KEPSA MEMORANDUM ON THE DRAFT BUSINESS LAWS (AMENDMENT) BILL, 2024

About KEPSA

The Kenya Private Sector Alliance (KEPSA) is the apex body for the private sector in Kenya. KEPSA brings together local and foreign business associations, federations, chambers of commerce, professional bodies that are sectoral umbrella bodies and individual sectoral business membership organizations, corporates, from multinationals to large and medium-sized companies, SMEs, and start-ups from all sectors of the economy, across all parts of the country. This gives KEPSA a reach of over 2 million businesses directly and indirectly. KEPSA also serves as the national focal point of the East Africa Business Council (EABC), the umbrella body of businesses in East Africa. It hosts the International Chamber of Commerce (ICC) Kenya Chapter, a member of the ICC with a reach of over 45 million businesses globally.

KEPSA coordinates businesses to speak with one voice and engage local and foreign governments, development partners, and other stakeholders on cross-cutting policies, laws, and regulations for private sector development. It allows sectoral business organizations to engage in sectoral issues.

Additionally, KEPSA runs projects for the private sector and the country's socioeconomic development, such as youth and jobs and climate change initiatives. It does this by being the focal point for all stakeholders to reach businesses in a coordinated manner. Through the projects, KEPSA supports business development with opportunities for training and capacity building, networking, financial linkages, mentorships and coaching, access to markets, value chain enhancement, and investment opportunities with partners worldwide.

Its social arm, KEPSA Foundation's, mandate is to strengthen socio-economic transformation by engaging private sector members in social projects, ensuring its expertise and resources are utilized for impactful interventions in the community and with stakeholders. The Foundation coordinates businesses' engagement with the government, development partners, and other stakeholders on social issues that address the environment and vulnerable communities as well as issues of governance under the five priority areas, namely: Fostering Governance and National Value System; Empowerment of Women, Youth, Persons with Disabilities & Childcare; Community Climate Action and Sustainability; Community Outreach and Partnerships; and Knowledge Institute and Think Tank.

Following the call for submissions, we as KEPSA submit as follows:

No.	CLAUSE OF THE BILL	THE WORDING OF THE CLAUSE	RECOMMENDATION	JUSTIFICATION/RATIONALE
The Standards Act				
1.	**Clause 20** *Registration of Manufacturers*	The Standards Act is amended by inserting the following new section immediately after section 5— 5A (4) (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*	The clause be amended to provide for the formation of Regulations by the Cabinet Secretary to explicitly outline the notification process to be followed in the event a registration application is rejected.	To ensure clarity and transparency, it is essential that the rejection of a registration application be communicated in writing. Additionally, specifying a timeline for issuing the notification will enhance consistency and accountability in the process.
2.	**Clause 22** *Standards for Manufacturers* **Clause 23** *Samples and Information*	Section 10 D (2) — *(a) ensure that every product meets the requirements of the relevant Kenya*	Proposal that the clause be revised to specify compliance with Kenyan/EAC standards	Incorporating the harmonized EAC standards into the Standards Act is essential for aligning with regional regulatory frameworks and advancing the objectives of the

	Clause 24 *Establishment of Laboratories* *Establishment of Calibration Facilities* **Clause 25** *Appointment of Inspection Body*	*standards;* Section 12 (1) – *(a) ensure that every product complies with the Kenya standards;* Section 12A – *(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.;* Section 12B – *(3) The Bureau may, where necessary, license and register competent bodies to provide*		customs union. This integration will facilitate seamless trade, enhance compliance, and support the broader goal of regional economic integration.

		calibration services and issue certificates subject to the Kenya standards; Section 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.*		
The Kenya Accreditation Service Act				
3.	**Clause 26** *Accreditation of Foreign Conformity Assessment Bodies Operating in Kenya*	The Kenya Accreditation Service Act is amended by inserting the following new section immediately after section 10— *10A Every foreign conformity assessment body that carries out any conformity assessment*	Proposal to amend the clause after "service" to add the following: - *"…or any other accreditation body based on mutual recognition agreement"*	Mutual Recognition Agreements (MRAs) typically allow certification and inspection bodies accredited by one party to be accepted by others without additional requirements. However, if KENAS accreditation standards diverge from international practices, it may create barriers for Kenyan-accredited certifications to be recognized in other countries or regions that are part of MRAs.

		activity in Kenya shall be accredited by the service		CABs that hold both KENAS and international accreditations will face additional compliance requirements, financial burdens, and operational challenges due to the proposed amendments to the Kenya Accreditation Service Act. While having a local presence and meeting some Kenyan accreditation standards may offer certain advantages, CABs will still encounter more regulatory obstacles, higher costs, and potential delays in service delivery as a result of these new provisions.
4.	**Clause 27** *Accreditation Levy*	The Kenya Accreditation Service Act is amended by inserting the following new section immediately after sect ion 12— *12A (1) There is imposed a levy to be known as the accreditation levy which*	It is proposed that the introduction of the accreditation levy be postponed, and further discussions take place to identify alternative solutions that are less financially burdensome for businesses.	The implementation of a 3% accreditation levy will raise the cost of services for CABs operating in Kenya. For those of us holding both KENAS and global accreditations, this levy will apply to all accredited services provided to third-party clients within Kenya. Previously, we were offering services at competitive rates based on international standards. However,

		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 *(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 percent of the amount due for each month or part of a month thereof that the amount remains*		this new levy will increase our operational costs, which we will likely need to pass on to our clients. As a result, the cost of certification testing and inspection services will rise, making them less appealing to price-sensitive clients, especially small and medium-sized businesses, which in turn will reduce marketability of the products produced by the SMEs The introduction of an accreditation levy will result to additional costs for the business. This levy will add a financial burden that must be carefully considered, as it could impact operational expenses and potentially affect overall profitability. It is important to assess the long-term implications of this cost on the business's financial stability and competitive position in the market.

Thank you for your consideration and attention.

Best Regards,

Carole Kariuki, EBS, MBS, HSC
Chief Executive Officer