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&  
DEPARTMENT OF JUSTICE

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21<sup>st</sup> February, 2018

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RE: THE INSOLVENCY (AMENDMENT) REGULATIONS, 2018

pls deal  
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Reference is made to the above matter.

Herewith please find the Insolvency (Amendment) Regulations 2018 along with an explanatory memorandum, for your further necessary action.

GITHU MUIGAI, EGH, SC  
ATTORNEY GENERAL

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26 FEB 2018  
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**EXPLANATORY MEMORANDUM TO THE INSOLVENCY (AMENDMENT)  
REGULATIONS, 2018**

**PART I**

**Name of the Statutory Instrument:** The Insolvency (Amendment) Regulations, 2018.

**Name of the Parent Act:** The Insolvency Act, 2015

**Enacted Pursuant to:** Section 730 of LN. NO.18 of 2015

**Name of the Ministry/ Department:** Office of the Attorney General and the Department Of Justice, Business Registration Service

**Gazetted on:** 26<sup>th</sup> January, 2018

**Tabled on:**

**PART II**

**1.The Purpose of the Insolvency (Amendment) Regulations, 2018**

The purpose of these Regulations is to provide for the proper implementation of the Insolvency Act, 2015 by coming up with the missing forms and streamlining some of the regulations to give effect for the Act.

**2.Legislative Context**

The Insolvency Act, 2015 empowers the Attorney General to make regulations necessary or convenient for carrying out or giving effect to the Act. The Insolvency (Amendment) Regulations, 2018 are therefore issued to give effect to the Act.

### **3. Policy Background**

The regulatory framework on insolvent persons and entities is an initiative of the Office of the Attorney General, Law Society of Kenya, Institute of Certified Public Secretaries of Kenya, Institute of Certified Public Accountants of Kenya, the Capital Market Authority, IBM Research Africa, Insurance Regulatory Authority, Kenya Law Reform Commission, PricewaterhouseCoopers Limited, Deloitte & Touche, Ernst & Young including law firms like Anjarwalla & Khanna Advocates, Coulson Harney Advocates, Raffiman, Dhanji Elms & Virdee Advocates, Walker Kontos Advocates, Hamilton Harrison & Matthews Advocates and Kaplan & Stratton Advocates .

Further, these regulations will significantly improve Kenya's ranking on the ease of doing business index under the 'Resolving Insolvency' indicator.

### **4. Consultations Outcome**

The Insolvency (Amendment) Regulations, 2018 have taken into account the views of the key personnel in the Office of the Attorney General and Department of Justice who are versed with the operational aspects of resolving insolvency in Kenya. The Attorney General in coming up with the regulations has sought the extensive input of the Ag- Director General who is the accounting officer and administrator of the Business Registration Service.

The other key stakeholders from Law Society of Kenya, Institute of Certified Public Secretaries of Kenya, Institute of Certified Public Accountants of Kenya, the Capital Market Authority, IBM Research Africa, Insurance Regulatory Authority, Kenya Law Reform Commission, PricewaterhouseCoopers Limited, Deloitte & Touche, Ernst & Young including law firms like Anjarwalla & Khanna Advocates, Coulson Harney Advocates, Raffiman, Dhanji Elms & Virdee Advocates, Walker Kontos Advocates, Hamilton Harrison & Matthews Advocates and Kaplan & Stratton Advocates and the Office of the Attorney General.

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**Gazetted on:** 26<sup>th</sup> January, 2018

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## **5. Guidance**

The Business Registration Service will sensitize its officers for adherence to the objectives of accountability and efficiency in the management of the Registry. The Service will also engage key stakeholders whose participation and cooperation remains instrumental in the successful implementation of the key aspects of the Insolvency Act and the regulations.

## **6. Impact Assessment**

As impact assessment has not been prepared for this Instrument. The instrument is made pursuant to the objectives as operationalised by the Insolvency Act.

## **7. Review of the Regulations**

The Ag. Director General shall monitor the application of the Insolvency (Amendment) Regulations. This will be done through the reports prepared at regular intervals. In addition, the implementers of the regulations will carry out regular monitoring and evaluation of the specific provisions of these regulations with the aim of initiating any legislative amendments as may be necessary on an annual basis.

## **8. Contact Person**

The contact person at the Office of the Attorney General is Hon. Githu Muigai, EGH, SC Attorney General or Mr. Kenneth Gathuma, Ag- Director General, Business Registration Service.