Issue no 1

KEPSA WEEKLY LEGISLATIVE BULLETIN

A summary of key Parliamentary legislation

The Insurance (Motor Vehicle Third Party Risks) Act

A new legislation that limits the maximum compensation payable to accident victims has come into law. The Insurance (Motor Vehicle Third Party Risks) Act came into effect following an assent by the President in December 2013. It amended the previous Insurance (Motor Vehicle Third Party Risks) Act seen as a minefield for insurance companies that suffered runaway court compensation awards.

Injury	Compensation (Sh)
The maximum payout is Sh3 million	
Death	3,000,000
Loss of right arm	1,950,000
Stiff hip	750,000
Loss of eye	900,000
Loss of all toes	450,000
Total blindness	3,000,000
Loss of thumb	150,000
Scalp injury	30,000 to 150,000
Loss of nose	900,000
	SOURCE: NATIONAL TREASURY

The new law has created an elaborate schedule of a structured compensation scheme which sets out compensation due on different levels and degree of injury including, death and disablement. It places a Kshs 3 million cap on the maximum compensation payable to a passenger in the event of a motor vehicle accident in line with a 2009 Gazette Notice issued by the Minister for Finance which recommended such a limit to protect the insurance industry.

Under the new law, compensation will be determined by various factors such as individual income levels and the nature and extent of the injury.

While this law has been long canvassed by the insurance industry, it has faced resistance from lawyers who view it as limiting the power of the courts in determining compensation and the right of accident victims to pursue their claims through litigation.

Implications of legislation to Private Sector: This new law is expected to create certainty over compensation levels due and payable from accidents and fatalities arising from motor vehicle accidents. This will enable insurance companies plan for liability more efficiently and assist them in determining levels of motor vehicle premiums.

Spotlight on an upcoming Bill

The Marriage Bill, 2013

The primary aim and object of this Bill is to repeal the various existing laws dealing with marriage and consolidate them under one Act of parliament to be known as the Marriage Act. The statutes to be repealed include: The Marriage Act (CAP 150), The African Christian Marriage and Divorce Act (CAP 151), The Matrimonial Causes Act (CAP 152), The Subsidiary Courts (Separation and Maintenance) Act (CAP 153), The Mohamedan Marriage and Divorce Registration Act (CAP 155), The Mohamedan Marriage, Divorce and Succession Act (CAP 156) and The Hindu Marriage and Divorce Act (CAP 157). Once enacted, the Marriage Act will regulate the celebration of marriages in Kenya including the determination of matrimonial disputes and the principles governing court proceedings in matrimonial disputes.

Implications of Bill to Private Sector: This Bill has significance to Private Sector players in the money and property market such as banks and mortgage firms because it will be used to determine the stake of spouses in the ownership of matrimonial property in the event of divorce. This will impact the way financial institutions place a charge on mortgage properties since both spouses will have a stake in such property in the event of divorce with implications on the payment of liabilities to banks and mortgage firms. This could affect the ease with which such institutions may be able to realize such securities in the event of default.

News on KEPSA legislative engagement

Mining Policy in the pipeline

The Ministry of Mining has embarked on the process of developing a ***National Mining Policy*** which is expected to complement the Mining Bill currently under consideration. The Mining Policy is expected to outline key policies to be implemented by the Government in its quest to develop the Sector.

In a presentation at a consultative forum with industry stakeholders on the proposed Mining Policy, presided over by the Cabinet Secretary for Mining, Hon. Najib Balala, KEPSA voiced support for the proposed Mining Policy and review of the Mining Act.

KEPSA observed "the Mining Act which predates our independence, is not well aligned to the needs, demands and expectations of investors and cannot attract and motivate renewed investor interest in the mining sector. The Mining Policy, should, therefore be one that recognizes the most salient issues that will strengthen and secure a predictable legal framework".

KEPSA sought clarity and certainty in the issuance of licenses including clear timelines to enable investors plan appropriately. **"**Multiple licensing procedures should be dispensed of in favour of a one-stop shop that cuts back on bureaucracy and cost and overcomes the problem of prolonged delays in commencement of exploration and mining activities", noted KEPSA.

KEPSA sought clear guidelines on access to land by prospectors of minerals and making compensation due to land owners from investors contingent upon the establishment of existence of commercially viable mineral deposits.

"The Mining Policy must be well-aligned to legislation of land and must, as a minimum, provide security of tenure to investors involved in prospecting and exploiting minerals with clear safeguards and guarantees on access to mineral deposits by land owners", recommended KEPSA.

KEPSA presents views on privatization of the Kenya Petroleum Refineries Limited

The Parliamentary Investment Committee (PIC) held a session with KEPSA at County Hall to receive views on the way forward regarding the future of the Kenya Petroleum Refineries Limited (KPRL). The government is a joint equity partner in the firm with Essar Energy Overseas Limited (EEOL) but the firm has remained in operational since 2013 and its continued viability as a refinery is in doubt.

The firm was shut down in 2013 after Essar sold its stake in the company to the Government following findings from several studies which concluded the upgrade of the Mombasa refinery was not economically viable under the current refining environment which subsequently led to KPRL's shut down.

In its interaction with PIC, KEPSA,

represented by the CEO Ms. Carole Kariuki and members of the Energy Sector Board led by its Chair Mr. Julius Riungu, raised several concerns over the refinery.

KEPSA noted while the refinery's pricing remained uncompetitive compared to products from Western India and the Arab Gulf, the use of outdated machinery had resulted in the refinery being unable to produce fuels that met industry standards as recommended by the Kenya Bureau of Standards (KEBS).

"The outdated technology resulted in refinery inefficiencies including the inability to process all the by-products from crude oil. Independent audit reports show that KPRL owes Oil Marketers over KShs 9 billion worth of stocks and yield shift losses amounting to KShs 7 billion", warned Mr Riungu.

KEPSA recommended the conversion of the refinery into a strategic storage facility. The discovery of oil in northern Kenya could enhance the role of the refinery in the value addition chain once commercial production commences.

In line with the previous equity arrangement, KEPSA recommended the Public Private Partnership (PPP) Act should be used to advance a legal framework for private sector engagement in the revival of the refinery under a possible future equity arrangement.