prescription.

In the absence of a CoO, the KRA shall accept as sufficient proof of origin: an Origin Declaration containing the requisite details, a valid Export Permit or License, a Customs Export Declaration, or a Pre-Export Verification of Conformity issued by agents duly appointed by the Kenya Bureau of Standards.

While the Government's objective is to enhance tax compliance and revenue collection, the measure introduces new costs and procedural complexities, raising financial and administrative burdens for businesses and consumers. The legal and tax implications of this development are outlined below.

Legal and Tax implications

A) Direct Costs of Obtaining a Certificate of Origin

The immediate impact of the new CoO requirement shall be the cost of securing the Certificate itself, which shall be borne by the exporter. Charges vary by jurisdiction, type of goods, and consignment value, and are levied per shipment, creating a recurring expense. This is expected to erode the margins of importers, particularly those trading in high-volume, low-margin goods. Businesses will likely pass on these costs to consumers, driving up retail prices. Such adjustments may also generate disputes with suppliers where contracts do not allocate responsibility for the new expense.

Beyond direct costs, the requirement significantly increases the administrative burden on importers. They must now ensure that their suppliers secure CoOs before shipment, adding another compliance layer to pre-shipment processes, while increasing coordination costs that could delay shipments. During the transition, customs clearance times may lengthen as agents verify CoOs, with discrepancies triggering inspections, demurrage, and storage charges.

Lastly, non-compliance attracts severe penalties, including seizure and forfeiture of goods by the Commissioner. Importers failing to meet the requirement risk losing consignments and invested capital. This exposure creates a new category of compliance cost that businesses must account for in their risk management frameworks.

B) Tax-related Implications

The new CoO requirement functions as a tax enforcement tool to verify the true origin of goods and prevent tax evasion through misdeclarations.

First, for goods from Kenya's preferential trade partners such as the EAC, COMESA, and AfCFTA, the new CoO mandate adds a critical layer of verification to enforce rules of origin and curb trade diversion. Without a CoO, goods from outside these trade blocs, could enter a member country with a lower tariff and then re-exported to Kenya under false claims of regional origin. Requiring CoOs for all imports ensures products meet the required local value-addition or "wholly produced" standards, preserving the integrity of preferential regimes and protecting the benefits of intra-regional trade.

Secondly, a CoO provides an official and verifiable record of the goods' origin. This way, KRA can make cross-reference import declarations with the details on the CoO, making it more difficult for importers to engage in practices such as under-invoicing- declaring a lower value to pay less tax, or misclassification- declaring a different type of good to benefit from a lower tariff rate.

Thirdly, KRA's goal is to ensure that the correct levies are applied on goods. By mandating the CoO, the authority aims to have a more accurate customs value for each consignment, which forms the basis for calculating taxes, thus leading to higher revenue collection for the government.

C) Potential Conflict with Existing Laws

The mandatory CoO requirement appears to conflict with the EACCMA (2004), which only requires CoOs where preferential treatment is sought. Kenya's unilateral amendment may therefore be viewed as creating a new non-tariff barrier, potentially disrupting intra-EAC trade. Furthermore, the provision on asset forfeiture for failing to present a CoO appears inconsistent with the EACCMA, which does not prescribe such a penalty for this offence. Such conflicts could expose Kenya to legal or diplomatic challenges at the regional level.

Conclusion and Recommendations

While the Government's goal of strengthening revenue mobilisation and combating tax evasion is legitimate, the CoO requirement risks stifling legitimate trade, especially for SMEs, and creating bottlenecks rather than solutions. Key trade bodies, including the Shippers Council of Eastern Africa, have raised concerns about the absence of a formalised system for verifying CoOs issued globally, warning of confusion and delays if customs officers are forced into manual verification. The Retail Trade Association of Kenya has described the measure as an additional burden on a sector already struggling in a difficult business environment. Importers now face a

race against time to meet the 30 September 2025 deadline to align with the new regime or risk severe penalties.

Importers should act promptly to mitigate risks by engaging suppliers to secure valid CoOs, updating contracts to allocate responsibility for associated costs, and integrating the new requirement into compliance systems. Businesses should also update their compliance systems to integrate the new requirement into pre-shipment and clearance processes, budget for recurring CoO expenses, and anticipate possible clearance delays. Finally, importers should seek professional advisory support to avoid disputes and safeguard consignments under the new regime.

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