

# KEPSA WEEKLY LEGISLATIVE BULLETIN

**Issue no 3**

## **A summary of key Parliamentary legislation**

### **Kenya seeks review of investment laws to implement the EAC Common Market Protocol**

The Department of East African Affairs in the Ministry of East African Affairs, Commerce and Tourism has initiated a process of amending four Acts of Parliament to facilitate the implementation of the East Africa Common Market Protocol.

The Protocol, which was ratified on 1 July 2010, is seen as one of the key benchmarks in the regional integration process.



The others are the creation of the Customs Union and the formation of a Political Federation which was initially set to be completed by 2015 but which is now expected to overshoot this timeline.

The laws set for review through a Miscellaneous Amendment Bill include the Export Processing Zones Act, Bills of Exchange Act, Foreign Investment Act and the Investment Promotion Act. The Miscellaneous Amendment Bill is expected to be tabled before the National Assembly by the Attorney General during the current session of parliament that opened on February 11.

Following the establishment of the East Africa Community (EAC) through the EAC Treaty on July 7, 2000, EAC Partner States have taken various steps towards deepening regional integration. The ratification of the Common Market Protocol is seen as an important milestone on the integration road map. It would result in the adoption of common laws and policies governing the free movement of goods; labour; services; and capital.

Following the ratification of the Common Market Protocol, a Committee on Approximation of National laws was established to oversee the review of national legislation to support



implementation of the Protocol and assist countries comply with their legislative obligations under the Protocol.

This Committee on Approximation of National laws is made up of the chairs of law reform commissions from the 5 partner States and reports its progress on a regular basis to the Attorney Generals of the Partner States who in turn advise their governments on any necessary legal amendments.

The latest review by Kenya of its national legislation fits into the recommendations of this Committee and is in line with the obligation imposed by Article 47 of the Protocol which calls upon national governments to “approximate their national laws and to harmonize their policies and systems, for purposes of implementing [the] Protocol”.

To fully implement the Protocol, national laws dealing with Companies, Insolvency, Partnerships, Business Registration, Immigration, Labour and Employment will need to be reviewed across the region. Indeed, the Kenya National Assembly has lined up for review and enactment Bills in three of these areas namely Companies, Insolvency and Business Registration. In addition to these, amendments are proposed to existing laws dealing with investment.

One of these laws proposed for amendment is the Investment Promotion Act to secure equal treatment of investors by doing away with the distinction between “foreign” and “local” investors. This proposed amendment is expected to provide greater flexibility and facilitation to investors within the EAC in terms of business registration and conditions attached to investment in individual countries.

The Foreign Investment Act is also set for amendments to ensure that the latest entrants to the EAC -- Rwanda and Burundi – benefit from the same rights and obligations under the EAC Treaty as is the case with the original three Partner States of Kenya, Uganda and United Republic of Tanzania.

The amendment proposed to the Foreign Investment Act will in essence, grant the citizens of all the five Partner States, similar rights which is particularly important to investors since they would not require special protection for their investments. This arises from the fact that this amendment affirms the right of free movement of capital and the right of establishment in any of the EAC Partner States.

The Bills of Exchange Act is also set for amendment to reflect the composition of the EAC in its totality as constituted by the 5 Partner states of Republic of Kenya, Republic of Uganda,

Republic of Rwanda, Republic of Burundi and the United Republic of Tanzania. As a result of this proposed amendment, bills of exchange drawn in any of the EAC Partner States will be treated as Inland Bills in Kenya.

The amendment proposed to the Export Processing Zones Act seeks to ease the operation of countries registered outside Kenya by dispensing with the need for such Companies to seek parallel registration in Kenya under the Companies Act. This will enhance the attractiveness of investment in the Export Processing Zones within the region by easing set-up registration procedures.

## **Spotlight on an upcoming Bill**

### **The Persons with Disabilities (Amendment) Bill, 2013**

This amendment Bill seeks to amend the Persons with Disabilities Act to align it to the new constitution which guarantees the right of access to information and movement. The Bill seeks to compel the government to ensure



that telecommunications and the mass media are available and accessible to persons with hearing disabilities. In addition, it would seek safeguards for access to public transportation for persons with disabilities.

The specific amendment sought under this Bill is to section 39 of the Persons with Disabilities Act to require that “all television stations shall provide a sign language inset or sub-titles in all newscasts and education programmes and in all programmes covering events of national significance”.

### **Implications for the Private Sector**

The mass media market commands significant Private Sector investment especially electronic media which is capital intensive. While this amendment would improve access to information



for persons with disabilities, it will necessitate additional investment by media houses on sign language interpretation.

## News on KEPSA legislative engagements

### Land fraud comes under scrutiny

A Working Group on land established under the aegis of the Committee on Administrative Justice is keen on comprehensive reforms to address the problem of land fraud and provide greater certainty on the renewal of leases. This working group, of which KEPSA is a member, is expected to inform the position of the National Commission on Administrative Justice (NCAJ) on the problem of land fraud.

Other members of the working group include: Ministry of lands, Housing and Urban Development; National Land Commission; CAJ; law Society of Kenya; office of the judiciary Ombudsperson; Inspector General of Police; and, Directorate of Criminal Investigation.

The NCAJ is a high-level, policy making, implementation and oversight coordinating mechanism which debates and resolves matters relating to the administration of justice. It is on this basis that land fraud was identified as a special issue agenda that would be addressed through inter-agency collaboration.



The issue of land fraud was chosen based on a ranking of government Ministries and departments by the Commission on Administrative Justice which ranked the Ministry of lands as topping in public complaints received in 2012 in the areas of abuse of power, unresponsiveness, inefficiency, delay, lack of courtesy and corruption.

At a meeting convened by the National Commission on Administrative Justice in Nairobi on February 12 KEPSA presented a report on a review the mechanisms created under different laws on the regulation of various cadres of professionals dealing with land. The report assessed the extent to which these mechanisms provide sufficient safeguards against the perpetuation of professional misconduct on land matters.

In relation to Advocates and regarding the Complaints Commission established under Section 53 of the Advocates Act to address issues of professional misconduct, KEPSA observed that the Complaints Commission was not adequately staffed to deal comprehensively with the range of



complaints filed against advocates. A backlog and delay in processing complaints created a risk of discourage aggrieved clients from presenting grievances before the Commission.

KEPSA further noted that the Complaints Commission largely relies on activation through complaints filed by clients. This meant that the commission was limited in terms of its potential to act on its own motion and out of initiative in addressing issues that constitute professional misconduct such as land fraud.

It was noted that some matters require investigation to be resolved comprehensively and the Commission had limited capacity to carry out such investigations which would in turn, undermine its capacity to adequately and sufficiently prosecute its mandate and motivate complainants to present matters before it.

*Next week's Bulletin will highlight recommendations on the adequacy of professional regulation amongst Valuers, Surveyors and Estate Agents.*