

THE BUSINESS LAWS (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the laws relating to the promotion of investment, trade and industry and for connected purposes

ENACTED by the Parliament of Kenya as follows—

Short title.

1. This Act may be cited as Business Laws (Amendment) Act, 2024.

Amendment of the heading of Part II of Cap. 485.

2. The Investment Promotion Act is amended by deleting the heading “PART II—INVESTMENT CERTIFICATES—APPLICATION AND ISSUE, ETC” appearing immediately after section 2 and substituting therefor the following new heading—

“PART II—REGISTRATION OF FOREIGN DIRECT INVESTMENTS AND ACCREDITATION OF FACILITATORS FOR FOREIGN INVESTORS”

Repeal and replacement of section 3 of Cap. 485

3. The Investment Promotion Act is amended by repealing section 3 and replacing it with the following new section—

Accreditation of facilitators for foreign investors.

3. (1) A person who seeks to engage in the business of facilitating foreign direct investors shall be accredited by the Authority.

(2) The Cabinet Secretary may prescribe the requirements and procedure for accreditation of facilitators for foreign investors under subsection (1).

(3) An application for accreditation under this section shall be accompanied by a non-refundable application fee as may be prescribed in regulations.

(4) A person who contravenes subsection (1) commits an offence.

Repeal and replacement section 4 of Cap. 485

4. The Investment Promotion Act is amended by repealing section 4 and replacing it with the following new section—

Registration of foreign direct investments.

4. (1) Each foreign direct investments in Kenya shall be registered with the Authority before engaging in such investment.

(2) A foreign direct investor or his accredited facilitator shall apply for registration of a foreign direct investment in the prescribed form.

(3) The Authority may request

clarifications and additional information for purposes of registration.

(4) The Cabinet Secretary may prescribe, in regulations, the requirements for registration of foreign direct investments.

Repeal and replacement of section 6 of Cap. 485

5. The Investment Promotion Act is amended by repealing section 6 and replacing it with the following new section—

Issue of investment certificate.

6. (1) The Authority shall upon receipt and review of an application issue a foreign direct investor with an investment certificate in the name of the entity established by the applicant, if—

(a) the application is complete and satisfies the applicable requirements prescribed under this Act;

(b) the amount invested by a foreign investor meets the sector or industry threshold as may be determined by the Board by notice in the *Gazette*; and

(c) the investment and the activity related to the investment are lawful and beneficial to Kenya.

(2) In determining whether an investment and any activity related to the investment are beneficial to Kenya for the purposes of subsection (1)(c), the Authority shall consider the extent to which the investment or activity will contribute to the conditions specified in paragraphs (a), (b) and (c), and any or all of the conditions specified in paragraphs (d), (e), (f), (g) and (h)—

(a) creation of employment for Kenyans;

(b) acquisition of new skills or modern compatible state of the art technology for Kenyans;

(c) contribution to tax revenues or other Government revenues;

(d) transfer of technology to Kenya;

(e) an increase in foreign exchange, either through exports or import substitution;

(f) utilization of domestic raw materials, supplies and services;

(g) adoption of value addition in the processing of local, natural and

agricultural resources;

(h) utilization, promotion, development and implementation of information and communication technology; and

(i) any other factors that the Authority considers beneficial to Kenya.

Repeal and replacement of section 8 of Cap. 485

6. The Investment Promotion Act is amended by repealing section 8 and replacing it with the following new section—

Transfer of an investment certificate.

8. An investment certificate once issued shall not be transferable to another person.

Insertion of new sections 11A and 11B in Cap. 485

7. The Investment Promotion Act is amended by inserting the following new sections immediately after section 11—

Maintenance of register.

11A. The Authority shall maintain a register of—

(a) all investments registered by the Authority and nature of such investments;

(b) all applications for investment certificates;

(c) all issued investment certificates for new, expanded, restructured, rehabilitated or improved business enterprises; and

(d) all amendments or revocations of investment certificate; and

(e) such other particulars relating to the investment certificate as may be necessary or desirable to be recorded

Provision of government services at a centralized facility.

11B. (1) In promoting and facilitating investment in Kenya, the Authority shall establish and operationalize a centralized facility, both physical and digital, for purposes of providing Government services and regulatory requirements for investors.

(2) The facility may host Government regulatory and service provision agencies including the agencies responsible for—

(a) registration of businesses;

(b) tax and customs administration;

(c) immigration work permits and visas;

(d) labour compliance obligations;

(e) environmental conservation and management;

- (f) land administration;
- (g) development control and enforcement;
- (h) business permit and licensing services including the relevant approvals by a county government;
- (i) connection to business utilities;
- (j) construction approvals;
- (k) import and export approvals;
- (l) standardization and conformity assessment;
- (m) admission to incentivized economic zones;
- (n) healthcare approval;
- (o) Agricultural, Production and Value Addition;
- (p) digital economy approvals; and
- (q) any other service that the Board may consider necessary.

(3) Any agency stationed at the centralized facility shall provide services to investors in accordance with its functions and mandate.

Amendment of Section 13 of Cap 485

8. The Investment Promotion Act is amended by repealing Section 13 (1) and replacing it with the following new section—

Benefits of investment certificate.

13 (1) The holder of an investment certificate will be entitled to the following entry permits under the Kenya Citizenship and Immigration Act (Cap. 170)—

- a) Six class G work permits for shareholders and partners
- b) Six class D work permits for management and technical staff
- c) 13 (14) The Authority shall facilitate in Fast tracking the incentives and exemptions.

Insertion of new section 15A of Cap. 485

9. The Investment Promotion Act is amended by inserting the following new section immediately after section 15—

Collaboration with other public institutions.

15A. Every ministry, department, agency county government or any other public institution shall collaborate with the Authority in the performance of its functions under this Act.

Insertion of a new section 5A in Cap.

10. The Standards Act is amended by inserting

496. the following new section immediately after section 5—

Registration of
manufacturers.

5A. (1) A person shall not operate as a manufacturer unless the person is registered as a manufacturer under this Act.

(2) A person who seeks to be registered as a manufacturer under this Act shall apply to the Bureau for registration.

(3) An application under this section shall be made in the prescribed form and shall be accompanied by the prescribed fee and such other particulars or information as may be prescribed in regulations.

(4) The Bureau shall, upon receiving an application under this section consider the application and any other information submitted by the applicant and —

(a) if satisfied that the application meets all the requirements under this Act, register the applicant in the register of manufacturers and issue a certificate of registration in the prescribed form; or

(b) if the application does not meet the registration requirements under this Act, reject the application and notify the applicant of the rejection and give reasons thereof.

(5) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

Repeal and
replacement
of section
10C of Cap.
496.

11. The Standards Act is amended by repealing section 10C and replacing it with the following new section—

Disbursement
powers of
Director.

10C. (1) Any money that is received in respect of the Standards Levy Order shall be paid into a Bureau account.

(2) The Director may, on the direction of the Council, make payments out of the Bureau account for the purposes set out in section 8(2).

Insertion of a
new section
10D in Cap.
496

12. The Standards Act is amended by inserting the following new section immediately after section 10C—

Standards for
manufacturers.

10D. (1) A manufacturer shall ensure that

every product is designed and manufactured in accordance with this Act.

(2) A manufacturer shall, in addition to any other obligations under this Act—

- (a) ensure that every product meets the requirements of the relevant Kenya standards;
- (b) carry out sample testing of each product before releasing the product into the market;
- (c) have procedures for ensuring full traceability of a product from the factory to the consumer of the product manufactured for sale; and
- (d) ensure that the labelling of each product meets the requirements of the relevant standards including—
 - (i) the details and location of the manufacturer; and
 - (ii) the ingredients or content of the product;
- (e) investigate any complaint related to any product and take appropriate action;
- (f) keep a register of complaints, non-conforming products and product recalls; and
- (g) keep distributors informed of any monitoring.

Repeal and replacement of section 12 of Cap. 496

13. The Standards Act is amended by repealing section 12 and replacing it with the following new section—

Samples and information.

12. (1) A person who manufactures, imports, stocks, distributes, sells or exhibits a product shall—

- (a) ensure that every product complies with the Kenya standards;
- (b) ensure that every product bears a valid standardization mark issued or recognized under this Act;
- (c) maintain records that uniquely identify each product, every supplier and the immediate customers; and
- (d) ensure that the product does not exceed its declared shelf life or expiry date.

(2) The Bureau may request from any person who manufactures, stocks, distributes, sells or exhibits a product for

any documentation and information that the Bureau requires for the purpose of carrying out its functions.

(3) A manufacturer or a business operator who has reason to believe that a product which has been made available in the market is not in conformity with the requirements of this Act shall withdraw or recall the product.

(4) A business operator shall cooperate with the Bureau to eliminate or mitigate risks presented by non-compliant products made available in the market.

Insertion of a new section 12A in Cap. 496.

14. The Standards Act is amended by inserting the following new sections immediately after section 12—

Establishment of laboratories.

12A. (1) The Bureau may establish laboratories which shall—

- (a) provide testing and measurement services and issue test certificates;
- (b) produce certified reference materials;
- (c) develop test methods;
- (d) provide proficiency testing services; and
- (e) provide chemical metrology services.

Cap. 496 A

(2) The Bureau may, where necessary, designate competent bodies that are duly accredited under the Kenya Accreditation Service Act to provide testing services and issue test certificates subject to the Kenya standards for purposes of this Act.

(3) Only laboratories that have been assessed by the Bureau and found to have met criteria of assessment for designation of laboratories shall be designated as such.

(4) Any test carried out by a designated laboratory shall be deemed to have conformed to the requirements of the Bureau under this Act.

(5) A designated laboratory that issues incorrect or incomplete test results commits an offence.

(6) The Bureau may cancel the designation of a laboratory if the laboratory—

- (i) contravenes the conditions imposed by the Bureau;
- (ii) provides false or misleading

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- information to the Bureau;
 - (iii) is no longer fit to hold an accreditation granted under the Kenya Accreditation Service Act;
 - (iv) contravenes any provisions of this Act; or
 - (v) fails to pay any fees prescribed under this Act.

Establishment of calibration facilities.

12B. (1) The Bureau shall be the competent entity to provide calibration services in Kenya, either by itself or through designated laboratories.

(2) The Bureau may establish calibration facilities which shall—

- (a) be the custodian of the national measurement standards;
- (b) realize, develop and maintain national measurement standards;
- (c) provide traceability of the national measurement standards to the International System of Units including physical, chemical, biological and medical fields of measurement; and
- (d) provide national inter-comparison measurements for calibration laboratories in the country.

(3) The Bureau may, where necessary, license and register competent bodies to provide calibration services and issue certificates subject to the Kenya standards.

Calibration service providers.

12C. (1) Every calibration service provider shall have each of its measurement standards referenced to the national measurement standards maintained by the Bureau.

(2) The Cabinet Secretary may, by notice in the *Gazette*, designate the specific categories of measuring instruments and equipment used for health, safety or environmental purposes that shall be calibrated.

(3) The notice under subsection (2) may also prescribe the timeframe after which it shall be unlawful to use an instrument or equipment that is not calibrated.

Insertion of a new section 14D in Cap. 496.

15. The Standards Act is amended by inserting the following new section immediately after section 14C—

Appointment of an inspection body.

14D. (1) The Bureau may appoint an inspection body in the country of origin of goods to undertake verification of conformity to Kenya Standards or approved specifications.

(2) The inspection body shall have tax residence in Kenya.

Insertion of a new section 10A in Cap. 496A

16. The Kenya Accreditation Service Act is amended by inserting the following new section immediately after section 10—

Accreditation of foreign Conformity Assessment Bodies operating in Kenya.

10A. Every foreign conformity assessment body that carries out any conformity assessment activity in Kenya shall be accredited by the Service.

Insertion of a new section 12A in Cap. 496A

17. The Kenya Accreditation Service Act is amended by inserting the following new section immediately after section 12—

Accreditation levy.

12A (1) There is imposed a levy to be known as the accreditation levy which shall be at the rate of three percent of the value of any accredited service offered to a third party by an accredited conformity assessment body.

(2) The Cabinet Secretary may, by notice in the Gazette, prescribe—

- (a) the evidence by which the liability of a conformity assessment body to the accreditation levy or his discharge of that liability may be established;
- (b) the time at which the accreditation levy shall become due; and
- (c) the manner in which the accreditation levy shall be recoverable by the Service.

(3) A person who fails to pay the accreditation levy within the prescribed time shall be liable to a penalty of a sum equal to five per cent of the amount due for each month or part of a month thereof that the amount remains unpaid.

(4) A person who fails to pay the accreditation levy commits an offence.

(5) Any person who is aggrieved by any act or decision made under accreditation levy order may appeal to the Tribunal.

Amendment of section 4

18. The Scrap Metal Act is amended in section 4(1)—

of Cap. 503

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph —
 - (a) a chairperson appointed by the President who has at least five years' experience in the private sector;
- (b) by inserting the following new paragraphs immediately after paragraph (e) —
 - (ea) the Principal Secretary responsible for matters relating to finance or a designated representative;
 - (eb) the Principal Secretary responsible for matters relating to internal security or a designated representative;
 - (ec) the Attorney-General or a designated representative;
- (c) deleting paragraph (f) by and substituting therefor the following new paragraph —
 - (f) four persons of diverse gender representing the collectors, agents, smelters and millers.

Amendment
of section 2
of Cap. 510

19. Section 2 of the Anti-Counterfeit Act is amended—

- (a) in the definition of “Cabinet Secretary” by deleting the word “industrialization” and substituting therefor the word “anti-counterfeit”
- (b) in the definition of “consumer” by deleting the word “owner” and substituting therefor the word “holder”
- (c) by deleting the definition of “counterfeiting” substituting therefor the following new definition—

“counterfeiting” means taking the following actions without the authority of the holder of intellectual property right subsisting in Kenya or outside Kenya in respect of protected goods—

 - (a) the manufacture, production, packaging, re-packaging, labelling or making, whether in Kenya or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods;
 - (b) the manufacture, production or making, whether in Kenya or elsewhere, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said holder or any goods manufactured, produced or made under his licence;
 - (c) the manufacturing, producing or making of copies, whether in Kenya or elsewhere, in violation of an author’s rights or related rights;
 - (d) in relation to medicine, the deliberate and

fraudulent mislabelling of medicine with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging:

- (d) in the definition of “counterfeit goods depot” by inserting the expression “or deemed as such under section 25(1)(c)” immediately after the expression “section 29”
- (e) in the definition of “protected goods” by deleting the word “owner” and substituting therefor the word “holder”
- (f) inserting the following new definitions in the proper alphabetical sequence—
 - “disposal” means alienation, donation, conversion and destruction by any means or alienation by way of donation of seized or counterfeit goods depending on their nature effect on public health, and natural resources
 - “raw material” means any item that is used as an ingredient in the manufacture, production, packaging, repackaging, labelling or making of goods;
 - “unbranded goods” means goods that do not bear, embody or incorporate any intellectual property right;

Amendment
of section 6
of Cap. 510

20. The Anti-Counterfeit Act is amended in section 6 (1) by —

- (a) deleting paragraph (b) and substituting therefor the following new paragraph—
 - (b) the Principal Secretary responsible for matters relating to anti-counterfeit or his or her representative;
- (b) deleting paragraph (e) and substituting therefor the following new paragraph—
 - (e) the Principal Secretary responsible for matters relating to internal security or his or her representative;
- (c) deleting paragraph (f) and substituting therefor the following new paragraph—
 - (f) the Principal Secretary responsible for matters relating to Information Communication and Technology or his or her representative;
- (d) inserting the following new paragraph immediately after paragraph (f)—
 - (fa) the Principal Secretary responsible for matters relating to micro and small enterprises development or his or her representative;

Amendment
of section 7
of Cap. 510

21. The Anti-Counterfeit Act is amended in paragraph (a) of section 7 by deleting the expression “with approval of the Cabinet Secretary” and substituting therefor the expression “and approve”.

Amendment
of section 23
of Cap. 510

22. Section 23 (1) of the Anti-Counterfeit Act is amended—

- (a) in paragraph (a) by deleting the word "destruction" and substituting therefor the word "disposal";
- (b) by deleting paragraph (d) and substituting therefor the following new paragraph—
 - (d) seize, detain and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or any exclusive mark or any work which is the subject matter of copyright on such goods;

Amendment
of section 27
of Cap. 510

23. Section 27 (1) of the Anti-Counterfeit Act is amended deleting paragraph (a) and substituting therefor the following new paragraph—

- (a) is ordered by a court to return, release, or otherwise dispose of those goods as specified in the order:
Provided that in the case of counterfeit goods, such goods shall be disposed based on the environmental considerations and the capacity of the country to dispose of the goods, or shall be reshipped;

Amendment
of section 27
of Cap. 510

24. Section 28 of the Anti-Counterfeit Act is amended—

- (a) in subsection (2) by deleting the word "destruction" and substituting therefor the word "disposal".
- (b) in subsection (3) by deleting the word "destruction" and substituting therefor the word "disposal".
- (c) by deleting subsection (4) and substituting therefor the following new subsection—
 - (4) Where a person charged with an offence under this Act absconds and does not appear in court or where counterfeit goods are seized but are not claimed, an inspector may apply to court to have the counterfeit goods forfeited to the State for disposal.
- (d) by inserting the following new subsection immediately after subsection (4)—
 - (5) Despite subsection (4), an inspector may apply to court to have any other seized goods forfeited to the State for disposal where such goods have not been claimed or where such goods are abandoned.

Amendment
of section
34B of Cap.
510

25. Section 34B of the Anti-Counterfeit Act is amended by—

- (a) deleting the marginal note and substituting therefor with the following new marginal note—
“Recordation of intellectual property rights”
- (b) deleting subsection (4) and substituting therefor the following new subsection—

(4) The Authority shall have the power to seize and dispose of any goods originally imported into Kenya but found within Kenya that do not bear the anti-counterfeit security device.

Amendment
of section 35
of Cap. 510

26. Section 35 of the Anti-Counterfeit Act is amended by inserting the following new sub section after subsection (2)—

(2A) Any person who is convicted of an offence under section 32(h) to section 32(n), shall, on conviction, be liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years, or both.

Amendment
of the
Schedule to
Cap. 510

27. The Schedule to the Anti-Counterfeit Act is amended—

(a) by deleting paragraph 1 and substituting therefor the following new paragraph—

1. Any member of the Board, other than an ex officio member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and condition as may be specified in the instrument of appointment, but shall be eligible for reappointment for one further and final term of three years.

(b) in paragraph 3 (4) by deleting the word “seven” and substituting therefor the expression “two thirds of the”

Amendment
of section 2
of Cap. 517A

28. Section 2 of the Special Economic Zones Act is amended by deleting the definition of “business processing outsourcing” and substituting therefor the following new definition—

“business process outsourcing” means the provision of outsourcing services to business for specific business functions or processes such as back office support services in human resources, finance, accounting and procurement amongst other services, and includes the delegation of one or more information technology-intensive business processes to an external provider

Amendment
of section 4
of Cap 517A

29. Section 4 of the Special Economic Zones Act is amended by inserting the following new paragraph (c) immediately after paragraph (4) (2) (b) —

4 (2) (c)The Cabinet Secretary shall, on the recommendation of the Authority, set the minimum acreage of land and the Minimum Investment Amount to be invested for a land to be considered for declaration as a Special Economic Zone.

Amendment
of section 8
of Cap 517A

30. The Special Economic Zones Act is amended in section 8 by inserting the following new paragraph immediately after paragraph (4) —

(5) Goods of any description sold to any person that remains within a customs-controlled area of a special economic zone are not deemed to have entered the customs territory and are entitled to the benefits conferred under this Act.

Amendment of section 11 of Cap 517A

31. Section 11 of the Special Economic Zones Act is amended —

- (a) in paragraph (d) by inserting the words “and the minimum investment value” immediately after the word “threshold”;
- (b) by inserting the following new paragraph after paragraph (f)—
 - (fa) review applications and grant special economic zone service permits;
- (c) by deleting paragraph (h) and substituting therefor the following new paragraph—
 - (h) establish and administer a "one-stop" shop through which special economic zone enterprises can channel all their applications for permits, approvals, licences and facilities not handled directly by the Authority, coordinating with such other Government or private entities as may be necessary through agreements with the entities or procedures defined in implementing regulations or such other prescribed procedures;
- (d) by deleting paragraph (m) and substituting therefor the following new paragraph—
 - (m) suspend or cancel the licence of a special economic zone enterprise or a special economic zone developer which is in violation of this Act, the East African Community Customs Management Act, 2004 or any other applicable law.

Amendment of section 28 of Cap 517A

32. Section 28 of the Special Economic Zones Act is amended in paragraph (a) by inserting the words “or a public entity” immediately after the word “Kenya”.

Insertion of a new Section 30A in Cap. 517A

33. The Special Economic Zones Act is amended by inserting the following new section immediately after section 30—

Issuance of Special Economic Zone Business Service Permit

30A. (1) A person who intends to provide a service within a special Economic zone for which no incentive or benefit accrues under this Act, shall apply in the prescribed form to the Authority for a special economic zone business service permit or for a renewal of the permit.

(2) The Cabinet Secretary may prescribe in regulations the rights and obligations which shall apply upon the issuance of the permit issued under

subsection (1).

Amendment
of section 33
of Cap 517A

34. Section 33 of the Special Economic Zones Act is amended—

- (a) in subsection (1), paragraph (b), by—
 - (i) deleting the word “and” immediately after the expression “special economic zone operators” and substituting therefor the expression “special economic zone service permit holders”; and
 - (ii) inserting the expression “and residents” immediately after the word “enterprises”
- (b) in subsection (2) paragraph (b), by deleting the words “enclosures” and substituting therefor the word “measures”
- (c) by deleting subsection (4), and substituting the following new subsection—
 - (4) A special economic zone developer or a special economic zone operator who fails to maintain adequate and proper accounts and other records as required by this section is liable to payment of an administrative penalty not exceeding five million shillings or such administrative sanction as the Authority may deem fit, or both.

Amendment
of section 35
of Cap 517A

35. Section 35 of the Special Economic Zones Act is amended by deleting 35 (1) and substituting therefor with —

35 (1) All licensed special economic zones developers, operators enterprises, shall be granted tax incentives as specified in the respective tax laws and as set out in the Third Schedule as may be developed from time to time

- a) in subsection (2) by deleting the words “Subject to subsection 1” and adding the word “also” right after the word shall.
- b) inserting the following new subsection immediately after subsection (4)—

(5) Notwithstanding any changes in any other written law, the incentives and tax benefits granted to a Special Economic Zone developer operator or enterprise under this Act shall be for a period of ten years from the date of issuance of a licence.

THIRD SCHEDULE

[S. 35 (2)]

Special Economic Zone enterprises, developers and operators shall be granted the following tax incentives

Insertion
of a new
Third

1. Value Added Tax is Zero Rated; as per Section 12 of the Second Schedule of the Value Added Tax Act No. 35 of 2013 revised in 2018, “the supply of goods or taxable

Schedule
to Cap
517A

services to a special economic zone enterprise are zero-rated for VAT purposes”.

2. Corporate Tax rate of 10% for the first 10 years; as per Head B of the Third Schedule to the Income Tax Act Cap 470 paragraph 2 (h), licensed SEZ developer, operator and enterprises charged a corporation tax rate of ten per cent for the first ten years from the date of the first operation and thereafter fifteen per cent for another ten years.

3. Investment Deduction Allowance of 100% on capital expenditure on buildings and machinery for use in a Special Economic Zone as provided in the Finance Act of 2021, section 19 (b).

4. Excise Duty is exempted; as SEZ goods and Services are defined as exports under the Excise duty Act No 23 of 2015 revised 2017.

5. Stamp Duty is exempted as per the Stamp Duty cap 480 revised in 2018, Part VIII 117 (n) which provides for exemption on any instrument relating to business activities of Special Economic Zone Enterprises, Developers and Operators licensed under Special Economic Zone Act, 2015.

6. Exemption from payment of **withholding tax on dividends** paid by Special Economic Zone enterprises, developers and operators licensed under the Special Economic Zones Act;

7. Exemption from Payment of Withholding Taxes on Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator or enterprise, in the first ten years of its establishment, to a non-resident person as provided in the Finance Act of 2023 Section 24 (c) 73.

8. Exemption from payment of **Capital Gains Tax** on transfer of property within a special economic zone enterprise, developer and operator as provided in the Finance Act of 2023 Section 24 (c) 72.

9. Import Declaration Fee is exempted from Special Economic Zone enterprises as per the Second Schedule part A of the Miscellaneous Fees and Levies Act No. 29 of 2016 revised 2021.

10. **Import Duties** is exempted as per the East Africa

Customs Management Act 2004

Amendment
of section 6
of Cap. 511A

36. Section 6(2) of the Kenya Industrial Research and Development Institute Act is amended by inserting the following new paragraphs immediately after paragraph (h)—

(ha) arrange with any person or entity to buy, sell or take patent rights in an invention, subject to the terms approved by the Board for the purposes of the commercial exploitation of any invention which the Institute deems important for or incidental to the achievement of its objects and performance of its functions;

(hb) market its research, technological and innovative products to the public in order to encourage the public to invest in the Institute in purchasing its products;

Amendment
of the First
Schedule to
Cap. 472

37. The First Schedule of the Excise Duty Act is amended in Part I, in the second table of paragraph 1—

(a) in the tariff description “Imported Articles of plastic of tariff heading 3923.30.00 and 3923.90.90” by deleting the word “imported”;

(b) by deleting the tariff description “Imported non- virgin test liner of heading 4805.24.00” and the corresponding rate of excise duty; and

(c) by deleting the tariff description “Imported non-virgin fluting medium of heading 4805.19.00 and the corresponding rate of excise duty.

Amendment
of the Third
Schedule to
Cap. 469C.

38. The Miscellaneous Fees and Levies Act is amended by deleting the Third Schedule and substituting therefor the following new Schedule—

THIRD SCHEDULE

(s. 7A (1), (2))

**GOODS SUBJECT TO EXPORT AND
INVESTMENT PROMOTION LEVY**

1. Goods on articles of leather of Chapter 42, 20% of customs value.

2. Imported footwear of Chapter 64, 20% of the customs value.

<i>Tariff No.</i>	<i>Tariff description</i>	<i>Export and investment promotion levy rate</i>
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2207.20.00	Denatured ethyl alcohol and other spirits	3% of the customs value
2208.40.00	Rum and other spirits obtained by distilling fermented sugar	3% of the customs value
2208.60.00	Vodka	3% of the customs value
2523.10.00	Cement clinker	10 % of the customs value
2523.29.00	Portland cement	10 % of the customs value
2523.30.00	Aluminous cement	10 % of the customs value
2523.90.00	Other hydraulic cements	10 % of the customs value
3401.30.00	Organic surface-active products and preparations for washing the skin.	3% of the customs value
0401.20.00	Milk and cream of a fat content by weight, exceeding 1% but not exceeding 6%	3% of the customs value
6910	Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar sanitary fixtures	
6910.10.00	-of porcelain or China	3% of the customs value
6910.90.00	-Other	3% of the customs value
7207.11.00	Billets	10% of the customs value
7321.12.00	Cooking stoves for liquid fuel	3% of the customs value
8711.10.90	Fully built Motorcycles with internal combustion engine not exceeding 50cc	3% of the customs value
8711.20.10	Fully built Motorcycles	3% of the

	with internal combustion engine exceeding 50cc but not exceeding 250cc	customs value
8711.20.90	Fully built Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc	3% of the customs value
8711.30.90	Fully built Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc	3% of the customs value
8711.40.90	Fully built Motorcycles with internal combustion engine exceeding 500cc but not exceeding 800cc	3% of the customs value
8711.50.90	Fully built Motorcycles with internal combustion engine exceeding 800cc	3% of the customs value
8711.60.00	Fully built Electric motorcycles	3% of the customs value
9403.10.00	Metal furniture of a kind used in offices	3% of the customs value
9403.20.00	Other metal furniture	3% of the customs value
9403.30.00	Wooden furniture for office	3% of the customs value
9403.40.00	Wooden furniture for kitchen	3% of the customs value
9403.50.00	Wooden furniture for bedrooms	3% of the customs value
9403.60.00	Other wooden furniture	3% of the customs value
9403.70.00	Furniture of plastics	3% of the customs value
9403.82.00	Furniture of bamboo	3% of the customs value
9403.83.00	Furniture of rattan	3% of the customs value
9403.89.00	Furniture of cane, osier or similar material	3% of the customs value
9403.91.00	Parts of furniture, of wood	3% of the

	customs value
9403.99.00Parts of furniture, not of wood	3% of the customs value
9404.10.00Mattress supports	3% of the customs value
7213.10.00TMT/Construction steel	10%
721391.10 Wire rods	10%
7216.10.00Channels	10%
7216.21.00Angles	10%
7216.61.00Flats	10%
7217.10.00Binding wire	10%
7217.20.00Galvanised wire	10%
7217.30.90Cold drawn wire	10%
7217.30.90Agriculture benches	10%
7217.90.00HT Cable wire	10%
7217.90.00Bailing Ties	10%
7312.10.00Stranded Wire	10%
7312.10.00Stay wire	10%
7312.90.00Rope Wire	10%
7312.90.00Electric cable wire	10%
7313.00.00Barbed wire	10%
7314.20.00BRC/Weld mesh	10%
7314.41.00Chain link	10%
7314.42.00PVC Coated Chain link	10%
7314.49.00Gabions	10%
7317.00.00Nails	10%

Amendment
of section 2
of Cap. 226

39. The Employment Act is amended in section 2 by—

(a) deleting the definition of the word “employee” and substituting therefor the following new definition—

‘employee’ means a person who is employed for wages or a salary and includes an apprentice, indentured learner and a person who performs his duties remotely or on-site within a business

process outsourcing arrangement or an information technology enabled service;

- (b) deleting the definition of the word “employer” and substituting therefor the following new definition—

“employer” means a person who has entered into a contract of service to employ any individual, whether remotely or on site, and includes an agent, foreman or manager of that person;

- (c) inserting the following new definition in the proper alphabetical sequence—

“Business Process Outsourcing” means the act of transferring the recurring internal activities and decision rights of an organization to a third-party service provider as set out in a contract.

Insertion of a new section 5A in Cap. 226

40. The Employment Act is amended by inserting the following new section immediately after section 5—

Obligations of Business Process Outsourcing companies and providers of information technology enabled services.

5A. An employer who operates as a Business Process Outsourcing company or who is a provider of Information Technology Enabled Service shall—

- (a) ensure that an employee working remotely or on the employer’s site is provided with the necessary tools, equipment and resources to effectively perform his duties, whether or not those tools, equipment or resources are owned by a third beneficiary of the services of the employee; and
- (b) be responsible for any claim raised by an employee in relation to the contract of service and shall not, in its defence to such claim, assert that it was not in fact the beneficiary of the services of the employee.

Amendment of section 2 of Cap. 236A

41. The Occupational Safety and Health Act is amended in section 2 by—

- (a) deleting the definition of the word “employee” and substituting therefor the following new definition—

‘employee’ means a person who is employed for wages or a salary and includes an apprentice, indentured learner and a person who performs his

duties remotely or on-site within a business process outsourcing arrangement or an information technology enabled service;

- (b) deleting the definition of the word “workplace” and substituting therefor the following new definition—

“workplace” includes, any land, premises, on site or remote location, vessel or thing, at, in, upon, or near which, a worker is in the course of employment;

- (c) inserting the following new definition in the proper alphabetical sequence—

“employer” means a person who has entered into a contract of service to employ any individual, whether remotely or on site, and includes an agent, foreman or manager of that person;

Amendment
of section 2
of No. 2 of
2024

42. The Affordable Housing Act is amended in section 2 by—

- (a) deleting the definition of “affordable housing scheme” and substituting therefor the following new definition—

“affordable housing scheme” means the construction of affordable housing units including the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme;

- (b) inserting the following new definitions in the proper alphabetical order—

“social, physical and urban infrastructure” means social or physical amenities, infrastructure or services necessary for social welfare and the functioning and well-being of people;

“administration fee” means any payment made in relation to a *sharia* compliant facility for the purchase of an affordable housing unit;

Amendment
of section
90 of
Cap.280.

43. Section 90 of the Land Act is amended—

- (a) in subsection (2) by inserting the following proviso at the end of paragraph (b)—

Provided that for purposes of affordable housing the timeline specified in this paragraph shall be forty-five days.

- (b) in subsection (3) by inserting the following proviso at the end of paragraph (e)—

Provided that for purposes of affordable

housing the timeline specified in this subsection shall be forty-five days.

Amendment
of section
90 of
Cap.280.

44. Section 96 of the Land Act is amended in by inserting the following proviso at the end of subsection (2) —

Provided that for purposes of affordable housing the timeline specified in this paragraph shall be twenty days.

Repeal and
replacement
of section
11 of Cap.
485D

45. The National Electronic Single Window System Act is amended by repealing and replacing section 11 with the following new section—

Fees.

11. The Agency may—

(a) subject to the approval by the Cabinet Secretary, levy nominal fees for its services as may be specified by notice in the Gazette; and

(b) facilitate, through the System, the collection of any other dues as agreed upon by relevant Government ministries, departments or agencies as provided for under any written law.

(2) The Cabinet Secretary may, by notice in the Gazette, exempt a certain category of users from the payment of fees prescribed under this Act.

Amendment
of section
157 Cap.
412C

46. The Public Procurement and Asset Disposal Act is amended in section 157 by deleting subsection (9) and substituting therefor the following new subsection—

(9) For the purpose of ensuring sustainable promotion of local industries—

(a) a procuring entity shall have in its tender documents a mandatory requirement as a preliminary evaluation criteria for all foreign tenderers participating in international tenders to source at least forty percent of their supplies from citizen contractors prior to submitting a tender;

(b) a procuring entity shall procure forty per cent of all its goods and services from a local manufacturers or local service provider;

(c) a procuring entity shall, on a quarterly basis, report to the Cabinet Secretary on its compliance with paragraph (b); and

(d) the Cabinet Secretary may publish in the *Gazette* a Preferential Procurement Master Roll specifying the locally manufactured goods that shall be procured locally by every procurement

entity.

MEMORANDUM OF OBJECTS AND REASONS

The Business Laws (Amendment) Bill, 2024 seeks to make various amendments to various statutes.

Clause 1 of the Bill provides for the short title of the Bill.

Clause 2 of the Bill seeks to amend the Investment Promotion Act by renaming the heading of Part II of the Act as Registration of Foreign Direct Investments and Accreditation of facilitators for foreign investors.

Clause 3 of the Bill seeks to amend section 3 of the Investment Promotion Act to provide for the accreditation of persons who facilitate foreign direct investors by the Kenya Investment Authority.

Clause 4 of the Bill seeks to amend section 4 the Investment Promotion Act to provide for the registration of foreign direct investments by the Kenya Investment Authority.

Clause 5 of the Bill seeks to amend section 6 of the Investment Promotion Act to provide for the matters that are to be considered by the Kenya Investment Authority before issuing an investment certificate to a foreign investor.

Clause 6 of the Bill seeks to amend section 8 the Investment Promotion Act in order to prohibit the transfer of an investment certificate.

Clause 7 of the Bill seeks to amend the Investment Promotion Act by introducing new sections that gives the Kenya Investment Authority the mandate to maintain a register of all foreign direct investments, investment certificates applications and establish a one stop centre that will ensure that investors are provided with Government services at a centralized facility.

Clause 8 of the Bill seeks to amend section 13 of the Investment Promotion Act to increase the number of permits that will be issued to the Foreign direct investors and facilitators for foreign investors who apply for an Investment Certificate.

Clause 9 of the Bill seeks to amend the Investment Promotion Act to provide for collaboration between the Kenya Investment Authority and other Public Institutions.

Clause 10 of the Bill seeks to amend the Standards Act by providing for the registration of manufacturers by the Kenya Bureau of Standards.

Clause 11 seeks to amend the Standards Act by providing for the payment and disbursement of the standard levy order from the Bureau account.

Clause 12 of the Bill seeks to insert as new section 10D in the Standards Act to provide for the Standards to be met by manufacturers.

Clause 13 of the Bill seeks to amend section 12 of the Standards Act to provide for compliance with sampling and information requirements by manufacturers, importers, stockers, distributors, sellers and exhibitors.

Clause 14 of the Bill seeks to insert new sections after section 12 of the Standards Act to provide for the establishment and designation of laboratories and establishment of calibration facilities by the Kenya Bureau of Standards.

Clause 15 of the Bill seeks to amend the Standards Act to provide for the appointment of inspection bodies in the country of origin of goods to undertake verification of conformity to Kenya Standards and to require the inspection bodies to have a tax presence in Kenya.

Clause 16 of the Bill seeks to amend section 10 of the Kenya Accreditation Service Act to provide for the Accreditation of foreign Conformity Assessment Bodies operating in Kenya.

Clause 17 of the Bill seeks to insert a new section 12A in the Kenya Accreditation Service Act to provide for the imposition of the accreditation levy.

Clause 18 of the Bill seeks to amend section 4 of the Scrap Metal Act to amend the composition of the Scrap Metal Council.

Clause 19 of the Bill seeks to amend section 2 of the Anti-Counterfeit Act to provide for the amendment of some definitions and introduction of new definitions.

Clause 20 of the Bill seeks to amend section 6 of the Anti-Counterfeit Act to amend the composition of the board of the Anti-counterfeit Authority.

Clause 21 of the Bill seeks to amend section 7 of the Anti-Counterfeit Act to provide for the approval of policies by the board of the Anti-counterfeit Authority.

Clause 22 of the Bill seeks to amend section 23 of the Anti-Counterfeit Act to provide for the power of inspectors to dispose of counterfeit goods.

Clause 23 of the Bill seeks to amend section 27 of the Anti-Counterfeit Act to provide for the disposal of counterfeit goods by the court.

Clause 24 of the Bill seeks to amend section 28 of the Anti-Counterfeit Act to provide for the disposal of seized goods.

Clause 25 of the Bill seeks to amend section 34B of the Anti-Counterfeit Act to provide for the recordation of intellectual property rights.

Clause 26 of the Bill seeks to amend section 35 of the Anti-Counterfeit Act to provide for the penalty for the offences under section 32(h) to section 32(n).

Clause 27 of the Bill seeks to amend the Schedule to the Anti-Counterfeit Act to provide for a fixed term of office for board members of the Authority and to provide for quorum for meetings.

Clause 28 of the Bill seeks to amend section 2 of the Special Economic Zones Act to provide for a new definition of business process outsourcing.

Clause 29 of the Bill seeks to amend section 4 of the Special Economic Zones Act by inserting a new subsection (4) (2) (b) to give the Cabinet Secretary the authority to set the minimum acreage of land to be considered for declaration as a Special Economic Zone.

Clause 30 of the Bill seeks to insert a new subsection (5) in section 8 of the Special Economic Zones Act to provide that sold Goods that remains within a customs-controlled area of a special economic zone are not entitled to the benefits conferred under the Act.

Clause 31 of the Bill seeks to amend section 11 of the Special Economic Zones Act to give the Special Economic Zones Authority the power to determine the minimum investment value and minimum land size.

Clause 32 of the Bill seeks to amend section 28 of the Special Economic Zones Act to enable public entities to qualify as special economic zone developers and operators.

Clause 33 of the Bill seeks to insert a new Section 30A of the Special Economic Zones Act to provide for the issuance of Special Economic Zone Business Service Permit.

Clause 34 of the Bill seeks to amend section 33 of the Special Economic Zones Act to provide for the lease, sub-lease or sale of land or buildings to special economic zone service permit holders.

Clause 35 of the Bill seeks to amend section 35 (1) of the Special Economic Zones act by introducing a third schedule on the incentives and tax benefits that will be granted to a special economic zone developer operator or enterprise.

Clause 36 of the Bill seeks to amend section 6 of the Kenya Industrial Research and Development Institute Act to provide for further functions

of the Institute to include buying, selling or taking patent rights in inventions and undertaking marketing research, technological and innovative products.

Clause 37 of the Bill seeks to amend the First Schedule to the Excise Duty Act to provide for the reduction of excise duty charged on packaging and non-virgin test liners to avoid double taxation.

Clause 38 of the Bill seeks to amend the third Schedule to Miscellaneous Fees and Levies Act by deleting the Third Schedule and providing for the goods subject to export and import promotion levy and prescribing the respective rates of the levies.

Clause 39 of the Bill seeks to amend section 2 of the Employment Act to redefine the definition of the words employee, employer and business process outsourcing in order to provide for the provision of information technology enabled services.

Clause 40 of the Bill seeks to amend section 5 of the Employment Act to provide for the obligations of Business Process Outsourcing companies and providers of information technology enabled services to their employees.

Clause 41 of the Bill seeks to amend the Occupational Safety and Health Act to provide for the recognition of remote locations as workplaces.

Clause 42 of the Bill seeks to amend the definitions in section 2 of the Affordable Housing Act to facilitate the implementation of the Act.

Clause 43 of the Bill seeks to amend section 90 of the Land Act to reduce the timelines within which a chargee may enforce remedies in case of default by a chargor.

Clause 44 of the Bill seeks to amend section 96 of the Land Act to reduce the time within which a charge may exercise the power of sale from forty days to twenty days.

Clause 45 of the Bill seeks to amend section 11 of the National Electronic Single Window System Act by granting the Cabinet Secretary the power to exempt certain category of users from the payment of fees prescribed under the Act.

Clause 46 of the Bill seeks to amend section 157 of the Public Procurement and Asset Disposal Act to provide for the mandatory procurement of forty percent of goods and services from local manufacturers or local service providers and grants the Cabinet Secretary the power to prescribe the Preferential Procurement Master Roll.

Dated the 2024

SALIM MVURYA MGALA,

Cabinet Secretary for Investments, Trade and Industry.

Section 3 of Cap. 485 which it is proposed to amend—

3. Applications

- (1) A local investor may apply to the Authority for an investment certificate.
- (2) A foreign investor who intends to invest in Kenya may apply to the Authority for an investment certificate.
- (3) An application for an investment certificate shall be in the prescribed form.
- (4) The Authority may request clarifications and additional information.

Section 4 of Cap. 485 which it is proposed to amend—

4. Entitlement to certificate

- (1) An applicant shall be entitled to an investment certificate if—
 - (a) the application is complete and satisfies the applicable requirements under this Act;
 - (b) the amount to be invested by a foreign investor is at least one hundred thousand United States of America dollars or the equivalent in any currency;
 - (c) the amount to be invested by a local investor is at least one million shillings or the equivalent in another currency; and
 - (d) the investment and the activity related to the investment are lawful and beneficial to Kenya.
- (2) In determining whether an investment and the activity related to the investment are beneficial to Kenya for the purposes of subsection (1)(d), the Authority shall consider the extent to which the investment or activity will contribute to the conditions specified in paragraphs (a), (b) and (c), and any or all of the conditions specified in paragraphs (d), (e), (f), (g) and (h)—
 - (a) creation of employment for Kenyans;
 - (b) acquisition of new skills or technology for Kenyans;
 - (c) contribution to tax revenues or other Government revenues;
 - (d) a transfer of technology to Kenya;
 - (e) an increase in foreign exchange, either through exports or import substitution;
 - (f) utilization of domestic raw materials, supplies and services;
 - (g) adoption of value addition in the processing of local, natural and agricultural resources;
 - (h) utilization, promotion, development and implementation of information and communication technology;
 - (i) any other factors that the Authority considers beneficial to Kenya.

Section 6 of Cap. 485 which it is proposed to amend—

6. Issue of certificate

- (1) If the Authority decides to issue an investment certificate it shall issue the certificate on the date the applicant requests.

(2) The Authority may issue an investment certificate in the name of a corporation established by the applicant for the purposes of the investment or in the name of any other business organization to be used for the purposes of the investment.

(3) Deleted by Act [No. 6 of 2005](#), s. 57.

(4) A local investor who does not hold an investment certificate shall register the investment with the Authority.

Section 8 of Cap. 485 which it is proposed to amend—

8. Transfer

(1) An investment certificate may be transferred only with the written approval of the Authority.

(2) The transfer of an investment certificate is subject to any restrictions prescribed in the regulations.

Section 10C of Cap. 496 which it is proposed to amend—

10C. Disbursement powers of Director

(1) All moneys received in respect of the standards levy order shall be paid into a standards levy fund (in this section referred to as "the Fund") established in respect of the industry to which that order relates.

(2) The Director, acting on the direction of the Cabinet Secretary, may make payments out of the Fund for the purposes set out in [section 8](#)(2).

Section 12 of Cap. 496 which it is proposed to amend—

12. Samples and information

(1) Every person to whom a permit has been issued under this Act shall, if so requested by the Council in writing, furnish within such period as may be specified such samples of any commodity to which the permit relates and all such information in regard to that commodity or its manufacture, production, processing or treatment as may be specified in the request.

(2) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Section 4 of Cap. 503 which it is proposed to amend—

4. Composition of the Council

(1) The Council shall consist of—

(a) a Chairperson appointed by the Cabinet Secretary who has at least five years' experience in the public or private sector;

- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to transport or representative;
 - (c) the Commissioner General of the Kenya Revenue Authority or a representative;
 - (d) the Inspector-General of Police or a representative;
 - (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialisation or his or her representative;
 - (f) the following persons, nominated as follows, and appointed by the Cabinet Secretary—
 - (i) one person nominated by the Scrap Metal Dealers Association;
 - (ii) one person nominated by the metal cottage industry;
 - (iii) one person nominated by the Kenya Association of Manufacturers;
 - (iv) one person nominated by large utility companies or agencies in charge of infrastructure, to be appointed on rotational basis;
 - (v) one person nominated by the Consumer Federation of Kenya.
- (2) The members of the Council shall elect a vice-Chairperson from among their number during the first meeting of the Council.
- (3) The Chairperson and members of the Council, other than an *ex officio* member shall be appointed by notice in the *Gazette* and hold office for a period of three years, but shall be eligible for reappointment once.

Section 2 of Cap. 510 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

"Agency" deleted by Act No. 18 of 2018, Sch.;

"Authority" means the Anti-Counterfeit Authority established under section 3;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to industrialization;

"Commissioner" shall have the meaning assigned to it under the Kenya Revenue Authority Act (Cap. 469);

"complainant" means a person, institution, government agency or state corporation entitled to lay a complaint under section 33(1), or who has laid such a complaint;

"consumer" includes any member of the public or person who purchases or likely to purchase goods as an end user other than the owner of intellectual property right; and

"counterfeiting" means taking the following actions without the authority of the owner of intellectual property right subsisting in Kenya or outside Kenya in respect of protected goods—

- (a) the manufacture, production, packaging, re-packaging, labelling or making, whether in Kenya, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods;

- (b) the manufacture, production or making, whether in Kenya, the subject matter of that intellectual property, or a colourable imitation

thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner or any goods manufactured, produced or made under his licence;

(c) the manufacturing, producing or making of copies, in Kenya, in violation of an author's rights or related rights;

(d) in relation to medicine, the deliberate and fraudulent mislabelling of medicine with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging:

Provided that nothing in this paragraph shall derogate from the existing provisions under the Industrial Property Act (Cap. 509);

"counterfeit goods" means goods that are the result of counterfeiting any item that bears an intellectual property right, and includes any means used for purposes of counterfeiting;

"counterfeit goods depot" means a place designated as such under section 29;

"counterfeit mark" means a spurious mark—

(a) that is used in connection with any goods, labels, patches, stickers, wrappers, budes, emblems, medallions, charms, boxes, containers, cans, hand tags, documentation or packaging of any type or nature;

(b) that is identical with, or substantially indistinguishable from, a mark registered in the trade mark register and in use, whether or not a person knows such a mark was registered;

(c) that is applied to or used in connection with the goods for which the mark is registered, or is applied to or consists of a label, patch, sticker, wrapper, badges, emblems, medallion, charms, boxes, containers, cans, hand tags, documentation or packaging of any type or nature, that is designed, marked or otherwise intended to be used on or in connection with the goods for which the mark is registered; and

(d) the use of which is likely to cause confusion, to cause mistake, or to deceive;

"document" includes a tape recording, a photograph and any electronic, magnetic or other medium on, in, or by means or by way of which, images, sound, data or information may be stored;

"exporter" includes any person who, at the relevant time—

(a) is the owner or is in control or possession of any goods exported or to be exported from Kenya;

(b) carries the risk for any goods so exported or to be so exported;

(c) represents that, or acts as if, he is the exporter or owner of any goods so exported or to be so exported;

(d) actually takes, or attempts to take, any goods from Kenya;

(e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so exported or to be so exported; or

(f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e), and, in relation to imported goods destined for exportation from Kenya, includes the manufacturer, producer,

maker, supplier or shipper of those goods or any person inside or outside Kenya representing or acting on behalf of such a manufacturer, producer, maker, supplier or shipper;

"importer" includes any person who, at the relevant time—

- (a) is the owner or is in control or in possession of any goods imported or to be imported into Kenya;
- (b) carries the risk for any goods so imported or to be so imported;
- (c) represents that, or acts as if, he is the importer or owner of any goods so imported;
- (d) actually brings, or attempts to bring, any goods into Kenya;
- (e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so imported or to be so imported;
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

"inspector" means a person appointed as such under section 22;

"intellectual property right" includes—

- (a) any right protected under the Copyright Act (Cap. 130);
- (b) any plant breeders' right granted under the Seeds and Plant Varieties Act (Cap. 326);
- (c) any right protected under the Trade Marks Act (Cap. 506); and
- (d) any right protected under the Industrial Property Act (Cap. 509);

"owner" in relation to an intellectual property right, includes a person who has the capacity in law to enforce the intellectual property right in his own name;

"package" means any container, wrapping or outer cover and the contents thereof, or any bundle or single piece in the case of unpacked goods;

"prescribed" means prescribed by regulations made under section 37;

"protected goods" means—

- (a) goods featuring, bearing, embodying or incorporating the subject matter of an intellectual property right with the authority of the owner of that intellectual property right, or goods to which that subject matter has been applied by that owner or with his authority;
- (b) any particular class or kind of goods which, in law, may feature, bear, embody or incorporate the subject matter of an intellectual property right only with the authority of the owner of that intellectual property right, or to which that subject matter may in law be applied, only by that owner or with his authority, but which has not yet been manufactured, produced or made, or to which that subject matter has not yet been applied, with the authority of or by that owner, whichever is applicable;

"tools" include machinery and equipment;

"trade" includes business and profession; and

"vehicle" includes any motorcar, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessels, and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self-propelled or not, as well as any pack animal.

Section 6 of Cap. 510 which it is proposed to amend—

6. Board of the Authority

(1) There shall be a Board of the Authority which shall consist of —

- (a) a Chairperson appointed by the Cabinet Secretary from amongst the members appointed under paragraph (h);
 - (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to trade or his or her representative;
 - (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance or his or her representative;
 - (cc) the Attorney-General or his representative;
 - (d) *deleted by Act [No. 25 of 2015, Sch.](#);*
 - (e) the Commissioner-General of the Kenya Revenue Authority, who may be represented by the Commissioner of Customs;
 - (f) the Managing Director of the Kenya Bureau of Standards;
 - (g) the Chief Executive of the Kenya Association of Manufacturers or a representative, being a person who meets the qualifications set out in paragraph (h); and
 - (h) two members appointed by the Cabinet Secretary, not being public officers, and who hold a degree from a university recognised in Kenya and have at least ten years' experience in matters relating to—
 - (i) intellectual property rights;
 - (ii) consumer protection, or
 - (iii) trade.
- (2) A person shall not qualify to be appointed as Chairperson under subsection (1)(a) unless such person is a holder of a degree in law or science from a recognised institution, and has at least five years working experience in the field of trade, industry or intellectual property.

Section 7 of Cap. 510 which it is proposed to amend—

7. Powers of the Board

The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) formulate, with approval of the Cabinet Secretary, policies pertaining to the organisation, management and implementation of the objects of the Authority;
- (b) control, supervise and administer the assets of the Authority in such manner as best promotes the purposes for which the Authority is established;
- (c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;
- (e) enter into association with such other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (f) open a banking account or banking accounts for the funds of the Authority; and

- (g) invest any funds of the Authority not immediately required for its purposes in the manner provided for in section 21.

Section 23 of Cap. 510 which it is proposed to amend—

23. Powers of inspectors

(1) An inspector may at any reasonable time—

- (a) enter upon and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected of being counterfeit goods are to be found, or on reasonable grounds are suspected to be manufactured, produced or made, and search such place, premises or vehicle and any person found in such place, premises or vehicle, for such goods and for any other evidence of the alleged or suspected act of dealing in counterfeit goods, and for purposes of entering, inspecting and searching such a vehicle, an inspector may stop the vehicle, wherever found, including on any public road or at any other public place;
- (b) take the steps that may be reasonably necessary to terminate the manufacturing, production or making of counterfeit goods, or any other act of dealing in counterfeit goods being performed, at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future:
Provided that those steps shall not include the destruction or alienation of the relevant goods unless authorized by an order issued by a court of competent jurisdiction;
- (c) seize detain, and, where applicable, remove for detention, all the goods in question found at, on or in such place, premises or vehicle;
- (d) seize detain, and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or that exclusive mark on such goods;
- (e) if he reasonably suspects that a person at, on or in such place, premises or vehicle may furnish any information with reference to any act of dealing in counterfeit goods—
 - (i) question that person and take down a statement from him;
 - (ii) demand and procure from that person any book, document, article, item or object which in any way may be relevant to nature, quantity, location, source or destination of the goods in question, or the identity and address of anyone involved or appears to be involved as a supplier, manufacturer, producer, maker, distributor, wholesaler, retailer, importer, exporter or clearing and forwarding agent of, or other dealer in, the goods in question; and
- (f) seal or seal off any place, premises or vehicle at, on or in which—
 - (i) the goods in question are found, or are manufactured, produced or made, either wholly or in part;
 - (ii) any trade mark, any exclusive mark or any work which is the subject matter of copyright, is applied to those goods;
 - (iii) the packaging for those goods is prepared; or
 - (iv) the packaging of those goods is undertaken.

- (2) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.
- (3) An inspector may arrest, without a warrant, any person whom he suspects upon reasonable grounds of having committed any offence under this Act and may search and detain such a person: Provided that no person shall be arrested under this section unless he obstructs or hinders the inspector or refuses to give his name and address to the inspector or to produce to him satisfactory evidence of his identity, or gives a name and address which the inspector has reason to believe to be false or it appears to the inspector that such a person may not be found or made answerable to justice without unreasonable delay, trouble or expense.
- (4) An inspector shall have the power to investigate any offence related or connected to counterfeiting notwithstanding that such an offence is not expressed as such under the provisions of this Act.
- (5) An inspector shall have the same powers as are exercised by a customs officer with regard to importation of counterfeit goods under the East African Community Customs Management Act, 2004.
- (6) If a magistrate, on sworn information in writing—
- (a) is satisfied that there is reasonable ground to believe either—
 - (i) that any goods, books or documents which an inspector has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of commission of an offence under this Act; or
 - (ii) that any offence under this Act has been, is being, or is about to be committed on any premises; and
 - (b) is also satisfied either—
 - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier; or
 - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,the magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorize an inspector to enter the premises, if need be by force.
- (7) An inspector entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him to be necessary; and on leaving any premises which he has so entered by virtue of a warrant he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

Section 27 of Cap. 510 which it is proposed to amend—

27. Storage and access to seized goods

- (1) Goods that have been seized under section 23(1) shall be stored and kept in safe custody at a counterfeit goods depot until the person in charge of the depot—
 - (vi) is ordered by a court to return, release, destroy or otherwise dispose of those goods as specified in the order: Provided that in the case of counterfeit goods, such goods shall be destroyed at the expense of the local manufacturer or importer, as the case may be, based on the environmental considerations and the capacity of the country to destroy the goods, or shall be reshipped;
 - (vii) is directed by an inspector under section 28 to release the goods to the person from whom they were seized.
- (2) Upon an application in the prescribed manner, goods seized under section 23(1) shall, within five working days, be made available for inspection by the complainant or prospective complainant, if any, the suspect or any other interested person, at the counterfeit goods depot at any reasonable time.
- (3) Upon an application in the prescribed manner, the Executive Director may make a sample of the seized goods available within a period of five working days to the applicant for testing or analysis.
- (4) An inspector may take, in the prescribed manner, samples of goods in reasonable quantities for testing or analysis.

Section 28 of Cap. 510 which it is proposed to amend—

28. Release of seized goods

- (1) Where any goods are seized and detained under section 23, they shall be returned, less any portion thereof which has been reasonably utilized for the purpose of any test or analysis, to the person from whom they were seized within a period of three months after the date of seizure unless, within such period, some person is charged with an offence under this Act and it is alleged that such offence was committed in relation to or in connection with such goods.
- (2) Where a prosecution for an offence under this Act is commenced within the period mentioned in subsection (1), and any person is convicted of that offence, the court which made the conviction may order that any goods seized and detained in relation to or in connection with which such offence was committed shall be forfeited to the Government for destruction at the expense of the person so convicted.
- (3) The court before which a person is charged with an offence under this Act shall, whether such person is convicted of the offence or not, order that any goods in his possession which appear to the court to be counterfeit goods or to be tools used or intended to be used for making counterfeit goods, be destroyed or otherwise dealt with as the court may deem appropriate.

- (4) Where a person charged with an offence under this Act absconds and does not appear in court or where counterfeit goods are seized but are not claimed, an inspector may apply to have the counterfeit goods forfeited to the State for destruction.

Section 34B of Cap. 510 which it is proposed to amend—

34B. Trademark

- (1) Trademarks relating to goods to be imported into Kenya, irrespective of the place of registration, shall be recorded with the Agency, in the prescribed manner if the registration is current.
- (2) Applicants for recordation of trademarks shall be notified of the approval or denial of an application filed under this section in a prescribed manner by notice in the Anti-Counterfeit newsletter published by the Agency.
- (3) An application to record one or more trademarks shall be in writing in the prescribed manner and addressed to the Agency and shall include the following information—
- (a) the name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);
 - (b) the places of manufacture of goods bearing the recorded trademark;
 - (c) sample of the trademarked goods or a sufficient digital photographic representation of the trademarked goods with appropriate details for identification and differentiation from any counterfeits;
 - (d) the name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and
 - (e) the identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad.
- (4) The application shall be accompanied by—
- (a) a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name of the Applicant;
 - (b) the application shall be accompanied by a fee set out in the Second Schedule to the Act:
Provided that if the trademark is registered for more than one class of goods, the fee for recordation shall be for each class.
- (5) The recordation of the trademark and protection thereunder shall be effective on the date an application for recordation is approved.
- (6) The recordation of a trademark shall remain in force for a period of one year from the date of approval of the application for recordation or the current registration period of the trademark, whichever is shorter.
- (7) Recordation of a trademark shall be cancelled if the trademark registration is finally cancelled or revoked.

- (8) If there is change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the Agency, the new owner shall apply immediately by—
- (a) complying with subsection (4) hereinabove;
 - (b) describing any time limit on the rights of ownership transferred;
 - (c) submitting a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name of the new owner; and
 - (d) paying a fee as prescribed in the Second Schedule to the Act.
- (9) If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the Agency accompanied by—
- (a) a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name as changed; and
 - (b) a fee as prescribed in the Second Schedule to the Act.
- (10) The owner of a recorded trademark shall submit a written application in the prescribed manner to the Agency not later than 30 days to the expiration of the current recordation.
- (11) An application for renewal of recordation shall be accompanied by—
- (a) a status copy of the certificate of registration certified by the registering authority showing the title to be in the name of the applicant; and
 - (b) a statement describing any change of ownership or in the name of the owner and any change of addresses of the owners and places of manufacture;
 - (c) a fee as prescribed in the second schedule to the Act.
- (12) The provisions of this Section shall apply to the recordation of copyrights, trade names or any other form of intellectual property rights *mutatis mutandis*.
- (13) The Agency shall after satisfying itself that imported goods have complied with the provisions of this section issue to the importer of goods a certification mark in the form of an anti-counterfeit security device at a fee to be set out in the Second Schedule to the Act.
- (14) The Agency shall have the power to seize and destroy any goods originally imported into Kenya but found within Kenya that do not bear the anti-counterfeit security device.

Section 35 of Cap. 510 which it is proposed to amend—

35. Penalties

- (1) A person convicted of an offence under section 32, shall be liable—
- (a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both;
 - (b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years, or to a fine, not

less than five times the value of the prevailing retail price of the goods, or both.

(2) A person convicted of an offence under section 24 or 31, shall be liable to imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both.

(3) A court that has convicted a person of an offence under section 32—

(a) shall, when considering which penalty to impose, take into account, inter alia, any risk to human or animal life, health or safety or danger to property, whether movable or immovable, that may arise from the presence or use of the counterfeit goods in question;

(b) may take into account, in mitigation of sentence, any evidence to the effect that such person had fully, truthfully and to the best of his ability disclosed to an inspector who investigated that offence, all information and particulars available to that person in relation to any or all of the following—

(i) the source from which the counterfeit goods involved in the commission of the offence, were obtained;

(ii) the identity of the persons involved in the importation, exportation, manufacture, production or making of those counterfeit goods;

(iii) the identity and, if reasonably demanded, the addresses or whereabouts of the persons involved in the distribution of those goods;

(iv) the channels for the distribution of those goods.

(4) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate commits an offence.

(5) Where a Court has concluded the hearing of a matter in any criminal proceedings whether the suspect is convicted or acquitted and the goods in the opinion of Court are counterfeit and it appears that the suspect has benefited or obtained some monetary advantage from dealing in counterfeit goods the subject matter of the criminal proceedings, the Court shall on application of the prosecutor order the suspect to forfeit that benefit or monetary advantage to the Agency within a period of three months and in default the Agency may trace and recover that benefit or advantage from the suspect.

Schedule to Cap. 510 which it is proposed to amend—

SCHEDULE [s. 8]

**PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS
OF THE BOARD**

1. Tenure of office

Any member of the Board, other than an ex officio member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment, subject to a maximum of three terms of office.

2. Vacation of office

A member of the Board, other than an ex officio member, may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board; or
 - (vi) fails to comply with the provisions of this Act relating to disclosure.

3. Meetings

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- (3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (4) The quorum for the conduct of the business of the Board shall be seven members including the Chairperson or the person presiding.
- (5) The Chairperson shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.
- (6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.
- (7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

4. Disclosure of interest by Board members

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote

on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter: Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

5. Execution of instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

6. Minutes

The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Section 2 of Cap. 517A which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

"agricultural zone" means a special economic zone declared as such under section 4 to facilitate the agricultural sector, its services and associated activities;

"Authority" means the Special Economic Zones Authority established under section 10;

"Board" means the Board of Directors of the Authority established under section 12;

"business processing outsourcing" means the provision of outsourcing services to business for specific business functions or processes such as back office support services in human resources, finance, accounting and procurement amongst other services;

"business service park" means a special economic zone declared as such under section 4 to facilitate the provision of services including but not limited to regional headquarters, business processing outsourcing centres, call centres, shared service centres, management consulting and advisory services and other associated services;

"business service permit" means an administrative grant of authority to operate services within a special economic zone for which no benefits accruing under this Act are granted;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to industrialization;

"company" has the meaning assigned to it by section 2 of the Companies Act (Cap. 486.) and includes a company incorporated outside Kenya but registered in Kenya under that Act;

"customs control" means the measures applied to ensure compliance with the laws and regulations under the East African Community Customs Management Act, 2004;

"customs-controlled area" means the special economic zone where certain enterprises carry out customs controlled operations;

"customs territory" means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the East African Community under Article 3 of the Treaty for the Establishment of the East African Community, but does not include a special economic zone;

"duty" means duty as defined under the East African Community Customs Management Act;

"export" means to take or cause to be taken out of the customs territory or into a special economic zone;

"export duties" means customs duties and other charges having an effect equivalent to customs duties payable on the exportation of goods;

"Freeport zone" means a designated area placed at the disposal of the special economic zone or freeport authority where goods introduced into the designated area are generally regarded, in so far as import duties are concerned, as being outside the customs territory;

"free trade zone" means a special economic zone customs-controlled area where goods are off-loaded for transshipment, storage and may include bulk breaking, repacking, sorting, mixing, trading or other forms of handling excluding manufacturing and processing;

"Fund" means the General Fund established under section 21;

"goods" include all kinds of wares, articles, merchandise, animals, matter, baggage, stores, materials, currency and includes postal items other than personal correspondence and where any such goods are sold under this Act, the proceeds of such sale;

"import" means to bring or cause to be brought into the customs territory or a special economic zone;

"import duties" means any customs duties and other charges of equivalent effect levied on imported goods;

"industrial park" means a special economic zone declared as such under section 4 with integrated infrastructure to facilitate the needs of manufacturing and processing industries;

"information communication technology park" means a special economic zone declared as such under section 4 to facilitate the information communication technology sector, its services and associated activities;

"infrastructure" means roads, power, water, drainage, telecommunication, sanitation or water treatment plants, networks, buildings or other facilities, necessary for the development and operations of special economic zones and appropriate to their particular sector or cluster focus;

"Kenya Revenue Authority" means the Authority established by section 3 of the Kenya Revenue Authority Act (Cap. 469);

"licence" means a licence issued under this Act;

"livestock zone" means a special economic zone declared as such under section 4, in which the following activities are carried out: livestock marshalling and inspection; livestock feeding or fattening, abattoir and

refrigeration; deboning; value addition; manufacture of veterinary products, and other related activities;

"manufacture" means to make, produce, fabricate, assemble, process or bring into existence by manual, mechanical, chemical or biochemical methods into a new product having a distinctive name, character or use and includes processes such as refrigeration, cutting, polishing, blending, beneficiation, re-making and re-engineering;

"negative list" means a list of activities not allowed to be undertaken by special economic zone enterprises under the laws of Kenya and those of the East African Community;

"proper officer" means any officer whose right or duty is to perform or require the performance of the acts referred to in the East African Community Customs Management Act, 2004;

"regional headquarters" means a special economic zone enterprise engaged in headquarters management activities to oversee, manage and control their local, regional and global operations by providing managerial, supervisory, shared services centre and other support services to affiliate companies;

"science and technology park" means a special economic zone declared as such under section 4 to facilitate the science and technology sector, its services and its associated activities;

"services" means tradable services which are covered under the General Agreement on Trade in Services annexed as 1B to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994 and any successor agreements or amendments thereto;

"special economic zone" means a zone declared as such under section 4;

"special economic zone enterprise" means a corporate body which has been licensed under this Act;

"special economic zone developer" means a corporate body which is engaged in or plans on developing, and which may or may not also operate or plan to operate, a special economic zone under this Act;

"special economic zones operator" means a corporate body engaged in the management of a special economic zone and designated as such under the provisions of this Act; and

"tourist and recreation centre" means a special economic zone declared as such under section 4 to facilitate tourism and recreation sector, its services and associated activities.

Section 8 of Cap. 517A which it is proposed to amend—

8. Removal of goods from a special economic zone

(1) Subject to this Act as well as applicable customs laws of the East African Community, goods within a special economic zone may be—

- (a) stored, sold, exhibited, broken up, repackaged, assembled, distributed, sorted, graded, cleaned, mixed, or otherwise manipulated or manufactured in accordance with the provisions of this Act; or
- (b) destroyed under the supervision of the proper officer; or
- (c) removed, under the supervision of the proper officer from the special economic zone for export or sent into another special economic zone or bonded factory, either in its original package or otherwise.

(2) Subject to this Act and the customs laws of the East African Community, goods of any description which would be used in the activities of a licensed special economic zone enterprise may be brought into a special economic zone.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding twenty million shillings or imprisonment for a term not exceeding three years or both and the goods shall be forfeited under the East African Community Customs Management Act.

(4) The special economic zone enterprise shall also operate in conformity with the specific regulations issued under the relevant provisions of the East African Community Customs Management Act.

Section 11 of Cap. 517A which it is proposed to amend—

11. Functions of the Authority

The functions of the Authority shall be to—

(a) make recommendations to the Cabinet Secretary on all aspects of designation, approval, establishment, operation and regulation of special economic zones;

(b) implement the policies and programmes of the Government with regard to special economic zones;

(c) identify, map and, where necessary, procure or avail to developers and operators the areas of land to be, or which have been, designated as special economic zones;

(d) determine investment criteria including investment threshold;

(e) undertake or approve the development, operation or maintenance, as well as finance, appropriate infrastructure up to the perimeter of, or within, select special economic zones, as and when deemed necessary;

(f) review applications and grant licences to special economic zone developers, operators and enterprises;

(g) promote and market special economic zones to potential special economic zone developers, operators, or other investors;

(h) administer a "one-stop" centre through which special economic zone enterprises can channel all their applications for permits, approvals, licences and facilities not handled directly by the Authority, coordinating with such other Government or private entities as may be necessary through agreements with the entities or procedures defined in implementing regulations or such other prescribed procedures;

(i) exclusively perform under time-bound conditions as may be prescribed, all administrative business regulations and services functions in relation to the designated special economic zones;

(j) maintain current data on the performances of the programme in each individual special economic zone and enterprise;

(k) establish and enhance inter-agency collaboration among relevant State agencies to ensure compliance with all applicable laws, procedures and other applicable requirements;

(l) recommend to the Cabinet Secretary a negative list of activities that are prohibited in the special economic zones including an additional set of, restricted activities under the regulations made thereunder;

(m) recommend to the Cabinet Secretary to suspend or cancel the licences of a special economic zone enterprise or a special economic zone

developer which is in the violation of this Act, the East African Community Customs Management Act, 2004 or the Value Added Tax Act (Cap. 476);

(n) regulate the access of non-licensed service providers from the customs territory as may be required in order to service individual enterprises;

(o) regulate, implement, monitor and supervise all aspects of the special economic zones regime set forth in this Act;

(p) maintain a register of enterprises and residents domiciled in the special economic zones; and

(q) any other functions as may be directed by the Board.

Section 28 of Cap. 517A which it is proposed to amend—

28. Qualifications of a special economic zone developer and operator

A special economic zone developer shall, in addition to such other criteria and requirements as may be prescribed—

(a) be a company incorporated in Kenya, for the purpose of undertaking special economic zone activities;

(b) have the financial capacity, technical and managerial expertise, and associated track record of relevant development or operational projects, required for developing or operating the special economic zone; and

(c) own or lease land or premises within the special economic zone as stipulated under the Special Economic Zones (Land Use) Regulations to be enacted within one hundred and eighty days of the coming into force of this Act.

Section 33 of Cap. 517A which it is proposed to amend—

33. Rights and obligations of an economic zone developer or operator

(1) A special economic zone developer shall have the right to—

(a) act or appoint a special economic zone operator to undertake management and administration of the special economic zone on its behalf subject to subsections (2), (3) and (4) of this section, section 28

(b) and such other licensing requirements as may be prescribed;

(b) lease, sub-lease or sell land or buildings to licensed special economic zone operators and, enterprises, and charge rent or fees for other services that may be provided;

(c) acquire, dispose or transfer special economic zone lands or other assets;

(d) develop, operate and service special economic zone lands and other assets in conformity with applicable law and its licence;

(e) provide utilities and other services in the special economic zone, in accordance with its licence, and to charge fees for such services;

(f) provide utilities and other services outside the special economic zone in conformity with applicable law;

(g) enjoy the benefits that may accrue under the provisions of this Act;

(h) enter into contracts with private third parties for the development, operation, and servicing of special economic zone lands and other assets, including on-site and off-site infrastructure;

(i) enter and freely participate in international financial markets, without any legal impediments or restrictions, to obtain funds, credits, guarantees and other financial resources; and

- (j) advertise and promote the special economic zone for which it holds a licence to potential investors and service providers.
- (2) A special economic zone developer shall, in such manner as may be prescribed—
 - (a) perform such physical development works or make such improvements to the special economic zone site and its facilities as may be required according to the plans approved by the Authority;
 - (b) provide adequate enclosures to segregate the zone area from the customs territory for the protection of revenue together with suitable provisions for the movement of persons, conveyances, vessels and goods entering or leaving the zone;
 - (c) provide or cause to be provided, adequate security on the site, as may be determined by the Authority in its licence;
 - (d) adopt and enforce such rules and regulations within the special economic zone that promote safe and efficient business operations;
 - (e) maintain adequate and proper accounts, and other records in relation to its activities, employment statistics, business and report on zone activities, performance and development to the Authority on a periodic basis or as required by the Authority; and
 - (f) register all leases with the Authority.
- (3) The accounts and records required under paragraph (e) of subsection (2) shall be maintained in any of the official languages.
- (4) A special economic zone developer or a special economic zone operator who fails to maintain adequate and proper accounts and other records as required by this section commits an offence and is liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding six months or both.

Section 35 of Cap. 517A which it is proposed to amend—

35. Benefits accruing to special economic zone enterprises, developers and operators

- (1) All licensed special economic zone enterprises, developers and operators shall be granted tax incentives as specified in the respective tax laws.
- (2) Subject to subsection (1), the licensed special economic zone enterprises, developers and operators shall be granted the following exemptions from—
 - (a) stamp duty on the execution of any instrument relating to the business activities of special economic zone enterprises, developers and operators;
 - (b) the provisions of the Foreign Investments and Protection Act (Cap. 518) relating to certificate for approved enterprise;
 - (c) the provisions of the Statistics Act (Cap. 112);
 - (d) the payment of advertisement fees and business service permit fees levied by the respective County Governments' finance Acts;
 - (e) general liquor licence and hotel liquor licence under the Alcoholic Drinks Control Act (Cap. 121);
 - (f) manufacturing licence under the Tea Act (Cap. 343);

- (g) licence to trade in unwrought precious metals under the Trading in Unwrought Precious Metals Act (Cap. 309)(repealed);
 - (h) filming licence under the Films and Stages Plays Act (Cap. 222);
 - (i) rent or tenancy controls under the Landlord and Tenant (Shops, Hotels and Catering establishments) Act (Cap. 301); and
 - (j) any other exemption as may be granted under this Act in consultation with the Cabinet Secretary for that matter, by notice in the Gazette.
- (3) The licensed special economic zone enterprises, developers and operators shall be entitled to work permits of up to twenty per cent of their full-time employees;
- (4) Despite subsection (3), on the recommendation of the Authority, additional work permits may be obtained for specialised sectors.

Section 6 of Cap. 511A which it is proposed to amend—

6. Functions of the Institute

- (1) The Institute shall undertake research, development and innovation in industrial and allied technologies in—
- (a) civil engineering;
 - (b) mechanical engineering;
 - (c) electrical engineering;
 - (d) chemical engineering;
 - (e) textile technology;
 - (f) industrial chemistry;
 - (g) food technology;
 - (h) ceramics and clay technology;
 - (i) power resources;
 - (j) mining technology;
 - (k) natural products technology;
 - (l) leather technology;
 - (m) emerging technologies; and
 - (n) building materials technology.
- (2) Without prejudice to the generality of subsection (1), the Institute shall also—
- (a) advise the government on all aspects of industrial research, innovation, development, technology and policy;
 - (b) develop an industrial research agenda based on indigenous technical knowledge, and contemporary and emerging issues;
 - (c) collaborate with institutions of higher learning, professional and industrial associations, government agencies and industrial research institutions to advance technology, innovation and development;
 - (d) disseminate and facilitate the application and commercialisation of research findings and technological developments;
 - (e) facilitate the implementation of government policies on industrial research and development;
 - (f) establish industrial research and technology transfer centres;
 - (g) collaborate with other organisations and institutions of higher learning in the development of industrial research training programmes;
 - (h) establish and maintain an industrial technology depository; and

(i) perform any other function related to industrial research, innovation, technology and development.

Third Schedule to Cap. 469C which it is proposed to amend—

THIRD SCHEDULE [s. 7(3)(a)]

GOODS EXEMPT FROM IMPORT DECLARATION FEE AND RAILWAY DEVELOPMENT LEVY

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Export and investment promotion levy rate</i>
2523.10.00	Cement Clinkers	17.5 % of the customsvalue
7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	17.5 % of the customsvalue
7213.91.10	Bars and rods of iron or non-alloy steel, hot- rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm	17.5 % of the customsvalue
7213.91.90	Bars and rods of iron or non-alloy steel, hot- rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	17.5 % of the customsvalue
4804.11.00	Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached	10 % of the customsvalue
4804.21.00	Sack kraft paper; Unbleached	10 % of the customsvalue
4804.31.00	Other kraft paper and paperboard weighing 150 g/m ² or less:Unbleached	10 % of the customsvalue
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more.	10 % of the customsvalue
4819.40.00	Other sacks and bags, including cones.	10 % of the customsvalue

Section 2 of Cap. 226 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

"authorised officer" means a labour officer, employment officer or medical officer;

"basic salary" means an employee's gross salary excluding allowances and other benefits;

"Board" means the National Labour Board;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to labour matters;

"casual employee" means a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time;

"child" means a person who has not attained the age of eighteen years;

"collective agreement" means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employers' organization;

"contract of service" means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies;

"dependent" means a member of an employee's family or a relative who substantially depends on that employee for his livelihood;

"Director" means a person appointed as the Director of Employment;

"disability" means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person's social and economic participation;

"employee" means a person employed for wages or a salary and includes an apprentice and indentured learner;

"employee contribution" deleted by Act No. 20 of 2020, Sch.;

"employee earnings" deleted by Act No. 23 of 2019, s. 52;

"employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

"employer contribution" means the employer's contribution payable into the National Housing Development Fund;

"exit certificate" means a written authority given by a registered adoption society to a prospective adoptive parent to take the child from the custody of the adoptive society;

"forced or compulsory labour" means any work or service which is extracted from any person under the threat of any penalty, including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service;

"HIV" means the Human Immune-Deficiency Virus;

"industrial undertaking" includes—

(a) a mine, quarry and other works for the extraction of any substance from the surface or under the surface of the earth;

(b) a factory or a place where raw materials are manufactured, processed or packaged;

(c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephone installation, electrical undertaking, gas work, water work or other work of construction, as well as the preparation for or laying of the foundations of any such work or structure; or

(d) transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand:

Provided that—

(i) the Cabinet Secretary, if he sees fit so to do, having regard to the nature of the work involved in any employment carried on in any industrial undertaking, may by order declare that the employment shall be excluded from the provisions of this Part relating to industrial undertakings, and thereupon the employment shall be deemed not to be employment in an industrial undertaking for the purposes of this Part;

(ii) an undertaking of which a part only is an industrial undertaking shall not for that reason alone be deemed to be an industrial undertaking;

"labour inspector" means a person appointed as a labour inspector;

"labour officer" means a person appointed as the Commissioner of Labour, a Senior Deputy Commissioner of Labour, a Deputy Commissioner of Labour, an Assistant Commissioner of Labour, a Chief Industrial Relations Officer, a Deputy Chief Industrial Relations Officer, a Senior Labour Officer, an Industrial Relations Officer or a Labour Officer;

"lockout" means the closing of a place of employment or the suspension of work or refusal by an employer to employ any employees—

(a) for the purpose of compelling the employees of the employer to accept any demand in request of a trade dispute; and

(b) not for the purpose of finally terminating employment;

"migrant worker" means a person who migrates to Kenya with a view to being employed by an employer and includes any person regularly admitted as a migrant worker;

"mine" includes an undertaking, whether public or private, for the extraction of a substance from the surface, or from under the surface of the earth;

"Minister" deleted by Act No. 19 of 2015, s. 143(c);

"National Housing Development Fund" deleted by Act No. 20 of 2020, Sch.;

"organisation" includes employees' trade unions and employers organisations;

"parties" means the parties to a contract of service;

"piece work" means any work the pay for which is ascertained by the amount of work performed irrespective of the time occupied in its performance;

"probationary contract" means a contract of employment, which is of not more than twelve months duration or part thereof, is in writing and expressly states that it is for a probationary period;

"redundancy" means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;

"Registrar" means the Registrar of Trade Unions;

"remuneration" means the total value of all payments in money or in kind, made or owing to an employee arising from the employment of that employee;

"strike" means the cessation of work by employees acting in combination, or a concerted refusal or a refusal under a common understanding of employees to continue to work, for the purpose of compelling their employer or an employers' organization of which their employer is a member, to accede to any demand in respect of a trade dispute;

"task" means such amount of work as can, in the opinion of an authorised officer, be performed by an employee in an ordinary working day;

"trade union" means an association of employees whose principal purpose is to regulate relations between employees and employers and includes an employer's organisation;

"woman" means a female of the age of eighteen years or above;

"worst form of child labour" with respect to juveniles, means their employment, engagement or usage in any activity comprising of—

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child;

"young person" means a child who has attained the age of sixteen years but has not attained the age of eighteen years.

Section 2 of Cap. 236A which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

"air pollution" means air contaminated by substances whatever their physical state, which are harmful to health or otherwise dangerous;

"article for use at work" means—

(a) any plant designed for use or operation (whether exclusively or not) by persons at a workplace; and

(b) any article designed for use as a component in such plant;

"biological monitoring" means a planned programme of periodic collection and analysis of body fluid, tissues, excreta or exhaled air in

order to detect and quantify the exposure to or absorption of any substance or organism by persons;

“bodily injury” includes injury to health;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for labour matters;

“class or description” in relation to workplaces, includes a group of workplaces described by reference to a locality;

“code of practice” includes a standard, a specification and any other documentary form of practical guidance;

“competent person” in relation to any duty or function, means a person who has adequate training, relevant qualifications and experience to enable him to perform that duty or function;

“Council” means the National Council for Occupational Safety and Health established under section 27;

“court” means a magistrate’s court;

“Director” means the Director of Occupational Safety and Health Services appointed under section 23;

“driving belt” includes any driving strap or rope;

“employee” means a person who works under a contract of employment and related expressions shall be construed accordingly;

“exposure” means the amount of a workplace agent that has reached an individual worker (external dose) or has been absorbed into the individual worker (absorbed dose);

“fume” includes gas or vapour;

“general register” means the register kept in a workplace as required under section 122;

“highly flammable liquid” means any liquid, liquid solution, emulsion or suspension which gives off a flammable vapour at a temperature of less than 32 degrees centigrade;

“improvement notice” means a notice issued under section 36 of this Act;

“machinery” means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to performing work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy;

“maintained” means maintained in an efficient state, in an efficient working order and in good repair;

“major hazard installation” means an installation—

- (a) where more than the prescribed quantity of any substance is or may be kept, whether permanently or temporarily; or
- (b) where any substance is produced, processed, used, handled or stored in such a form that it has the potential to cause a major incident;

“major incident” means an occurrence of catastrophic proportions resulting from the use of plant or machinery or from activities at a workplace;

“medical surveillance” means a planned programme of periodic examination, which may include clinical examinations, biological monitoring or medical tests of persons employed by a designated health practitioner or by an occupational medical practitioner;

“noise” means all sound energy, which can result in hearing impairment or be harmful to health or otherwise dangerous;

“occupational hygiene” means the anticipation, recognition, evaluation, monitoring and control of conditions arising in or from the workplace, which may cause illness or adverse health effects to persons;

“occupational safety and health officer” means any officer appointed under section 26 and includes the Director appointed under section 23;

“occupier” means the person or persons in actual occupation of a workplace, whether as the owner or not and includes an employer;

“owner” means the person for the time being receiving the rents or profits of premises whether on his own account or as agent or trustee of another person, or who would receive the rents and profits if the premises were leased;

“plant” includes any equipment, gear, machinery, apparatus or appliance or any part thereof;

“premises” includes any place and, in particular includes—

(a) any vehicle, vessel aircraft or hovercraft;

(b) any installation on land including the foreshore and land intermittently covered by water, any offshore installation or any other installation whether floating, or resting on seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof;

(c) any tent or movable structure;

“prime mover” means every engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source;

“process” includes the use of any locomotive;

“prohibition notice” means a notice issued under section 37;

“risk” means the probability of occurrence of an adverse effect from a substance on people or the environment combined with the magnitude of the consequence of that adverse effect;

“safety and health advisor” means any person who holds a minimum qualification of a certificate in occupational safety and health from a recognised institution and has at least five years proven practical experience in that field;

“sanitary conveniences” includes urinals, water-closets, earth-closets, privies, ash pits and any similar convenience;

“self-employed person” means an individual who works for gain or reward other-wise than under a contract of employment, whether or not he employs others;

“steam boiler” means any closed vessel in which for any purpose, steam is generated under pressure greater than atmospheric pressure, and includes any economizer used to heat water being fed to any such vessel, and any superheated used for heating steam;

“substance” means any natural or artificial matter or material whether in solid or liquid form or in the form of a gas or vapour;

“supplier” means a person who provides articles or substances by way of sale, lease, hire or hire-purchase, whether as principal or agent;

“transmission machinery” means every shaft, wheel, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving-belt or other devices

by which the motion of a prime mover is transmitted to or received by any machine or appliance;

“user” in relation to plant or machinery, means the person who uses plant or machinery for his own benefit or who has the right of control over the use of plant or machinery, but does not include a leaser of, or any person employed in connection with, that plant or machinery;

“vibration” means mechanical energy transmitted to a person’s body from a source of oscillations and is harmful to health or otherwise dangerous;

“workplace” includes, any land, premises, location, vessel or thing, at, in, upon, or near which, a worker is, in the course of employment;

“workroom” means any room or cubicle in which work is done by persons employed.

Section 2 of No. 2 of 2024 which it is proposed to amend—

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“agency” means an institution allocated monies for affordable housing under section 11;

“administrator of the Fund” means the person designated as the administrator of the Fund under section 26 (1);

“affordable housing” means housing that is adequate and costs not more than thirty percent of the income of a person per month to rent or acquire;

“affordable housing scheme” means the construction of affordable housing units including such other social amenity, infrastructure or services and the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme necessary for social welfare and trading;

“Board” means the Affordable Housing Board established under section 16;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to affordable housing;

“Chief Executive Officer” means the person appointed as such under section 25;

“collector” means the Commissioner-General of the Kenya Revenue Authority, appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469);

“County Committee” means the County Affordable Housing Committee established under Part IV of this Act;

“Fund” means the Affordable Housing Fund established under section 8;

“institutional housing” means housing that is adequate and affordable for public institutions such as universities, colleges, police, defence forces, government pool housing and prisons; and

“Levy” means the Affordable Housing Levy imposed under section 4.

(2) For purposes of this Act, “affordable housing unit” refers to—

(a) a social housing unit means a house targeted to a person whose monthly income is below twenty thousand shillings;

- (b) an affordable housing unit means a house targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings;
- (c) affordable middle class housing unit means middle to high income housing targeted at persons whose monthly income is over one hundred and forty nine thousand shillings; or
- (d) rural affordable housing unit means a house under section 42 targeted at a person living in any area which is not an urban area.

Section 90 of Cap.280 which it is proposed to amend—

90. Remedies of a chargee

(1) If a chargor is in default of any obligation, fails to pay interest or any other periodic payment or any part thereof due under any charge or in the performance or observation of any covenant, express or implied, in any charge, and continues to be in default for one month, the chargee may serve on the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be.

(2) The notice required by subsection (1) shall adequately inform the recipient of the following matters—

- (a) the nature and extent of the default by the chargor;
- (b) if the default consists of the non-payment of any money due under the charge, the amount that must be paid to rectify the default and the time, being not less than three months, by the end of which the payment in default must have been completed;
- (c) if the default consists of the failure to perform or observe any covenant, express or implied, in the charge, the thing the chargor must do or desist from doing so as to rectify the default and the time, being not less than two months, by the end of which the default must have been rectified;
- (d) the consequence that if the default is not rectified within the time specified in the notice, the chargee will proceed to exercise any of the remedies referred to in this section in accordance with the procedures provided for in this sub-part; and
- (e) the right of the chargor in respect of certain remedies to apply to the court for relief against those remedies.

(3) If the chargor does not comply within ninety days after the date of service of the notice under, subsection (1), the chargee may—

- (a) sue the chargor for any money due and owing under the charge;
- (b) appoint a receiver of the income of the charged land;

- (c) lease the charged land, or if the charge is of a lease, sublease the land;
 - (d) enter into possession of the charged land; or
 - (e) sell the charged land;
- (4) If the charge is a charge of land held for customary land, or community land shall be valid only if the charge is done with concurrence of members of the family or community the chargee may—
- (a) appoint a receiver of the income of the charged land;
 - (b) apply to the court for an order to—
 - (i) lease the charged land or if the charge is of a lease, sublease the land or enter into possession of the charged land;
 - (ii) sell the charged land to any person or group of persons referred to in the law relating to community land.
- (5) The Cabinet Secretary shall, in consultation with the Commission, prescribe the form and content of a notice to be served under this section.

Section 96 of Cap.280 which it is proposed to amend—

96. Chargee's power of sale

- (1) Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90(1), a chargee may exercise the power to sell the charged land.
- (2) Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.
- (3) A copy of the notice to sell served in accordance with subsection (2) shall be served on—
- (a) the Commission, if the charged land is public land;
 - (b) the holder of the land out of which the lease has been granted, if the charged land is a lease;
 - (c) a spouse of the chargor who had given the consent;
 - (d) any lessee and sublessee of the charged land or of any buildings on the charged land;
 - (e) any person who is a co-owner with the chargor;

- (f) any other chargee of money secured by a charge on the charged land of whom the chargee proposing to exercise the power of sale has actual notice;
- (g) any guarantor of the money advanced under the charge;
- (h) any other person known to have a right to enter on and use the land or the natural resources in, on, or under the charged land by affixing a notice at the property; and
- (i) any other persons as may be prescribed by regulations, and shall be posted in a prominent place at or as near as may be to the charged land.

Section 11 of Cap. 485D which it is proposed to amend—

11. Fees

The Agency may—

- (a) subject to the approval by the Cabinet Secretary, levy nominal fees for its services as may be specified through a notice; and
- (b) facilitate, through the System, the collection of any other dues as agreed upon by relevant Government ministries, departments or agencies as provided for under any written law.

Section 157 of Cap. 412C which it is proposed to amend—

157. Participation of candidates in preference and reservations

- (1) Candidates shall participate in procurement proceedings without discrimination except where participation is limited in accordance with this Act and the regulations.
- (2) Subject to subsection (8), the Cabinet Secretary shall, in consideration of economic and social development factors, prescribe preferences and or reservations in public procurement and asset disposal.
- (3) The preferences and reservations referred to in subsection (2) shall—
 - (a) be non-discriminatory in respect of the targeted groups;
 - (b) allow competition amongst the eligible persons; and
 - (c) be monitored and evaluated by the Authority.
- (4) For the purpose of protecting and ensuring the advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination, reservations, preferences and shall apply to—
 - (a) candidates such as disadvantaged groups;
 - (b) micro, small and medium enterprises;
 - (c) works, services and goods, or any combination thereof;
 - (d) identified regions; and
 - (e) such other categories as may be prescribed.
- (5) An accounting officer of a procuring entity shall, when processing procurement, reserve a prescribed percentage of its procurement budget, which shall not be less than thirty per cent, to the disadvantaged group and comply with the provisions of this Act and the regulations in respect of preferences and reservations.
- (6) To qualify for a specific preference or reservation, a candidate shall provide evidence of eligibility as prescribed.

- (7) The Authority shall maintain an up-to-date register of contractors in works, goods and services, or any combination thereof, in order to be cognizant at all times of the workload and performance record.
- (8) In applying the preferences and reservations under this section—
- (a) exclusive preferences shall be given to citizens of Kenya where—
 - (i) the funding is 100% from the national government or county government or a Kenyan body; and
 - (ii) the amounts are below the prescribed threshold;
 - (iii) the prescribed threshold for exclusive preference shall be above five hundred million shillings;
 - (b) a prescribed margin of preference shall be given—
 - (i) in the evaluation of tenders to candidates offering goods manufactured, assembled, mined, extracted or grown in Kenya; or
 - (ii) works, goods and services where a preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed.
- (9) For the purpose of ensuring sustainable promotion of local industry, a procuring entity shall have in its tender documents a mandatory requirement as preliminary evaluation criteria for all foreign tenderers participating in international tenders to source at least forty percent of their supplies from citizen contractors prior to submitting a tender.
- (10) Despite subsection (2) or any other provisions of this Act, every procuring entity shall ensure that at least thirty percent of its procurement value in every financial year is allocated to the youth, women and persons with disability.
- (11) Every procuring entity shall ensure that all money paid out to an enterprise owned by youth, women or persons with disability is paid into an account where the mandatory signatory is a youth, woman or a person with disability.
- (12) The procuring entities at the national and county level shall make a report after every six months to the Authority.
- (13) A report under subsection (12) shall—
- (a) certify compliance with the provisions of this section; and
 - (b) provide data disaggregated to indicate the number of youth, women and persons with disability whose goods and services have been procured by the procuring entity.
- (14) The Authority shall make a report to Parliament after every six months for consideration by the relevant committee responsible for equalization of opportunities for youth, women and persons with disability, which report shall contain details of the procuring entities and how they have complied with the provisions of this section.
- (15) The Cabinet Secretary shall prescribe the preferences that shall facilitate the attainment of the quota specified in subsection (10) in order for the State to achieve the objectives of Articles 55 and 227(2) of the Constitution.
- (16) The preferences referred to in subsection (15) shall—
- (a) be prescribed within ninety days after commencement of this Act;

- (b) be subject to such conditions as the Cabinet Secretary may specify therein but such conditions shall not pose any unnecessary impediment to the youth from participating in public procurement.
- (17) The National Treasury shall operationalize a preference and reservations secretariat to be responsible for the implementation of the preferences and reservations under this Act which shall be responsible for—
- (a) registration, prequalification and certification of the persons, categories of persons or groups as provided for in under Part XII;
 - (b) training and capacity building of the above target groups;
 - (c) providing technical and advisory assistance to procuring entities in the implementation of the preferences and reservations under this Act; and
 - (d) monitoring and evaluating the implementation of the preferences and reservations under this Act.
- (18) The National Treasury shall provide adequate staff and resources for the operations of the secretariat.