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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FOURTH SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

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REPORT ON THE CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2019

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 04 MAR 2020 DAY. WEDNESDAY
TABLED BY: HON. JOSEPH LIMO CHAIRPERSON FINANCE AND NATIONAL PLANNING
CLERK-AT THE-TABLE:

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2020

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of seven Departmental Committees of the National Assembly namely; Finance and National Planning, Justice and Legal Affairs, Labour and Social Welfare, Lands, Communication, Information and Innovation, Transport, Public Works and Housing and Trade, Industry and Cooperatives on their consideration of the Business Laws (Amendment) Bill, 2019, which was published on **18th November, 2019** and read a First Time on **Wednesday, 4th December, 2019** and committed to the Departmental Committees pursuant to Standing Order 127.

The Bill has a total of forty-one (41) clauses and the amendments are seeking to amend the following laws in order to facilitate the ease of doing business in the country; The Law of Contract Act (Cap. 23), Industrial Training Act (Cap. 237), Registration of Documents Act (Cap 285), Survey Act (Cap. 299), Income Tax Act (Cap. 470), Stamp Duty Act (Cap. 480), Kenya Information and Communications Act No.2 of 1998, Occupational Safety and Health Act No. 15 of 2007, National Construction Authority Act No. 41 of 2011, Land Registration Act No. 3 of 2012, Public Finance Management Act No. 18 of 2012, Value Added Tax Act No. 35 of 2013, Business Registration Act No. 17 of 2015, Insolvency Act No. 18 of 2015, Companies Act No. 17 of 2015, Excise Duty Act No. 23 of 2015 and the Miscellaneous Fees and Levies Act. No. 29 of 2016.

In processing the Bill, the Clerk of the National Assembly invited comments from the public by placing advertisements in the print media on **Monday, 13th January, 2020** pursuant to Article 118 of the Constitution. Members of public were given a period of fourteen (14) days to submit their memoranda on the various statutes in the Bill. It is to be noted that the period given was longer than the usual seven days given to other Bills. By the time the Committees were considering the Bill, a total of sixteen (16) memoranda had been submitted. The Departmental Committees held sessions with the stakeholders to clarify further on their comments. The Stakeholder comments are contained in chapter three of this report. The Committees put all the stakeholders' comments into consideration while preparing the proposed Committees' amendments and some of the proposals were adopted forming part of the proposed Committees' amendments.

This report was compiled by the Departmental Committee on Finance and National Planning on behalf of the other six Departmental Committees. Pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report on the consideration of the Business Laws (Amendment) Bill, 2019.

My gratitude goes to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to us during the consideration of the Bill. I am also grateful to all the stakeholders especially members of the public who took keen interest and even participated in the scrutiny of the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the seven Departmental Committees who made useful contributions towards the preparation and production of this report.

It is my pleasure to report to the House that the Departmental Committees have considered the Business Laws (Amendment) Bill, 2019 and have the honour to report back to the National Assembly with the recommendation that the Bill should be **approved with amendments**.

Hon. Joseph Limo, M.P.

Chairperson, Departmental Committee on Finance and National Planning

1. PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under ***Standing Order 216*** whose mandates pursuant to the ***Standing Order 216 (5)*** are as follows:
   a. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
   b. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
   c. **To study and review all the legislation referred to it;**
   d. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
   e. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
   f. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
   g. To examine treaties, agreements and conventions;
   h. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
   i. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
   j. To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.

3. In executing its mandate, the Committee oversees the following Government Ministries and Departments;
    a. The National Treasury and Planning
    b. Ministry of Devolution and ASALs
    c. The Commission on Revenue Allocation (CRA)
    d. Office of the Controller of Budget
    e. Salaries and Remuneration Commission (SRC)

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

Chairperson
Hon. Joseph K. Limo, MP
MP for Kipkelion East Constituency
Jubilee Party

Vice-Chairperson
Hon. Isaac W. Ndirangu
M.P for Roysambu Constituency
Jubilee Party

Members

Hon. Jimmy O. Angwenyi, MP
MP for Kitutu Chache North Constituency
Jubilee Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency
ODM Party

Hon. Dr. Enoch Kibunguchy, MP
MP for Likuyani Constituency
FORD-K

Hon. Shakeel Shabbir Ahmed, MP
MP for Kisumu Town East
Independent Member

Hon. Abdul Rahim Dawood, MP
MP for North Imenti Constituency
Jubilee Party

Hon. Daniel E. Nanok, MP
MP for Turkana West Constituency
Jubilee Party

Hon. Andrew A. Okuome, MP
MP for Karachuonyo Constituency
ODM Party

Hon. David M. Mboni, MP
MP for Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP
M.P. Molo Constituency
Jubilee Party

Hon. Joseph M. Oyula, MP
MP for Butula Constituency
ODM Party

Hon. Joshua C. Kandie, MP
MP for Baringo Central Constituency
MCC Party

The Hon. Lydia H. Mizighi, MP
MP for Taita Taveta County
Jubilee Party

Hon. Mohamed A. Mohamed, MP
MP for Nyali Constituency

Independent Member

Hon. Purity W. Ngirici, MP
MP for Kirinyaga County
Jubilee Party

Hon. Samuel Atandi, MP
MP for Alego Usonga Constituency
ODM Party

Hon. Stanley M. Muthama, MP
MP for Lamu West Constituency
MCC Party

The Hon. Edith Nyenze, MP
MP for Kitui West Constituency
WDM-K

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Members of the Secretariat:-

Head of the Secretariat

Ms. Leah W. Mwaura

Senior Clerk Assistant

Ms. Jennifer Ndeto
Principal Legal Counsel I

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Fiscal Analyst I

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Euridice Nzioka
Audio Officer

2 OVERVIEW OF THE BUSINESS LAWS (AMENDMENT) BILL, 2019

2.1 ANALYSIS OF THE BILL

The Business Laws (Amendment) Bill, 2019 seeks to amend the following statutes:-

The Law of Contract Act (Cap. 23) – Clause 2

6. The Bill seeks to amend the Act to include an advanced electronic signature and an electronic signature in the definition of the word "sign".

Industrial Training Act (Cap. 237) – Clause 3

7. The Bill seeks to amend the Act to provide for the annual payment of the training levy and to align the penalty for failure to pay the levy.

Registration of Documents Act (Cap. 285) – Clauses 4 to 6

8. The Bill seeks to amend the Act to include definitions of electronic documents and various forms of electronic signatures; to authorize the Registrar to establish and maintain the Principal and Coast registries in both physical and electronic form; and to provide for the filing of documents in physical and electronic form in the Registry.

Survey Act (Cap. 299) – Clause 7 to 10

9. The Bill seeks to amend the Act to include the definitions of various forms of electronic signatures; to provide for the sealing and security features of electronic documents that have been processed under the Act; to allow the lodging of documents under the Act in either physical or electronic form; and to incorporate the electronic affixation of the Seal of the Survey of Kenya.

Income Tax Act (Cap. 470) – Clause 11

10. The Bill seeks to amend the Act to provide for investment deductions on capital expenditure incurred for the construction of bulk storage facilities for supporting the Standard Gauge Railway.

Stamp Duty Act (Cap. 480) – Clause 12

11. The Bill seeks to amend the Act to include a stamp's electronic features in its definition.

Kenya Information and Communications Act No. 2 of 1998 – Clause 13

12. The Bill seeks to amend the Act to provide for electronic means of authenticating and signing documents.

Occupational Safety and Health Act No. 15 of 2007 – Clause 14

13. The Bill seeks to amend the Act to provide for the exclusion of certain workplaces of employers with less than one hundred employees from the application of various requirements under the Act and the procedure for the grant of the exemption.

National Construction Authority Act No. 41 of 2011 – Clause 15 to 17

14. The Bill seeks to amend the Act to authorize the Authority to enforce the Building Code in the construction industry; to provide for the penalty to be imposed on a person who fails to comply with an order of an investigating officer; and to authorize the Authority to conduct mandatory inspections of construction sites and the making of regulations in respect of the same.

Land Registration Act No. 3 of 2012 – Clause 18 to 23

15. The Bill seeks to amend the Act to include the definitions of various forms of electronic signatures; to delete the requirement for obtaining land rates and land rent certificates before registration of an instrument transferring interest in land; to provide for the use of electronic signatures in the execution of documents processed under the Act; to recognize the execution of documents using electronic signatures; and to prescribe a procedure for claiming indemnity under section 81 of the Act.

Public Finance Management Act No. 18 of 2012 – Clause 24

16. The Bill seeks to amend the Act to remove reference to the Division of Revenue Act which currently implies that a Finance Bill cannot be introduced in the National Assembly unless a Division of Revenue Bill is in place.

Valued Added Tax No. 35 of 2013 – Clause 25 and 26

17. The Bill seeks to amend Part I and Part II of the First Schedule to the Act to exempt taxable supplies procured locally or imported for the construction of bulk storage and handling facilities with a minimum capital investment of ten billion shillings and a

minimum storage capacity of one hundred thousand metric tonnes in support of the Standard Gauge Railway operations.

Business Registration Act No. 5 of 2015 – Clause 27

18. The Bill seeks to amend the Act to assign the mandate of administering the Act to the Cabinet Secretary responsible for matters relating to business reforms and transformation.

Companies Act No. 17 of 2015 – Clause 28 to 36

19. The Bill seeks to amend the Act to remove the requirement for the use of company seals; to provide for the treatment of bearer shares that existed before the coming into force of the Act in 2015 and to raise the applicable thresholds for "squeezing-in" and "selling-out" of shares in a company to the control of at least ninety percent of the shares of the company.

Insolvency Act No. 18 of 2015 – Clause 37 and 38

20. The Bill seeks to amend the Act to allow the court to take into consideration the perishability of a movable asset and whether or not it used to maintain a company as a going concern before lifting a moratorium imposed under the Act to protect secured creditors' rights. Additionally, it proposes the insertion of a new provision in the Act to provide for the manner in which insolvency practitioners are to process requests for information by creditors.

Excise Duty Act No. 23 of 2015 – Clause 39

21. The Bill seeks to amend the Act to encourage the use of locally produced glass bottles. The import of the amendment is to impose excise duty on imported bottles at a rate of 25 %. It is to be noted that in terms of local production capacity, presently there are about 10,000 tonnes annually, due to low uptake and unfair competition from cheap imports. With only two major players i.e. Milly Glassworks and Console Glass, the incentives will spur local manufacturing in glass bottles. The effect of this would lead to stable employment to thousands of Kenyans as well as providing a ready market for various locally sourced materials required to manufacture glass containers. The major challenge facing the glass manufacturers is the flooding of the Kenyan market with cheap foreign glass containers. These glass containers are majorly from Egypt which, since it is in the

COMESA trade bloc, the imports do not attract duties. Manufacturers in Egypt receive massive subsidies on power and freight. This has the effect of making their goods cheaper and therefore have an unfair advantage in the local market.

22. In terms of economic benefits, the exemption will support the achievement of the manufacturing pillar in the Big 4 Agenda and the local firms will expand their manufacturing capacity. In addition to increased manufacturing capacity, there will be increased employment opportunities for Kenyans. Another benefit is improved traceability of products and curbing of illicit trade practices. Some of these imported bottles have been used by unscrupulous companies to refill liquors of various brands and subsequently obtain fake KEBS and KRA stickers and this has had a huge impact in terms of revenue loss through tax evasion and putting human lives at risk.

Miscellaneous Fees and Levies Act No. 29 of 2016 – Clause 40 and 41

23. The Bill seeks to amend the Second Schedule to the Act to exempt goods imported for the construction of bulk storage and handling facilities in support of the standard gauge railway from import declaration fee and the railway development levy.

2.2 CONSIDERATION OF THE BILL

24. The Bill is an omnibus Bill proposing amendments to various statutes. The proposed amendments were considered by Departmental Committees under whose mandate the statutes to be amended fall and the report was compiled by the Departmental Committee on Finance and National Planning. The proposed amendments were considered by the following Committees:-

2.2.1 Justice and Legal Affairs

25. The Departmental Committee on Justice and Legal Affairs considered proposed amendments to the following Statutes:-
    i. The Law of Contract Act (Cap. 23);
    ii. The Companies Act No. 17 of 2015; and
    iii. The Insolvency Act No. 18 of 2015.

2.2.2 Labour and Social Welfare

26. The Departmental Committee on Labour and Social Welfare considered proposed amendments to the following Statutes:-
    i. The Industrial Training Act (Cap. 237); and
    ii. The Occupational Safety and Health Act No. 15 of 2007.

2.2.3 Lands

27. The Departmental Committee on Lands considered the proposed amendments to the following Acts:-
    i. The Registration of Documents Act (Cap. 285);
    ii. The Survey Act (Cap. 299);
    iii. The Stamp Duty Act (Cap. 480); and
    iv. The Land Registration Act No.3 of 2013.

2.2.4 Finance and National Planning

28. The Departmental Committee on Finance and National Planning considered proposed amendments to the following Acts:-
    i. The Income Tax Act (Cap. 470);
    ii. The Public Finance Management Act No. 18 of 2012;
    iii. The Value Added Tax Act No. 35 of 2013;
    iv. The Excise Duty Act No. 23 of 2015; and
    v. The Miscellaneous Fees and Levies Act No. 29 of 2016.

2.2.5 Communication, Information and Innovation

29. The Departmental Committee on Communication, Information and Innovation considered proposed amendments to the Kenya Information and Communications Act No. 2 of 1998.

2.2.6 Transport, Public Works and Housing

30. The Departmental Committee on Transport, Public Works and Housing considered the proposed amendments to the National Construction Authority Act No. 41 of 2011.

2.2.7 Trade, Industry and Cooperatives

31. The Departmental Committee on Trade, Industry and Cooperatives considered the proposed amendments to the Business Registration Act No. 5 of 2015.

3. PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

32. Following the call for memoranda from the public through the placement of an advert in the print media on **Monday, 13th January, 2020**, memoranda were received from the following stakeholders:-
    i. National Treasury
    ii. East Africa Grain Council (EAGC)
    iii. Kipkenda and Co. Advocates
    iv. Communications Authority of Kenya
    v. Institute of Certified Public Accountants of Kenya (ICPAK)
    vi. KPMG Advisory Services Limited
    vii. Milly Glassworks Limited
    viii. Kenya Association of Manufacturers
    ix. Central Organisation of Trade Unions and other trade unions
    x. Ministry of Labour and Social Protection
    xi. Ministry of Transport, Public Works and Housing
    xii. National Construction Appeals Board
    xiii. Ministry of Lands and Physical Planning
    xiv. Ministry of Industry, Trade and Co-operatives
    xv. Office of the Attorney General
    xvi. Nairobi Securities Exchange PLC

33. On receipt of memoranda from stakeholders, the seven Departmental Committees invited stakeholders for further consultations on the Bill. Below are the views submitted by the stakeholders:-

3.1 NATIONAL TREASURY

The Cabinet Secretary for National Treasury and Planning submitted that:-

Clause 11

34. Under the Income Tax Bill, there is an intention by the Government to cap investment allowance at 100% since a 50% extra deduction will equate to subsidy by Government which erodes the tax base. However, due to the need to promote investment in the

construction of bulk storage and handling facilities to support SGR, the National Treasury agreed to the amendment as proposed in the Bill.

Clause 12

35. The amendment should be maintained as proposed in the Bill since it is one of the amendments aimed at "ease of doing business". This will facilitate the Ministry of Lands and Physical Planning to improve registration of land and documents.

Clause 24

36. The National Treasury were in support of the amendment because it will ensure that the preparation of the Finance Bill is not tied to Division of Revenue Act. If this amendment is not made and the enactment of the Division of Revenue Act is delayed, then this would adversely affect the Finance Bill timelines.

Clauses 25 and 26

37. The National Treasury did not support the amendments to the Value Added Tax Act contained in Clauses 25 and 26 because the list of exemption under the VAT Act has been increasing unsustainably and the National Treasury is making an effort to reduce the list which has significantly reduced the tax base.

Clause 39

38. The National Treasury was agreeable to the amendment. They however noted that there was need to exempt glasses imported by the pharmaceutical sub-sector considering the need to support Universal Health Coverage under the Big Four Agenda.

Clause 40 and 41

39. The National Treasury was agreeable to the amendment since it will support the operations of the Standard Gauge Railway by exempting from Import Declaration Fee (IDF) and Railway Development Levy (RDL) on goods imported to construct bulk storage and handling facilities with a minimum storage capacity of 100,000 metric tonnes, in support of the Standard Gauge Railway operations.

3.2 EAST AFRICA GRAIN COUNCIL

40. In his submission, the Chief Executive Officer of the Council stated that the Council supported the amendments proposed to the Income Tax Act (Cap. 470), Value Added Tax Act No. 35 of 2013 and the Miscellaneous Fees and Levies Act No. 23 of 2015 because they will attract their members and industry related players to invest in infrastructure that will facilitate the movement of various grain on the Standard Gauge Railway (SGR). This will create an enabling business environment for regional grain trade. Investments in infrastructure that supports the logistics supply chain using the SGR will lead to increased efficiencies, reduction in transportation costs and reliability in grain supply across the region.

3.3 KIPKENDA AND CO. ADVOCATES

Mr. Kiplagat submitted as follows on behalf of the Company, that:-

Law of Contract

41. They supported the amendment in clause 2 because it is timely and will enable the law to keep up with the changing technology. They however proposed an expansion to the intended amendment to read as follows, '*physically or electronically on the instrument capable of being authenticated by an Electronic Signature Device*'. They proposed a further amendment to '*electronic signature*' to mirror the above concerns i.e. '*electronic signature has the meaning assigned to it under the Kenya Information and Communications Act, 1998*'.
42. This is because mere recognition by the law on the use of electronic signatures without catering for the three essentials of a signature; authenticity, data integrity and non-repudiation opens a floodgate in the concepts of fraud and forgery.
43. The Committee agreed with the proposal by Messrs. Kipkenda and Company Advocates and resolved to adopt the definition of the term "advanced electronic signature" as currently defined in section 2 of the Kenya Information and Communications Act, No. 2 of 1998.

The Industrial Training Act

44. They did not support the amendment proposed to the Act because the proposal for annual remittance could open a loophole which could result in non-remittance thereby grounding the functions of the Industrial Training Authority and training in the industry. They

submitted that the monthly payment of KSh. 50 per employee be retained and proposed specificity in the date of collection of Industrial Training Levy in order to create simplicity, reduction in cost of compliance and ease of doing business. They stated that the rationale for the industrial training levy fee is to create a pool known as the Industrial Training Levy Fund into which employers can be reimbursed for such costs as they may incur in training approved under the Act and facilitates on-the-job training for learnerships, apprenticeships and internships. Further it provides a source of funds to run National Industrial Training Authority (NITA) since the money raised by employers is split between reimbursements to employers and coordination of the functions of the Authority.

Registration of Documents Act

45. They supported the proposed amendment because online storage of documents allows for easy retrieval and safety of the documents. It also makes it faster and less tedious to file documents. They proposed the following amendment, '*advanced electronic signature has the meaning assigned to it under the Kenya Information and Communications Act*'.
46. **Committee Observation**: The proposed amendment does not change the import/meaning of the amendment on definitions hence unnecessary.

Survey Act

47. The proposed that section 5 of the Survey Act is amended by inserting the following new sub-section immediately after sub-section (2), *'(3) A document or plan that has been processed electronically and bears a prescribed security feature shall be deemed to bear the imprint of the Survey of Kenya provided that the same is capable of verification and authentication*'. This will ensure verifiability and authenticity in the recognition of an electric signature and electronic seal of the Survey of Kenya.
48. **Committee Observation**: The Bill already recognizes electronically processed documents and hence there is no need to create further requirements for verification and authentication as this will create doubt on the validity of documents electronically processed.

Companies Act

49. They supported the proposed amendment to increase the required percentage to squeeze in and squeeze out to be returned to 90% as it initially was. They however did not support the amendments proposed to sections 35(1), 37, 38, 42, 43 and 495 because a company seal is

usually used to prove the authenticity of a document and to prove that a decision has been approved by a company.

Public Finance Management Act

50. They did not support the amendment proposed to the Act stating that it was unconstitutional.
51. The Committee observed that the amendment to the PFM Act as proposed in the Bill was meant to delink the Finance Bill from the Division of Revenue Bill. The Committee made reference to Article 203 where Division of Revenue Bill is based on last audited accounts hence it should therefore be tied to the Finance Bill which is about future revenue projections.

Stamp Duty Act

52. They supported the proposed amendment because e-stamping will contribute immensely in tackling counterfeiting and make it easier to pay stamp duty. Further, the stamp certificate can be generated almost instantly and is tamper proof and data can be saved in the online system. Verifiability and authenticity of the electronic stamp should however be of utmost consideration.

Land Registration Act

53. They opposed the proposed amendment to section 38 and 39 because the requirement to obtain land and rates clearance certificates means that the payment of revenue is guaranteed and up to date payments made before any interest can be transferred from one individual to another. The two sections also play a big role in minimising conflict among private citizens because the vendor in a land transaction is obligated to supply the purchaser with the completion documents.
54. Deleting the requirement for obtaining land rent and rates will lead to conflicts in future when the government seeks to enforce the payment against the registered proprietor who will inadvertently bring on board the immediate owner and so forth. This will precipitate greater conflict and increase the cost of administration in collection of revenue.
55. They supported the proposed amendment to section 83 citing that it will provide certainty as to who the application for indemnity should be made to and in case of dissatisfaction

then a person can resort to the courts. They however proposed a numbering of sub-sections in the following order:-

83. Procedure for claiming indemnity

1) A person claiming indemnity under section 81 shall apply to the Chief Land Registrar in the prescribed manner for investigation and consideration.
2) Any person who is aggrieved by the decision of the Chief Land Registrar may appeal to the court against the decision in the prescribed manner.
3) The Court may, on the application of any interested party, determine whether a right of indemnity has arisen and award indemnity and may add any costs and expenses properly incurred in relation to the matter.

The Insolvency Act

56. They supported the proposed amendment to section 560 of the Act as it provides a ground for lifting a moratorium. Further, another ground introduced by the proposed amendment when the court is granting an approval for lifting the moratorium is whether the movable asset is being used in maintaining the company as a going concern or not.
57. They also supported the proposed amendment to section 723 because the amendment will enable creditors to keep track of any developments in the insolvency process without having to wait for the insolvency practitioners to give such notice. This will be a protection measure for creditors guaranteed under the Statute.

3.4 COMMUNICATIONS AUTHORITY OF KENYA

Kenya Information Communication Act, 1998

58. The Authority supported the amendment proposed to section 83B of the Kenya Information and Communication Act citing that the law as currently is only facilitates paper based transactions. The proposed amendment will therefore attune it to technology changes and lead to alignment with the critical pillars of the digital economy.

3.5 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

The Institute proposed the following amendments:-

The Public Finance Management Act, 2012

59. They proposed deletion of the amendment proposed to section 39A(4)(a) in order to ensure certainty and predictability in revenue sharing between national and county governments.
60. The Committee observed that the amendment to the PFM Act as proposed in the Bill was meant to delink the Finance Bill from the Division of Revenue Bill. The Committee made reference to Article 203 where Division of Revenue Bill is based on last audited accounts hence it should therefore be tied to the Finance Bill which is about future revenue projections.

Section 31(3)

61. They proposed amendment of the section as follows, '*This section provides that at the end of every four months, the Cabinet Secretary shall submit a report to Parliament stating:-*

    (a) the loan balances brought forward, carried down, drawings and authorisations on new loans obtained from outside Kenya or denominated in foreign currency;

    (b) the total interest expense paid over the period;

    (c) the projected interest expense for the following four months;

    (d) the project or program for which new loans have been secured;

    (e) a summary of total debt exposure vis-à-vis the national debt ceiling; and

    (f) such other information as may be prescribed by regulations'.
62. This will ensure transparency in the management of public debt.

Section 187(1)

63. They proposed that the section should be amended by inserting the following new paragraph after sub-clause (h), *'(i) the Institute of Certified Public Accountants of Kenya'*. This is because the Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act, 2008 will add value to the Intergovernmental Budget and Economic Council.

Section 103

64. They proposed amendment of the section by inserting the following new sub-sections:-

'103(4) the Chief Officer Finance shall be a person appointed in such capacity and is a member of a statutory body responsible for the professional regulation of accountants in Kenya; and

103(5) the County Head of Treasury shall be a person appointed in such capacity and shall be a holder of Accounting, Finance, Economics degree or any other relevant degree and must have financial management experience'.

Justification

65. This amendments will support Public Finance Management (County Governments) Regulations, 2015 which stipulate that an accounting officer shall sign financial statements thereby making himself or herself responsible for their correctness.

Section 117(1)

66. They proposed that the section should be amended to read as follows, '*The County Treasury shall prepare and submit to the County Executive Committee the County Fiscal Strategy Paper for approval and the County Treasury shall submit the approved Fiscal Strategy Paper to the county assembly by the 15th March of each year*'. This will accord County Governments sufficient time to review the Budget Policy Statement for purposes of informing the County Fiscal Strategy Paper.
67. The Committee observed that the additional proposals in paragraph 61, 63, 64, 66 were outside the scope of the Bill and the amendments may vary the objects and reasons of the Bill. The proposed amendments by ICPAK were therefore not supported.

The Companies Act No. 17 of 2015

The Institute proposed the following amendments to the Act:-

Section 264

68. They proposed the following amendments to the section:-

(3) The qualifying conditions are satisfied by a company in a year in which it satisfies two or more of the following requirements:-

(a) it has a turnover of not more than five million shillings;

(b) the value of its net assets as shown in its balance sheet as at the end of the year is not more than five million shillings; and

(c) it does not have more than twenty employees.

Justification

69. Capital providers (shareholders and lenders) and KRA depend on reliable financial information from these businesses to assess their performance and tax obligations. Exemption from audit will include a substantial number of businesses hence have a direct impact on tax revenue administration as KRA relies heavily on audited financial statements. The amendment will encourage businesses to automate and use technology leading to leaner work forces. The proposed amendment is in line with the Finance Act, 2018 threshold of presumptive/turnover tax which targets resident persons whose turnover from business does not exceed KSh. 5 million during a year of income.

Sections 686(5)(b)(i) and 687(3)(b)(i)

70. They proposed that the sections be amended by deleting the words '*Senior Statutory Auditor*' as used in section 686(5)(b)(i), 687(3)(b)(i) and other parts of the Act as appropriate and replacing with the word '*Auditor*'. This is to ensure consistency in the form and content of the auditor's report – ICPAK will issue regulations as per the Accountants Act.

3.6 KPMG ADVISORY SERVICES

Tax Procedures Act (TPA)

They proposed the following amendments to the Tax Procedures Act:-

71. Amendment of section 12A of the TPA as follows:-

    Provided that the following persons shall be exempt:

    a) persons who are exempt from tax in Kenya;
    b) Non-resident persons whose entire income is taxed under the withholding tax regime;
    c) Non-resident persons opening bank accounts for purposes of transacting marketable securities listed on the Nairobi Securities Exchange.

Justification

72. This will enhance positioning of Kenya as a favourable destination for investors by removing unnecessary hurdles especially in obtaining a PIN. It will also enhance the steps that the country is making in improving the ease of doing business.

Amendment to section 23(2)

73. They proposed the following amendment to section 23(2) of the Act, '*the unit of currency in books of account records, paper registers, tax returns or tax invoices shall be in Kenya Shillings or United States Dollars'*. This is because allowing the use of USD in addition to KES effectively reduces the administrative requirements for conversion and negative impacts of foreign exchange differences which in most cases are only book differences that make book keeping administratively cumbersome but do not increase the revenue collection by Kenya Revenue Authority (KRA).

Amendment to section 25

74. They proposed that the section should be amended to read as follows:-

(2) An application for the extension of time shall be made no later than 14 days prior to the due date for the submission of the tax return.

(3) The Commissioner may grant an application under the section within 7 days of the receipt of the application if the Commissioner is satisfied that there is reasonable cause and shall notify the applicant in writing of the extension of time. Provided that the Commissioner does not communicate within this time, the request will be deemed to have been granted.

Justification

75. While it may not be easy to determine when the challenges faced by a taxpayer required to submit a tax return under a tax law may arise and therefore necessitate a request for an extension of time, it is prudent that the Commissioner replies within the shortest time possible to cushion the taxpayer from potential late filing penalties. KRA can provide a facility on iTax to facilitate the application and approval process.

Amendment to section 32

76. They proposed that the section should be amended by inserting the following new sub-sections:-

(3) The Commissioner may demand for payment of tax or evidence of payment of tax at any time prior to the expiry of five years from the date that the taxpayer filed the tax return.

(4) Sub-section (3) shall not apply in the case of gross or wilful neglect, evasion or fraud by a taxpayer.

Justification

77. This will align different sections of TPA and provide certainty to taxpayers that once they legally destroy their documents, KRA cannot demand for production of the same documents. This will also provide impetus to KRA to update the taxpayer records expeditiously.

Amendment to section 47(5)

78. They proposed the following amendment to the section, '*the Commissioner shall repay the overpaid tax within a period of one year from the date of application, failure to which the amount due shall attract an interest of 1% per month or part thereof of such unpaid amount after the period of one year*'. This is because delays in processing tax refunds have an immediate impact on businesses that are forced to seek alternative funding as they wait several months for KRA to refund them. This increases the cost of doing business locally and ultimately makes the country less competitive compared to other countries in the region. A shorter period will encourage KRA to invest more in technology that will allow it to automatically verify refunds and be more facilitative with regards to settling them.

Amendment to section 51(11)

79. They proposed the following amendment to the section, '*The Commissioner shall make the objection decision within sixty days from the date of receipt of the notice of objection failure to which the objection shall be deemed to be allowed. Provided that prior to the expiry of the sixty days, the Commissioner may by writing to the taxpayer extend the period by an additional thirty days where there are ongoing discussions between the taxpayer and the Commissioner to resolve the tax dispute*'.

Justification

80. Taxpayers are entitled to service that is expeditous, efficient, lawful, reasonable and procedurally fair. The amendment will protect the taxpayers from extended tax audits while making provision for genuine instances where there are ongoing discussions between the taxpayer and KRA.

Amendments to section 59(1)

81. They proposed the following amendment to sections 59(1)(b) and 59(1)(c) to read as follows:-

(b) *Furnish information relating to the tax liability of any person in the manner and within reasonable time as specified in the notice but in not less than twenty one days*; or

(c) *Attend, within reasonable time but in not less than twenty one days at the time and place specified in the notice for the purpose of giving evidence in respect of any matter or transaction appearing to be relevant to the tax liability of any person.*

74. To ensure that taxpayers are fairly treated and not bogged by unreasonable and unfair request for information, demands for records and clarifications, it is prudent to:-
    a) Define in line with other provisions of the TPA, how far back KRA may request for information; and
    b) Provide ample time for which a taxpayer can respond to such requests from KRA.
75. The above challenges have hindered normal business operations during the migration of legacy records to the iTax platform with information being requested for periods running to over 15 years.

Insertion of new sub-section 59(5)

76. Insert the following new sub-section 59(5), '*Other than in the case of alleged gross or wilful neglect, evasion or fraud by or on behalf of the taxpayer, for purposes of sub-section (1) the records, clarifications or information required by the Commissioner or an authorised officer shall be limited to the duration as provided for under section 23(1)(c)*'.
77. The Committee observed that the proposals by KPMG were all outside the scope of the Bill and therefore expanding the objects and reasons for the Bill. The amendments were therefore not supported in totality.

3.7 MILLY GLASSWORKS LIMITED

78. In their submission, the Company supported the amendments proposed to the Law of Contracts Act, the Industrial Training Act, the Registration of Documents Act, the Income Tax Act, the Value Added Tax Act, the National Construction Authority Act and the Excise Duty Act. In their opinion, the amendments will improve and support the Big Four Agenda and make the country a manufacturing and industrialisation hub.

3.8 KENYA ASSOCIATION OF MANUFACTURERS

79. The Association proposed the following amendments:-

The Excise Duty Act No. 23 of 2015

80. They opposed the amendment proposed to this Act stating that the world is shifting to glass bottles as they are environmentally friendly and such a move will encourage manufacturers to go back to plastic bottles. All manufacturers of excisable goods can claim back excise duty as per section 14 of the Excise Duty Act so the purpose of this amendment is irrelevant and impracticable to the manufacturers. Further to that, the law does not provide the criteria to charge excise duty on imported finished goods packed in glass bottles.

81. The Committee observed that the amendment is intended to spur manufacturing locally by imposing excise duty at 25% on all imported glass bottles except for those meant for the Pharmaceutical products. It was further observed that Kenyan manufacturers of glass bottles were facing competition from cheap imports from the region hence unable to compete favourably.

Registration of Documents Act - Clause 6(2)

82. They proposed that the clause should be amended as follows, '*A person may register a document referred to in sub-section (1) by filing it in physical or electronic form provided that if the electronic form is used, each person shall provide consent for the same*'. This is because the use of electronic signatures is becoming revolutionary and inevitable in this age of online trading. However, it would be prudent to protect the arbitrary use of the same by seeking consent of all parties.

Industrial Training Act (Cap. 237)

83. They did not support the amendment proposed to the Act because the payment of the training levy annually will lead to ambiguity and thereby affect effective implementation. The proposed amendment does not indicate the formula to be used to pay the levy annually. In addition, the levy is based on the number of employees engaged in a month. If paid annually, it will disadvantage employers who employ casuals/seasonal as and when required.

84. They also proposed that under the Training of Technical and Diploma graduates, the words '*technical and diploma*' should be added immediately after the words '*university*'. The proposal will ensure that all graduates are taken up by industries and will avoid discrimmination of others who would offer vital support to manufacturing industries.

Stamp Duty Act (Cap. 480)

85. They proposed further amendment to the proposal to read as follows, '*Stamp means a mark embossed or impressed by electronic means or by means of a dye, franking machine or adhesive stamp recognised by the Government of Kenya*'. Stamp duty is a government revenue and therefore, any such mark embossed or otherwise impressed, should be a mark recognised as such by the government of Kenya.

The National Construction Authority Act, 2011

86. They proposed that a further amendment should be made by deleting the word 'may' and replacing with the word 'shall'. This is because the word 'may' does not make it obligatory upon the Cabinet Secretary to come up with regulations which guide the process of mandatory inspection.

3.9 CENTRAL ORGANISATION OF TRADE UNIONS AND OTHER TRADE UNIONS

In their submission, they stated that:-

Industrial Training Act (Cap. 237)

87. They were only agreeable to the amendment to section 5B(3) of the Industrial Training Act if the training levy proposed to be paid annually is paid in advance to avoid denying the National Industrial Training Authority (NITA) the funds needed to make the necessary reimbursements and payments. They opposed any proposal for the Kenya Revenue Authority (KRA) to collect and remit the levy to NITA as it will create unnecessary bureaucracies as far as the running of NITA is concerned. The current status quo should be maintained where NITA collects the levy without creating any brokerage in between the levies and NITA. They agreed to the proposed amendment to the Occupational Safety and Health Act, 2007.

3.10 MINISTRY OF LABOUR AND SOCIAL PROTECTION

In a meeting held with the Ministry on Tuesday, 25th February, 2020, the CS submitted that:-

Industrial Training Act (Cap. 237)

88. They agreed to the proposal to exempt new employers in the country with less than 100 employees from levy payment for a period of one year and noted that the proposal to revise the mode of levy payment from KSh. 50 per month to a lump sum figure of KSh. 600 per annum may be considered if payable in advance so that the operations of the Authority are not affected. They further noted that the proposal to revise the penalty for default on levy payment from 5% per month for any sum due to 5% annually may be considered in light of the above proposal.
89. Additionally, they stated that the proposal to amend the penalty amount to not more than KSh. 50,000 every month or part thereof payable by an employer after conviction if such failure continues from KSh. 600 annually needs to be reviewed and retained at KSh. 50,000. They were concerned that if the annual payment is made in arrears, it may affect the operations of the Authority for the 1st year. In conclusion, they noted that the Industrial Act Bill was also under discussion in the National Assembly and if passed it will contradict the provisions of the draft statute in so far as the amount payable, when payable and the mandate on collection of the Levy.

3.11 MINISTRY OF TRANSPORT, INFRASTRUCTURE, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

In a meeting held with the Ministry, the CS submitted that:-

National Construction Authority Act, 2011

90. The proposed amendments are welcome given the role of the National Construction Authority in regulating the construction industry which in turn plays a critical part in the determination of ease of doing business.
91. The Local Government Act upon which the National Building Code, 1968 was anchored was repealed by the County Governments Act, 2012 and no specific mention of the Code was made in the latter Act. The Code has therefore remained unanchored on any law and this has resulted in implementation challenges. Article 94(6) of the Constitution as read together with Statutory Instruments Act, 2013 means that there is need to properly anchor the National Building Code in a specific statute. Consequently, the State

Department recommended that in addition to the proposed amendments, the National Construction Authority Act, 2011 be further amended by-

(i) Inserting a new definition of the term "Building Code" to mean the National Building Regulations issued under the Act; and

(ii) Amending section 42(2) of the Act to give the Cabinet Secretary the power to prescribe the Building Code.

3.12 NATIONAL CONSTRUCTION APPEALS BOARD

National Construction Authority Act, 2011

92. The Board proposed an amendment to section 27 of the National Construction Authority Act, 2011. The Committee noted that the amendment was however not in the Bill and it was substantive in nature. It was therefore not possible to consider the amendment for adoption considering that it was not part of the Bill and had not gone through public participation.

3.13 MINISTRY OF LANDS AND PHYSICAL PLANNING

In a meeting with the Ministry, the CS submitted that:-

Land Registration Act, 2012

93. A further amendment should be made by inserting a new part immediately after Part VIII of the Land Registration Act, 2012 to establish the Office of Independent Complaints Reviewer in the Land Registry and Survey of Kenya which shall provide a free, effective and impartial complaints mechanism at the Land Registry and Survey of Kenya by providing an independent opinion on complaints regarding land registration and survey services. The amendment also provides for appointment of the Independent Complaints Reviewer who shall be appointed by the Cabinet Secretary for a term of three years renewable once Additionally, the amendment provides for the powers of the Independent Reviewer which shall include receiving, processing and resolving all complaints.

Justification

94. To provide a complaints resolution mechanism under the Land Registration Act to expedite resolution of disputes.

95. **Committee's Observation:** The amendments offend the provisions of Standing Order 133(5) as they seek to expand the subject of the Bill.

3.14 MINISTRY OF INDUSTRY, TRADE AND CO-OPERATIVES

Ministry of Industrialization, Trade and Enterprise Development submitted as follows, that:-

Business Registration Act No. 5 of 2015

96. Ease of Doing Business is a trade related function. Though it is currently being administered by the East African Community Ministry, there is need to create a strong linkage between the two Ministries for ease of monitoring and evaluation of the performance. Trade policy formulation is a function of the Ministry responsible for Trade. The current reforms brought the need to enhance the trading environment in the country with an aim of increasing efficiency and effectiveness of the business environment. It may necessitate the need for new and more progressive regulatory reforms to be undertaken. This can best be achieved when the Ministry is on the driving seat of the reform agenda.
97. The State Department for Trade noted that it is important for them to keep track of the progress on the Ease of Doing Business Reforms. The State Department should therefore remain as a key player in the whole exercise of reforming the processes and legislation that inhibit fast uptake of business transformation in the country. To this extent, they proposed inclusion, where possible of the PS Trade or his representative in the Business Registration Service Board. The State Department for Trade therefore recommended insertion of a new paragraph immediately after sub-clause 5 (2) (c) to include the representation of the PS East African Community and Regional Development or his representative.
98. **Committee Observation**: The Committee rejected the proposal because they noted that it was prudent to describe the function to be carried out and include the Principal Secretary implementing the function in the Board as opposed to including a specific Principal Secretary who may not be in-charge of a particular function as is the current situation.

3.15 OFFICE OF THE ATTORNEY GENERAL

The Office of the Attorney General submitted that:-

Business Registration Act No. 5 of 2015

99. The proposed amendment is welcome as it seeks to conform to the Executive Order No. 1 of 2018 which transferred the Ease of Doing Business function from the State department for Trade to the Ministry of East African Community and Regional

Development. The amendment seeks to provide for the appointment of the Principal Secretary in the Ministry responsible for matters relating to business reforms and transformation, or his representative, as one of the directors of the Business Registration Service Board.

100. The amendment will ensure that initials both physical and electronic are recognized as signatures and are one of the indicators that a person intends to be bound by the contents of an instrument.

Law of Contract Act (Cap. 23)

101. The proposed amendment will ensure that initials both physical and electronic are recognized as signatures and are one of the indicators that a person intends to be bound by the contents of an instrument. It will also ensure conformity to the Law of Contract Act and with section 83P of the Kenya Information and Communications Act, 1998, which recognizes electronic signatures where any law provides that information or any other matter shall be authenticated by affixing a signature or that any document shall be signed or bear the signature of any person.

Companies Act No. 17 of 2015 (Clauses 28, 29, 30, 31, 32, 33 and 36)

102. The reforms are covered under Starting a business indicators which also measure post registration procedures. In Kenya, even though the requirement for companies to obtain a company seal is optional, in practice companies still get seals made which takes around 2 days to obtain it at a cost of KSh. 2,500 to KSh. 3500. The Office further submitted that with the digitization of the process of incorporating companies in Kenya, the security features offered by the company seals have been rendered obsolete owing to more technologically advanced security features of the digital system currently in place. The amendments therefore seek to streamline post-registration procedures by eliminating the need to obtain a company seal which in turn reduces the procedures, time, cost or paid up minimum capital requirements for starting a business in Kenya.

Clause 34

103. The Companies Act, 2015 provides that any share warrant issued stating that the bearer of the share warrant is entitled to the shares specified in it articles is void. The proposed amendments further provide for a transitional period of nine months within

which, companies that had issued share warrants shall convert the bearer shares to registered shares.

Clause 35

104. Minority shareholders should be protected from abusive actions by or taken in the interest of controlling shareholders acting either directly or indirectly. The 50% threshold is detrimental to the market as a whole and companies may be vulnerable to takeovers by acquirers who can succeed to persuade 50% of shareholders to accept an offer and then force out all remaining shareholders who are unwilling to sell. This can lead to undue or unfair takeover terms which affect the interests of the minority shareholders.

New clause 32A

105. The Office proposed insertion of a new clause 32A on protection of minority investors as follows:-

32A. Section 289 of the Companies Act, 2015 is amended in subsection (1) by—

(a) deleting paragraph (b) and substituting therefor the following new paragraph immediately after paragraph (a)—

"(b) in the case of a quoted company, a new item to be put in the agenda of the general nature of business to be dealt with at the meeting.

(b) inserting the following new paragraph immediately after paragraph (b)—

"(c) other business to be dealt with at that meeting."

In subsection (2) by inserting the following new paragraph immediately after paragraph (b)–

"(b) in the case of subsection (1) (b), by members representing at least five percent of paid up capital of the company."

Justification

106. The proposed provisions seek to ensure that in the case of a quoted company, shareholders representing 5% of the paid-up capital of the company are at liberty to propose an item in the agenda to be circulated to members of the company entitled to receive a notice of the general meeting.

3.16 NAIROBI SECURITIES EXCHANGE PLC

107. In their memorandum, Nairobi Securities Exchange (NSE) submitted that the amendments to the Companies Act contained in the Statute Law (Miscellaneous Amendments) Act No. 12 of 2019, had lowered the 90% threshold to just 50% thereby pushing Kenya away from global practice on minority shareholder protection. The lower threshold allows any bidder to force out any non-assenting shareholders easily if 50% of the shares to which the offer relates accept the offer.

108. They further submitted that there are few, if any, jurisdictions globally with such a low threshold for compulsory acquisition. Challenges are anticipated particularly, in respect of any take-overs effected in the capital market that takes advantage of the lower thresholds. The NSE recommended that a repeal of the amendments made to Sections 611 and 615 of the Companies Act, 2015 to revert to the original position with regard to the 90% threshold.

4. COMMITTTEE RECOMMENDATION

109. The Committee's having considered the Business Laws (Amendment) Bill, 2019 recommends that the House approves the Bill with amendments as proposed in the schedule.

5. SCHEDULE OF PROPOSED AMENDMENTS

The Committees proposed the following amendments to be considered by the House in the Committee stage:-

Clause 2

110. **THAT**, the Bill be amended by deleting Clause 2 and substituting therefor the following new Clause-

Section 3(6) of the Law of Contract Act is amended-

(a) in the definition of the word "sign" by inserting the words "physically or by means of an advanced electronic signature" immediately after the word "initial";

(b) by inserting the following new definition in proper alphabetical sequence-

"advanced electronic signature" has the same meaning as defined in the Kenya Information and Communications Act, No. 2 of 1998.

Justification

111. The Committee agreed with the submissions by Messrs. Kipkenda and Company Advocates and resolved to amend the Clause and make cross-reference to the definition of the term "advanced electronic signature" as currently defined in section 2 of the Kenya Information and Communications Act, No. 2 of 1998.

Clause 3

112. **THAT,** the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

3. Section 5B of the Industrial Training Act is amended in—

(a) subsection (3) by deleting the words "month or part of a month" and substituting therefor the word "year"; and

(b) subsection (4) by deleting the words "month or part" and substituting therefor the word "year".

Justification

113. The amendment to subsection (4) is a consequential amendment that seeks to align the penalty imposed for failure to comply with the provisions subsection (3) in line with the yearly payment that is to be introduction in the amendment to subsection (3)

Clause 11

114. **THAT,** Bill be amended in clause 11 in the proposed new paragraph 24E (1) by deleting the word "ten" appearing immediately before the words "billion shillings" and substituting therefor the word "five".

Justification

115. The amendment to clause 11 proposes to reduce the capital investment which is eligible for the investment deduction from ten billion to five billion.

Clause 12

116. **THAT,** the Bill be amended in clause 12 in the proposed new definition of "stamp" by inserting the words "recognized by the Government," immediately after the words "adhesive stamp".

Justification

117. The amendment is to insert the words recognised by the Government of Kenya. It is intended that the stamps issued under this amendment should be issued by the Government of Kenya to safeguard revenue.

Clause 17

118. **THAT** clause 17 of the Bill be amended in the proposed new section 23A by deleting subsection (2)

Clause 25

119. **THAT**, the Bill be amended by deleting clause 25.

Justification

120. The clause being deleted was a proposed amendment to the Value Added Tax Act relating to VAT exemption of goods, it is in an effort to sustain the list of items which attract VAT so as not to reduce the tax base.

Clause 26

121. **THAT,** the Bill be amended by deleting clause 26.

Justification

122. The clause being deleted was a proposed amendment to the Value Added Tax Act relating to VAT exemption of services, it is in an effort to sustain the list of items which attract VAT so as not to reduce the tax base.

Clause 37

123. **THAT**, clause 37 of the Bill be amended by deleting the clause and substituting therefor the following new clause—

The Insolvency Act, 2015, is amended by deleting section 560A and substituting therefor the following new section—

560A. (1) When considering whether to provide its approval under section 560 the court or the administrator may in particular take into consideration, circumstances where appropriate –

i. The statutory purpose of the administration;
ii. the impact of the approval on the applicant particularly whether the applicant is likely to suffer significant loss;
iii. the legitimate interests of the applicant and the legitimate interest of the creditors of the company, giving the right of priority to the proprietary interest of the applicant;
iv. whether the value of the secured creditor's claim exceeds the value of the encumbered asset;
v. whether the secured creditor is not receiving protection for the diminution in the value of the encumbered asset;
vi. whether the provision of protection may be feasible or overly burdensome to the estate;
vii. whether the encumbered asset is not needed for the reorganization or sale of the company as a going concern;
viii. whether relief is required to protect or preserve the value of assets such as perishable goods; or
ix. whether in reorganisation, a plan is not approved within six months.

(3) An approval granted under sub-section (1) shall be for a period of not more than twenty-eight days.

Justification

124. The law provides for an automatic stay on enforcement when a debtor enters a court-supervised reorganization procedure to protect secured creditors' rights. There is need to provide clear grounds for relief from the stay while setting a time limit for it. The proposed amendments seek to ensure the grounds are clear and broad enough to cover all justifiable reasons for relief from stay as per the international best practices.

CLAUSE 39

125. THAT, the Bill be amended in clause 39 in the proposed new item in the description by inserting the words "(excluding imported glass bottles by the pharmaceutical subsector).

Justification

126. The amendment is intended to provide that the increase in excise duty on glass bottles shall not apply to imported glass bottles by the pharmaceutical subsector.

NEW CLAUSES

NEW CLAUSE 12A

127. **THAT,** the Bill be amended by inserting the following new clause immediately after clause 12–

12A. Section 119 of the Stamp Duty Act is amended by inserting the following paragraph immediately after paragraph (c) –

(d) electronic stamping.

Justification

128. The amendment is to the regulation making clause of the Stamp Duty Act. It is intended to give the Cabinet Secretary power to make further provisions relating to electronic stamping, if need be.

New Clause 15A

129. **THAT** the Bill be amended by inserting the following new clause immediately after clause 14–

15A. Section 2 of the National Construction Authority Act, 2011 is amended by inserting the following new definition in its proper alphabetical sequence–

"building code" means the national building regulations made under this Act.

Justification

130. The amendment seeks to define the Building Code as the same had not been provided for in the Act. Further, it will ensure that the Building Code is introduced as a regulation so as to ensure that it is anchored in law.

New Clause 17A

131. THAT the Bill be amended by inserting the following new clause immediately after clause 17-

17A. Section 42 of the National Construction Authority Act, 2011 be amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (a) –

(aa) the Building Code in the construction industry; and

(ab) the manner of conducting mandatory inspections by the Authority.

Justification

132. The amendment seeks to ensure that the relevant section of the Act is amended which is section 42 of the Act so as to empower the Cabinet Secretary to make regulations regarding mandatory inspections by the Authority and the Building Code in the construction industry.

New Clause 32A

133. **THAT**, the Bill be amended by inserting the following new clause immediately after clause 32—**32A.** Section 289 of the Companies Act, 2015 is amended in subsection (1) by—

(c) deleting paragraph (b) and substituting therefor the following new paragraph immediately after paragraph (a)—

"(b) in the case of a quoted company, a new item to be put in the agenda of the general nature of business to be dealt with at the meeting.

(d) inserting the following new paragraph immediately after paragraph (b)—

"(c) other business to be dealt with at that meeting."

in subsection (2) by inserting the following new paragraph immediately after paragraph (b)–

"(b) in the case of subsection (1) (b), by members representing at least five percent of paid up capital of the company."

Justification

134. The proposed provisions seek to ensure that in the case of a quoted company, shareholders representing 5% of the paid-up capital of the company are at liberty to propose an item in the agenda to be circulated to members of the company entitled to receive a notice of the general meeting.

SIGNED.. DATE........3/3/2020..........................

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

MINUTES OF THE 9TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 3RD MARCH, 2020 ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Daniel E. Nanok, MP
8. Hon. Andrew A. Okuome, MP
9. Hon. David M. Mboni, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Joshua C. Kandie, MP
12. Hon. Lydiah Mizighi, MP
13. Hon. Purity Ngirici, MP
14. Hon. Samuel Atandi, MP
15. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP

ABSENT

1. Hon. Francis K. Kimani, MP
2. Hon. Mohamed A. Mohamed, MP
3. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Josephat Motonu - Fiscal Analyst I
5. Mr. Chelang'a Maiyo - Research Officer II
6. Mr. John Njoro - Serjeant-At-Arms
7. Ms. Euridice Nzioka - Audio Officer
8. Mr. Vitalis Augo - Office Assistant
9. Mr. Faustine Rotich - Intern

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising

5. **Meeting to:-**
   i. **Consider the National Policy to Support Enhancement of County Governments' Own Source Revenue**
   ii. **Adopt the Report on the consideration of the Business Laws (Amendment) Bill, 2019**

6. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2020/039: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10.26am and a prayer was said. The Chairperson then welcomed the secretariat to brief the Committee on the National Policy to support Enhancement of County Governments' Own Source Revenue.

MIN.NO.NA/F&NP/2020/040: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/041: CONSIDERATION OF THE NATIONAL POLICY TO SUPPORT ENHANCEMENT OF COUNTY GOVERNMENTS' OWN SOURCE REVENUE

Mr. Josephat Motonu took the Committee through the contents of the National Policy to Support Enhancement of County Governments' Own Source Revenue. Members raised several issues which will form part of the Committee's report on the Policy.

MIN.NO.NA/F&NP/2020/042: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) BILL, 2019

The Committee adopted the report on the consideration of the Bill having been proposed and seconded by Hon. Jimmy Angwenyi, MP and Hon. David Mboni, MP respectively. The Committee agreed on the following amendments:-

Clause 11

THAT, Bill be amended in clause 11 in the proposed new paragraph 24E (1) by deleting the word "ten" appearing immediately before the words "billion shillings" and substituting therefor the word "five".

Justification

The amendment to clause 11 proposes to reduce the capital investment which is eligible for the investment deduction from ten billion to five billion.

Clause 12

THAT, the Bill be amended in clause 12 in the proposed new definition of "stamp" by inserting the words "recognized by the Government," immediately after the words "adhesive stamp".

Justification

The amendment is to insert the words recognised by the Government of Kenya. It is intended that the stamps issued under this amendment should be issued by the Government of Kenya to safeguard revenue.

Clause 25

THAT, the Bill be amended by deleting clause 25.

Justification

The clause being deleted was a proposed amendment to the Value Added Tax Act relating to VAT exemption of goods, it is in an effort to sustain the list of items which attract VAT so as not to reduce the tax base.

Clause 26

THAT, the Bill be amended by deleting clause 26.

Justification

The clause being deleted was a proposed amendment to the Value Added Tax Act relating to VAT exemption of services, it is in an effort to sustain the list of items which attract VAT so as not to reduce the tax base.

CLAUSE 39

THAT, the Bill be amended in clause 39 in the proposed new item in the description by inserting the words "(excluding imported glass bottles by the pharmaceutical subsector).

Justification

The amendment is intended to provide that the increase in excise duty on glass bottles shall not apply to imported glass bottles by the pharmaceutical subsector.

NEW CLAUSE 12A

THAT, the Bill be amended by inserting the following new clause immediately after clause 12–

> **12A.** Section 119 of the Stamp Duty Act is amended by inserting the following paragraph immediately after paragraph (c) –
>
> > (d) electronic stamping.

Justification

The amendment is to the regulation making clause of the Stamp Duty Act. It is intended to give the Cabinet Secretary power to make further provisions relating to electronic stamping, if need be.

MIN.NO.NA/F&NP/2020/043: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 12.51p.m. The next meeting will be held on Thursday, 5th March, 2020 at 10.00 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED.......................................**DATE**....3/3/2020.................

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE BUSINESS LAWS (AMENDMENT) (NO. 2) BILL, 2019

DATE: 3RD MARCH, 2020

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN Sorry	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON. EDITH NYENZE, MP	