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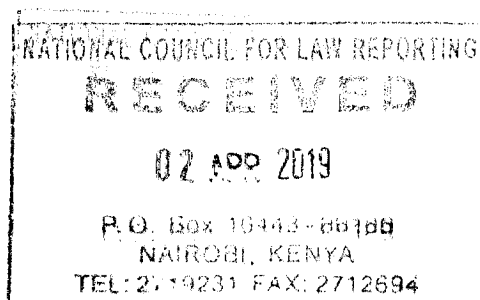
NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 29th March, 2019

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**THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2019**

A Bill for

**AN ACT of Parliament to make various amendments to
statute law**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Statute Law Short title.
(Miscellaneous Amendments) Act, 2019.

2. The several laws specified in the first column of the Amendment of
Schedule are amended, in the provisions specified in the written laws.
second column thereof, in the manner respectively
specified in the third column.

SCHEDULE

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
Districts and Provinces Act, 1992 (No. 5 of 1992)	New	Insert the following new section immediately after section 5—
		Regulations. 6. The Cabinet Secretary of the Ministry for the time being responsible for internal affairs may make regulations for the better carrying into effect the provisions of this Act.
Microfinance Act, 2006 (No. 19 of 2006)	s.14(1)(f)	Insert the following expression at the end thereof— “except to the extent strictly necessary for the conduct of business by sharia compliant microfinance businesses in Kenya”.
The Merchant Shipping Act, 2009 (No. 4 of 2009)	New	Insert the following new section immediately after section 4—

		Exemption. 4A. Notwithstanding any other provision of this Act, the Cabinet Secretary may, on the recommendation of the Authority, by notice in the Gazette and subject to such conditions as may be appropriate, exempt any Government entity or enterprise from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy.
The Alcoholic Drinks Control Act, 2010 (No. 4 of 2010)	s.2	Delete the definition of the word “magistrate” and substitute therefor the following— “magistrate” has the meaning assigned to it in the Magistrates’ Court Act, 2015 (No. 26 of 2015).
The Tourism Act, 2011 (No. 28 of 2011)	s.2	Insert the following new definition in its proper alphabetical sequence— “university” has the meaning assigned to it under the Universities Act, 2012 (No. 42 of 2012).
	s.68(f)	Insert the expression “, university offering training in tourism hospitality” immediately after the word “College”.
The Public Finance Management Act, 2012 (No. 18 of 2012)	s.2(1)	Delete paragraph (d) in the definition of “accounting officer” and substitute therefor the following new paragraph— “(d) in the case of the Parliamentary Service Commission— (i) the Clerk of the Senate in respect of the Senate; (ii) the Clerk of the National Assembly in respect of the National Assembly; and (iii) such other officer in the parliamentary service in respect of any other office in the parliamentary service as the Cabinet Secretary shall, upon resolution by the Commission, designate, within fourteen days of the resolution”.

The Kenya School of Law Act, 2012
(No. 26 of 2012)

s.4(2) Delete and substitute therefor the following new subsection—

“(2) Without prejudice to the generality of subsection (1), the object of the School shall be to—

- (a) ensure the continuity of professional development for all cadres of the legal profession;
- (b) provide para-legal training;
- (c) provide other specialised training in the legal sector;
- (d) develop curricula, training manuals, conduct examinations and confer academic awards; and
- (e) undertake research projects and provide consultancy services.”

s.16 Delete.

Second Schedule. Delete.

The Legal Education Act, 2012
(No. 27 of 2012)

s.8(1) Insert the following new paragraph immediately after paragraph (f)—

“(g) administer the pre-Bar Examination for entry into the Advocates Training Programme.”

s.8(2) Insert the following new paragraph immediately after paragraph (a)—

“(aa) accreditation of legal education providers for the purpose of licensing of the Advocates Training Programme.”

s.8(3) Insert the word “all” immediately before the word “legal” appearing in paragraph (a).

The Prevention of Terrorism Act, 2012
(Act No. 30 of 2012)

s. 40A(2) Delete paragraph (e) and substitute therefor the following new paragraph—

“(e) the Directorate of Immigration;”

Insert the following new paragraphs

immediately after paragraph (e)—

- (f) the National Police Service;
 - (g) the Ministry for the time being responsible for foreign affairs;
 - (h) the Office of the Director of Public Prosecutions;
 - (i) the Kenya Wildlife Services;
 - (j) the Probation and Aftercare Services Department;
 - (k) the Kenya Prisons Service;
 - (l) the Kenya Civil Aviation Authority;
- and”

Renumber paragraph (f) as paragraph (m).

s.40A(3) Add the expression “renewable once” at the end thereof.

s.40B(2) Insert the following new paragraph immediately after paragraph (e)—

“(f) analyse all information and intelligence on terrorism and counter-terrorism for purposes of proposing policy and legal adjustments to the National Security Council and other national security leadership.”

s.40C Renumber the existing provisions as subsections (2) and (3) respectively and insert the following new subsection immediately before the renumbered subsections—

“(1) The Centre shall be an approving and reporting institution for all civil society organisations and international non-governmental organisations engaged in preventing and countering violent extremism and radicalisation through counter-messaging or public outreach, and disengagement and reintegration of radicalised individuals.”

The Kenya Law Reform s.8(1)(b)

Delete the expression “Cabinet Secretary” and substitute therefor the expression “Attorney-

Commission
Act, 2013
(No. 19 of
2013)

General”.

s. 8(1)(c) Delete and substitute therefor the following new paragraphs—

“(c) one member, being an Advocate of the High Court of Kenya, nominated by the Law Society of Kenya and appointed by the Attorney-General;

(ca) one member, being an officer in the Office of the Attorney-General, appointed by the Attorney-General.”

s.8(4) Delete.

s.11(9) Delete.

The Value
Added Tax
Act, 2013
(No. 35 of
2013)

s.17(5) Insert the word “or” at the end of paragraph (b).

Insert the following new paragraphs immediately after paragraph (b) in the proviso—

“(c) the Commissioner is satisfied that such excess arises from tax withheld by appointed tax withholding agents;

(d) the Commissioner is satisfied that such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act.”

The Wildlife
Conservation
and
Management
Act, 2013
(No. 47 of
2013)

s.23(2) Delete the word “being” appearing in paragraph (a).

Delete the words “who shall be the

- Chairperson” appearing in paragraph (b).
- The Companies Act, 2015 (No. 17 of 2015)
- s.9(1)(a) Insert the following new sub-paragraph immediately after sub-paragraph (iii) —
“(iv) requires the consent of all members to add a new member.”
- s.93(1) Delete the expression “which shall include information relating to beneficial owners of the company, if any”.
- s.93(2)(c) Delete.
- s.93(8) Delete the expression “including information relating to beneficial owners, if any”.
- New. Insert the following new section immediately after section 93—
Division 2A — Register of Beneficial Owners
Company to keep register of beneficial owners. **93A.** (1) Every company shall keep a register of its beneficial owners.
(2) A company shall enter in its register of beneficial owners, information relating to its beneficial owners as prescribed in the regulations.
(3) A company shall lodge with the Registrar a copy of its register of beneficial owners, within thirty days after completing its preparation.
(4) A company other than a public listed company shall lodge with the Registrar a copy of any amendment to its register of beneficial owners within fourteen days after making the amendment.
(5) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.
(6) If, after a company or any of its

officers is convicted of an offence under subsection (5), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

New. Insert the following new section immediately after section 275—

Annual
general
meeting. **275 A.** (1) Every company shall convene a general meeting once a year.

(2) Subsection (1) does not apply to single member companies.

(3) The Registrar may, on the application of the company or for any other reason the Registrar thinks fit, extend the period referred to in subsection (1) even if, as a result, the period is extended beyond the calendar year.

(4) A company that fails to comply with this section commits an offence and is liable to a fine not exceeding one hundred thousand shillings.

s.329(1) Delete and substitute therefor the following new subsection—

“(1) The directors of a company may exercise a power of the company to—

(a) allot shares in the company; or

(b) grant rights to subscribe for or to convert any security into shares in the company, only if they are authorised to do so by a resolution of the company.”

- s.329(2) Delete the words “and may be unconditional or subject to conditions”.
- s.611(2)(a) Delete the word “ninety” and substitute therefor the word “fifty”.
- s.611(2)(b) Delete the word “ninety” and substitute therefor the word “fifty”.
- s.611(4)(a) Delete the word “ninety” and substitute therefor the word “fifty”.
- s.611(4)(b) Delete the word “ninety” and substitute therefor the word “fifty”.
- s. 615 (3) (a) Delete the word “ninety” and substitute therefore the word “fifty”.
- s.615(3)(a)(ii) Delete the word “ninety” and substitute therefor the word “fifty”.
- s.615(4)(b)(i) Delete the word “ninety” and substitute therefore the word “fifty”.
- s.615(5)(a)(i) Delete the word “ninety” and substitute therefor the word “fifty”.
- s.615(5)(a)(ii) Delete the word “ninety” and substitute therefor the word “fifty”.
- s.624(3)(c) Delete and substitute therefor the following new paragraph—
- “(c) it does not have more than twenty-five employees.”

The
Insolvency
Act, 2015
(No. 18 of
2015).

New.

Insert the following new section immediately after section 560—

Considerations
for approval to
lift
moratorium.

560A. When considering whether to grant approval under section 560, the court may in particular take into consideration —

- (a) the statutory purpose of the administration;
- (b) the impact of the approval on the applicant particularly whether the applicant is likely to suffer significant loss;

(c) the legitimate interests of the applicant and the legitimate interest of the creditors of the company, giving the right of priority to the proprietary interest of the applicant; and

(d) the conduct of the parties.

s.615(4) Insert the words “including a contract of a loan or other credit or finance facility for the benefit of the company and necessary for the continuation of any business of the company,” immediately after the word “contract”.

The Court of s.26(1)
Appeal
(Organisation
and
Administration)
Act, 2015
(No. 28 of
2015)

Delete and substitute therefor the following new subsection—

“(1) The Court shall proceed on recess annually as follows—

- (a) from the second Thursday before Good Friday to the first Tuesday after the Easter Week, both days inclusive;
- (b) from the 1st August to the 15th September, both days inclusive; and
- (c) from the 21st December to the 13th January, both days inclusive.”

MEMORANDUM OF OBJECTS AND REASONS

The Statute Law (Amendment) Bill, 2019 seeks to make various amendments to various statutes.

The Bill contains proposed amendments to the following statutes—

The Districts and Provinces Act, 1992 (No. 5 of 1992)

The Bill proposes to amend the Districts and Provinces Act, 1992 to empower the Cabinet Secretary to make regulations to give effect to the provisions of the Act, and to clear some ambiguity currently existing in the Act.

The Microfinance Act, 2006 (No. 19 of 2006)

The Bill proposes to amend the Microfinance Act, 2006 to provide for the conduct of business by sharia compliant microfinance businesses.

The Merchant Shipping Act, 2009 (No. 4 of 2009)

The Bill seeks to amend the Act to exempt Government entities or enterprises from the provisions of the Act in furtherance of public interest or government policy.

The Alcoholic Drinks Control Act, 2010 (No. 4 of 2010)

The Bill seeks to align the definition of the term “magistrate” with the one contained in the Magistrate’s Court Act to provide more clarity on the matter.

The Tourism Act, 2011 (No. 28 of 2011)

The Bill seeks to amend the Act to include universities among institutions offering tourism-related courses.

The Public Finance Management Act, 2012 (No. 18 of 2012)

The Bill seeks to amend the Act to empower the Parliamentary Service Commission to designate, by resolution, additional accounting officers in the parliamentary service, in addition to the Clerks of the two Houses of Parliament. The amendment seeks to actualise the resolution made by the Commission at its 256th meeting held on 14th February, 2019.

The Kenya School of Law Act, 2012 (No. 26 of 2012)

The Bill proposes to amend section 4 to the Kenya School of Law Act, 2012, to remove the current exclusivity and open up the licensing of other education providers to train advocates under the Advocates Act. It also deletes the provisions hitherto empowering the Kenya School of Law to determine the admission requirements for the advocates training programme as this is a function of the Council for Legal Education.

The Legal Education Act, 2012 (No. 27 of 2012)

The Bill proposes to amend section 8 of the Legal Education Act to regularise the administration of the pre-bar examination for entry into the advocates Training Programme. It also provides for accreditation of legal education providers for the purpose of licensing of the Advocates Training Programme in order to open allow other institutions to offer the programme.

The Prevention of Terrorism Act, 2012 (No. 30 of 2012)

The Bill seeks to amend the Act to clear some ambiguities currently existing in the Act on the membership of the National Counter-Terrorism Centre, and to include other government agencies as additional members of the Centre.

It also seeks to provide for the term of office for persons nominated to represent various agencies in the Centre. It further seeks to provide for additional responsibilities of the Centre.

The Kenya Law Reform Commission Act, 2013 (No. 19 of 2013)

The Bill seeks to amend the Act to give clarification on the composition of the Kenya Law Reform Commission, and on the authority mandated to appoint members of the Commission.

The Value Added Tax Act, 2013 (No. 35 of 2013)

The Bill seeks to amend the Act to provide for a taxpayer to apply any withheld tax to his credit to offset any other tax liability due from the taxpayer.

The Wildlife Conservation and Management Act, 2013 (No. 47 of 2013)

The Bill seeks to amend the Act to remove ambiguities currently existing in the Act.

The Companies Act, 2015 (No. 17 of 2015)

The Bill seeks to amend the Act to require companies to keep a register of beneficial owners, and to provide for the particulars to be included in the register. The Bill further seeks to provide for the convening of annual general meetings by registered companies, and for the manner in which directors of a company may allot shares in a company or convert shares of the company into security.

The Bill further seeks to amend the Act to reduce the percentage of shares which may be offered for sale from ninety to fifty per cent.

The Insolvency Act, 2015 (No. 18 of 2015)

The Bill seeks to amend the Act to specify matters a court may take into consideration in granting an approval for the lifting of a moratorium.

The Court of Appeal (Organisation and Administration) Act, 2015 (No. 28 of 2015)

The Bill seeks to amend the Act to provide for the period during which the Court of Appeal will be proceeding on vacation.

The enactment of this Bill shall not occasion additional expenditure of public funds.

This Bill is a Bill not concerning county governments within the meaning of Article 110 of the Constitution.

Dated the 25th March, 2019.

ADEN DUALE,
Leader of Majority Party.

Section 14(1) of No. 19 of 2006 which it is proposed to amend—

14. Prohibited activities

(1) An institution shall not engage in the following activities—

(a) *deleted by Act No. 41 of 2013, s. 3;*

(b) *deleted by Act No. 41 of 2013, s. 3;*

(c) *deleted by Act No. 41 of 2013, s. 3;*

(d) trust operations;

(e) investing in enterprise capital;

(f) wholesale or retail trade;

(g) underwriting or placement of securities;

(h) purchasing or otherwise acquiring any land except as may be reasonably necessary for the purpose of expanding the deposit-taking business; or

(i) such other activity as the Central Bank may prescribe.

Section 2 of No. 4 of 2010 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“**Accounting Officer**” means the accounting officer of the relevant agency;

“**alcohol**” means the product known as ethyl alcohol or any product obtained by fermentation or distillation of any fermented alcoholic product, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with the prescribed formulas;

“**alcoholic drink**” includes alcohol, spirit, wine, beer traditional alcoholic drink, and any one or more of such varieties containing one-half of one per cent or more of alcohol by volume, including mixed alcoholic drinks, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being;

“**authorised officer**” means an authorised officer within the meaning of section 50;

“**cinema**” has the meaning assigned to it in the Films and Stage Plays Act (Cap. 222);

“**District Committee**” means the District Alcoholic Drinks Regulation Committee established under section 8;

“**entity**” includes a company, corporation, firm, partnership, association, society, trust or other organisation, whether incorporated or not;

“**Fund**” means the Alcoholic Drinks Control Fund established by section 5;

“**harmful constituent**” means any constituent of an alcoholic drink which the Minister may, under section 68 prescribe;

“**health institution**” means a hospital, nursing home, convalescent home, maternity home, health centre, dispensary or other institution where health or other medical services are rendered free of charge or upon payment of a fee;

“**illicit trade**” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of alcohol or its products, including any practice or conduct intended to facilitate such activity;

“**ingredients**” means substances used during the alcohol manufacturing process;

“**licensee**” means a person who holds a licence granted under this Act;

“**magistrate**” means a magistrate above the rank of resident magistrate;

“**manager**” in relation to—

- (a) a cinema or theatre, includes an assistant manager, a person holding an office analogous to that of a manager or assistant manager of the cinema or theatre or any person in charge or in control of the cinema or theatre;
- (b) a health institution, includes the owner or a person in charge or in control of the health institution;
- (c) a specified building, includes the owner, occupier, lessee or the person in charge or in control of the specified building;

“**manufacture**” means the processing of an alcoholic drink and includes the packaging, labeling, distribution or importation of an alcoholic drink for sale in Kenya;

“**manufacturer**”, in respect of an alcoholic drink, includes any entity that is involved in its manufacture, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

“**Minister**” means the Minister for the time being responsible for matters relating to provincial administration;

“**package**” means the container, receptacle or wrapper in which an alcoholic drink is sold or distributed and includes the carton in which multiple packages are stored;

“**relevant agency**” means the National Campaign Against Drug Abuse Authority or its successor in law as the public body or department responsible for matters relating to alcoholic drinks;

“**retailer**” means a person who is engaged in a business that includes the sale of any alcoholic drink to consumers;

“**sell**” includes—

- (a) barter or exchange without use of money;
- (b) offer or expose for sale, barter or exchange without use of money;
- (c) supply, or offer to supply, in circumstances in which the supplier derives or would derive, a direct or indirect pecuniary benefit;
- (d) supply or offer to supply, gratuitously but with a view of gaining or maintaining custom, or otherwise with a view for commercial gain;

“**vending machine**” means a machine or device that is constructed to contain alcoholic drinks and which can automatically retail any alcoholic drink upon the insertion of a coin, token or similar object into the machine or device.

Section 2 of No. 28 of 2011 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“**Authority**” means the Tourism Regulatory Authority established by section 4;

“**authorized officer**” means a person appointed by section 115 of this Act;

“**College**” means the Kenya Utalii College established by section 17 of this Act;

“**Council**” means the Council of the Kenya Utalii College established by section 20 of this Act;

“ecotourism” means responsible travel to natural areas to view the flora and fauna without disturbance to the economical, ecological and cultural status of the areas;

“environmental impact assessment” means a systematic examination conducted to determine whether or not a program, activity or project will have any adverse impact on the environment;

“Fund” means the Tourism Fund established by section 66;

“host” means a resident of a tourism destination or member of the community in a tourism destination area;

“hotel” includes a facility used for the reception of guests and travelers desirous of dwelling or sleeping therein;

“lead agency” means a Government ministry, department, state corporation or local authority, in which the law has vested functions of control or management of any of the tourism-related activities and services;

“licence” includes provisional licence granted under the provisions of this Act;

“Minister” means the Minister for the time being responsible for matters relating to tourism;

“Protection Service” means the Tourism Protection Service established by section 28;

“restaurant” means any premises on which the business of supplying food or drink for reward is carried on;

“sustainable tourism” means tourism development that meets the needs of present visitors and hosts while protecting and enhancing opportunity for the future;

“tourism activities and services” means any of the activities and services specified in the Ninth Schedule of this Act;

“tourism agencies” means the Authority, the College, the Tourism Board, the Institute, the Protection Service, the Fund, the Corporation and the Convention Centre and other tourism and hospitality institutions established by this Act;

“Tourism Board” means the Kenya Tourism Board established by section 29;

“tourism product” means a good or service which contributes to the total visitor or tourist experience in a tourism destination area;

“**tourist**” means a person travelling to and staying in a place outside his or her usual abode for more than twenty-four hours, but not more than one consecutive year, for leisure, business or other purpose, not being a work-related activity remunerated from within the place visited;

“**Tribunal**” means the Tourism Tribunal established by section 87; and

“**visitor**” means a person travelling to a place outside his or her usual abode for not more than one consecutive year for leisure, business or other purposes, not being a work-related activity remunerated from the place visit

Section 68 of No. 28 of 2011 which it is proposed to amend—

68. Object and purpose of the Fund

The object and purpose of the Fund shall be to—

- (a) finance the development of tourism products and services;
- (b) finance the marketing of Kenya as a tourist destination through the Tourism Board;
- (c) finance the activities of the Protection Service;
- (d) finance the tourism research, tourism intelligence and the national tourism information management system;
- (e) finance the activities of the Tourism Sector Safety, Communication and Crisis Management Centre to be established and managed by the Ministry;
- (f) finance training and capacity development activities of the College and of such other tourism hospitality training institutions as may be established under this Act; and
- (g) mobilize resources to support tourism-related activities.

Section 2(1) of No. 18 of 2012 which it is proposed to amend—

2. Interpretation

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

“**accounting officer**” means—

- (a) an accounting officer of a national government entity referred to in section 67;
- (b) an accounting officer of a county government entity referred to in section 148;

(c) in the case of the Judiciary, the Chief Registrar of the Judiciary;
or

(d) in the case of the Parliamentary Service Commission, the Clerk of the Senate in respect of the Senate and the Clerk of the National Assembly in respect of the National Assembly;

“Accounting Standards Board” means the Public Sector Accounting Standards Board established under section 192;

“appropriation” means—

(a) authority granted by Parliament to pay money out of the Consolidated Fund or out of any other public fund; or

(b) authority granted by a county assembly to pay money out of the relevant County Revenue Fund or out of any other county public fund;

“appropriation Act” means an Act of Parliament or of a county assembly that provides for the provision of money to pay for the supply of services;

“authorised officer”—

(a) in relation to the National Treasury, means any of its members or officers authorised by the National Treasury in accordance with section 13; or

(b) in relation to a County Treasury, means any of its officers authorised by the County Treasury in accordance with section 105;

“borrower” means a person to whom a loan has been or is to be made;

“Budget Policy Statement”, in relation to a financial year, means the Budget Policy Statement referred to in section 25;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

“chart of account” means a structured list of accounts used to classify and record budget revenue and expenditure transactions as well as government assets and liabilities on a standard budget classifications system;

“Chief Officer” means the person appointed by the County Governor to administer the County department responsible for financial affairs;

“collector of revenue”—

- (a) in relation to the national government, means a person authorised under section 76 to be a collector of revenue for the national government;
- (b) in relation to a county government, means a person authorised under section 158 to be a collector of revenue for that county government;

“commitment” means entering into a contract or other binding arrangement under which expenses or liabilities may be incurred;

“Contingencies Fund” means the Contingencies Fund established by Article 208(1) of the Constitution;

“county corporation” means a public corporation within a county established by an Act of Parliament or county legislation;

“County Emergency Fund” means a Fund established under section 110;

“County Exchequer Account” means a County Exchequer Account referred to in section 109;

“County Executive Committee member for finance” means the member of a County Executive Committee responsible for the financial affairs of the County and for the County Treasury;

“County Fiscal Strategy Paper”, in relation to a county government, means the County Fiscal Strategy Paper referred to in section 117;

“county government entity” means any department or agency of a county government, and any authority, body or other entity declared to be a county government entity under section 5(1);

“county government revenue” means all money derived by or on behalf of a county government from levies, rates, fees, charges or any other source authorised by the Constitution or an Act of Parliament;

“county government security” means a security issued by the county government under section 144 and includes a treasury bill, treasury bond, treasury note, government stock and any other debt instrument issued by the county government;

“County Public Debt” means all financial obligations attendant to loans raised and securities issued by the county government;

“County Treasury” means a County Treasury established under section 103;

“development expenditure” means the expenditure for the creation or renewal of assets;

“development partner” means a foreign government, an international organisation of states or any other organisation prescribed by regulations for the purpose of this Act;

“external government security” means a national government security which is issued outside Kenya;

“external loan” means any loan governed by the laws of a jurisdiction other than Kenya;

“financial objectives” means the financial objectives set out in a Budget Policy Statement of the national government or in the County Fiscal Strategy Paper of the county governments;

“financial statements”, in relation to a financial year or other accounting period of the national government, county government, or a national government or county government entity, means—

- (a) the financial statements referred to in Part III and Part IV of this Act; and
- (b) the financial statements prescribed by the Accounting Standards Board;

“fiscal responsibility principles” means the principles of public finance specified in Article 201 of the Constitution, together with—

- (a) the principles of fiscal responsibility referred to in section 15, in relation to national government; and
- (b) the principles of fiscal responsibility referred to in section 107, in relation to a county government;

“Government to government loan” means any loan that is negotiated with or covered by any government or national government entity including any government Export Credit Agency (ECA) or investment insurance agency or financial institution that acts as an intermediary between the Government and exporters to facilitate export financing, whether by means of buyer or supplier credit, credit insurance, financial intermediary loans, guarantees, Organization for Economic Cooperation and Development (OECD) tied-aid credit or officially supported export credit depending on the mandate granted to such export credit agency by the relevant government for the purpose of facilitating trade and investment between the two countries;

“Intergovernmental Budget and Economic Council” means the Council established under section 187;

“internal auditing” means an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations, which helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes;

“Islamic finance return” has the same meaning assigned to it under section 2 of the Income Tax Act;

“loan” means any borrowing with or without interest from any source or any issuance of a national government security;

“medium term” means a period of not less than three years but not more than five years;

“National Exchequer Account” means the National Exchequer Account referred to in section 17;

“national government entity” includes any department or agency of the national government and any authority, body or other entity declared to be a national government entity under section 4(1);

“national government revenue” means all taxes imposed by the national government under Articles 206(1)(a) and (b) and of the Constitution, excluding county government revenue;

“national government security” means a security issued by the national government under section 53 or section 53A and a treasury bill, treasury bond, *Sukuk*, treasury note, government stock and any other debt instrument issued by the national government;

“National Treasury” means the National Treasury established by section 11;

“Principal Secretary”, in relation to the National Treasury, means the person responsible for the administration of the National Treasury;

“public money” includes—

- (a) all money that comes into possession of, or is distributed by, a national government entity and money raised by a private body where it is doing so under statutory authority; and
- (b) money held by national government entities in trust for third parties and any money that can generate liability for the Government;

“publicise”, in relation to a document, means to make known to the public, through the national or local media—

- (a) the general nature of the document; and

(b) how and where it may be accessed and read by members of the public;

“publish”, in relation to a document, includes—

- (a) publishing the document in a newspaper, *Government Gazette* or other publication of general circulation in Kenya; or
- (b) publication of an abridged or summary versions of the documents without losing the core content of the document; or
- (c) making the document available for reference at public libraries or offices of national government entities or in archives of those institutions; or
- (d) posting the document on the internet on a Government website; or
- (e) if the document relates only to a county government or any of its entities—
 - (i) publishing the document in a newspaper or other publication of general circulation in the County;
 - (ii) making the document available for reference at public libraries or offices of the county government or those entities; or
 - (iii) posting the document on the Internet on a county government website;

“receiver of revenue”—

- (a) in relation to the National government, means a person designated to be a receiver of revenue under section 75;
- (b) in relation to the county government, means a person designated to be a receiver of revenue under section 157;

“recurrent expenditure”—

- (a) in relation to the national government, means the expenditure that is incurred in operating the services provided by the national government; and
- (b) in relation to a county government, means the expenditure that is incurred in operating the services provided by that county government, but does not include expenditure incurred in creating or renewing assets belonging to or managed by that government;

“regulations” means regulations made under this Act;

“**short term borrowing**” means borrowing by a government by way of Treasury Bills, bank-overdraft or other instrument to cover temporary cash shortfalls and is repayable within twelve months;

“**state corporation**” means a state corporation within the meaning of the State Corporations Act;

“*Sukuk*” means certificates of equal value, representing undivided shares in ownership of tangible or intangible assets, usufruct of assets; services or an investment activity, structured in conformity with Islamic law;

“**Treasury Single Account**”—

- (a) in relation to the national government, means a centralised bank account system where all deposits and payment transactions are processed for State Departments, Commissions and Independent Offices, and any national government entity which draws directly from the Consolidated Fund;
- (b) in relation to the county government, means a centralised bank account system established in each county where all deposits and payment transactions are processed for county departments and any other county entity which draws directly from the County Revenue Fund;

“**Urban Board**” means a city or municipal board within the meaning of the Urban Areas and Cities Act (No. 13 of 2011);

“**vote**” means money authorised by an appropriation Act for withdrawal from the Consolidated Fund or a County Revenue Fund; and

“**wasteful expenditure**” means any expenditure that was incurred which could have been avoided had due care and diligence been exercised.

Section 4 of No. 26 of 2012 which it is proposed to amend—

Objects and functions of the School.

(1) The School shall be a public legal education provider responsible for the provision of professional legal training as an agent of the Government.

(2) Without prejudice to the generality of subsection (1), the object of the School shall be to—

- (a) train persons to be advocates under the Advocates Act (Cap. 16);
- (b) ensure continuing professional development for all cadres of the legal profession;

- (c) provide para-legal training;
- (d) provide other specialized training in the legal sector;
- (e) develop curricular, training manuals, conduct examinations and confer academic awards; and
- (f) undertake projects, research and consultancies

Section 8 of No. 27 of 2012 which it is proposed to amend—

Functions of
the Council.

(1) The functions of the Council shall be to—

- (a) regulate legal education and training in Kenya offered by legal education providers;
- (b) licence legal education providers;
- (c) supervise legal education providers; and
- (d) advise the Government on matters relating to legal education and training.
- (e) recognise and approve qualifications obtained outside Kenya for purposes of admission to the Roll.
- (f) administer such professional examinations as may be prescribed under section 13 of the Advocates Act.

(2) Without prejudice to the generality of subsection (1), the Council shall, with respect to legal education providers, be responsible for setting and enforcing standards relating to the—

- (a) accreditation of legal education providers for the purposes of licensing;
- (b) curricula and mode of instruction;
- (c) mode and quality of examinations;
- (d) harmonization of legal education programmes; and
- (e) monitoring and evaluation of legal education providers and programmes.

(3) In carrying out its functions under subsection (2), the Council shall—

- (a) make Regulations in respect of requirements for the admission of persons seeking to enroll in legal education programmes;

- (b) establish criteria for the recognition and equation of academic qualifications in legal education;
- (c) formulate a system for recognizing prior learning and experience in law to facilitate progression in legal education from lower levels of learning to higher levels;
- (d) establish a system of equivalencies of legal educational qualifications and credit transfers;
- (e) advise and make recommendations to the Government and any other relevant authority on matters relating to legal education and training that require the consideration of the Government;
- (f) collect, analyse and publish information relating to legal education and training;
- (g) advise the Government on the standardization, recognition and equation of legal education qualifications awarded by foreign institutions;
- (h) carry out regular visits and inspections of legal education providers; and
- (i) perform and exercise any other functions conferred on it by this Act.

(4) Where any conflict arises between the provisions of this section and the provisions of any other written law for the time being in force, the provisions of this section shall prevail.

Section 40A of No. 30 of 2012 which it is proposed to amend—

40A. Establishment of a counter-terrorism Centre

(1) There is established a National Counter-Terrorism Centre, hereinafter referred to as the “Centre” which shall be an inter-agency body.

(2) The Centre shall consist of offices from the following organizations—

- (a) the Director appointed by the National Security Council;
- (b) the National Intelligence Service;
- (c) the Kenya Defence Forces;
- (d) the Attorney-General;

- (e) Directorate of Immigration and Registration; the National Police Service; and
- (f) such other national agencies as may be determined by the National Security Council.

(3) The members of the Centre specified under subsection (2) shall be seconded to the Centre for a period not exceeding three years.

(4) The Director shall be responsible for the management and implementation of the functions of the Centre

Section 40B of No. 30 of 2012 which it is proposed to amend—

40B. Responsibilities of the Centre

(1) The Centre shall be responsible for the co-ordination of national counter-terrorism efforts in order to detect, deter and disrupt terrorism acts.

(2) Without prejudice to the provisions of subsection (1) the Centre shall—

- (a) establish a database to assist law enforcement agencies;
- (b) conduct public awareness on prevention of terrorism;
- (c) develop strategies such as counter and de-radicalization;
- (d) facilitate capacity building for counter-terrorism stakeholders ;
- (e) co-ordinate with other government agencies to provide security certification for aviation schools or companies.

Section 40C of No. 30 of 2012 which it is proposed to amend—

40C. Responsibility of the public and government bodies

(1) The Centre may request any person or government body for any information relating to terrorism.

(2) Members of the public have a responsibility to furnish the Centre with any information relating to terrorism which is within their knowledge.

Section 8 of No. 19 of 2013 which it is proposed to amend—

8. Composition of the Commission

(1) The Commission shall consist of—

- (a) a chairperson appointed by the President through an open and competitive process;

- (b) two members appointed by the Cabinet Secretary through an open and competitive process;
 - (c) two persons appointed by the Attorney-General, of whom one shall be an advocate of the High Court of Kenya nominated by the Law Society of Kenya, and the other an officer in the Office of the Attorney-General;
 - (d) a representative of the Director of Public Prosecution appointed in writing; and
 - (e) a representative of the Chief Justice appointed in writing.
 - (f) a person of the rank professor and who teaches law in a public university, appointed by the Attorney-General;
 - (g) a person nominated by the Council of Governors and appointed by the Attorney General.
- (2) The chairperson and members of the Commission specified under paragraph (1) (b) shall be appointed in accordance with section 11.
- (3) The representatives of the Attorney-General and the Cabinet Secretary shall be *ex officio* members of the Commission.
- (4) The members referred to in paragraphs (1)(b) and (c) shall be officers from the Office of the Attorney-General or the respective State Department, as the case may be, and a representative from the Law Society of Kenya.

Section 11 of No. 19 of 2013 which it is proposed to amend—

11. Appointment of chairperson and members

- (1) The President or the Cabinet Secretary shall, whenever a vacancy arises in the office of the chairperson or member of the Commission, constitute a selection panel comprising one person from—
- (a) the Office of the President;
 - (b) the Office of the Attorney-General;
 - (c) the National Council for Science and Technology;
 - (d) the National Economic and Social Council;
 - (e) the Association of Professional Societies of East Africa;
 - (f) the Law Society of Kenya;
 - (g) the Federation of Women Lawyers; and
 - (h) the National Council for persons with disabilities.

(2) The Public Service Commission shall—

- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their number; and
- (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.

(3) The selection panel shall, within seven days of its convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson and members of the Commission.

(4) The selection panel shall within twenty one days—

- (a) consider the applications received under subsection (3) to determine their compliance with the provisions of this Act;
- (b) short list the applicants;
- (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of national circulation;
- (d) conduct interviews of the shortlisted persons in an open and transparent process;
- (e) shortlist three qualified applicants for the position of chairperson;
- (f) shortlist eight qualified applicants for the position of the members; and
- (g) forward the names of the qualified persons under paragraphs (e) and (f) to the President or the Cabinet Secretary.

(5) The President or Cabinet Secretary shall, within fourteen days of receipt of the names of the qualified applicants pursuant to subsection (4)(g), by notice in the *Gazette*, appoint the chairperson and members of the Commission.

(6) In short listing, nominating or appointing persons as chairperson and members of the Commission, the selection panel and the President or Cabinet Secretary shall ensure that there are equal opportunities for the youth and persons with disabilities and that not more than two-thirds of the members are of the same gender.

(7) The selection panel may, subject to this section, determine its own procedure.

(8) *Deleted by Act No. 18 of 2018, Sch.*

(9) Until after the first general elections under the Constitution, the President shall, in the appointment of chairperson or members of the Commission, consult the Prime Minister.

(10) The selection panel shall stand dissolved upon the appointment of the chairperson and members under subsection (4).

(11) Despite the foregoing provisions of this section, the Cabinet Secretary may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

Section 17 of No. 35 of 2013 which it is proposed to amend—

17. Credit for input tax against output tax

(1) Subject to the provisions of this section and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation.

Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

(3) The documentation for the purposes of subsection (2) shall be—

- (a) an original tax invoice issued for the supply or a certified copy;
- (b) a customs entry duly certified by the proper officer and a receipt for the payment of tax;
- (c) a customs receipt and a certificate signed by the proper officer stating the amount of tax paid, in the case of goods purchased from a customs auction;
- (d) a credit note in the case of input tax deducted under section 16(2);
or
- (e) a debit note in the case of input tax deducted under section 16(5).

(4) A registered person shall not deduct input tax under this Act if the tax relates to the acquisition of—

- (a) passenger cars or mini buses, and the repair and maintenance thereof including spare parts, unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses; or
- (b) entertainment, restaurant and accommodation services unless—
 - (i) the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee; or
 - (ii) the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer:

Provided that no tax shall be charged on the supply where no input tax deduction was allowed on that supply under this subsection.

(5) Where the amount of input tax that may be deducted by a registered person under subsection (1) in respect of a tax period exceeds the amount of output tax due for the period, the amount of the excess shall be carried forward as input tax deductible in the next tax period:

Provided that any such excess shall be paid to the registered person by the Commissioner where—

- (a) the Commissioner is satisfied that such excess arises from making zero rated supplies; and
- (b) the registered person lodges the claim for the refund of the excess tax within twelve months from the date the tax becomes due and payable.

(6) Subject to this Act, if a taxable supply to, or a taxable import by, a registered person during a tax period relates partly to making taxable supplies and partly for another use, the input tax deductible by the person for acquisitions made during the tax period shall be determined as follows—

- (a) full deduction of all the input tax attributable to taxable supplies;
- (b) no deduction of any input tax which is directly attributable to other use; and
- (c) deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula:

A x B C

where—

A is the total amount of input tax payable by the person during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use;

B is the value of all taxable supplies made by the registered person during the period; and

C is the value of all supplies made by the registered person during the period in Kenya.

(7) If the fraction of the formula in subsection (6) for a tax period—

(a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component **A** of the formula; or

(b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component **A** of the formula.

Section 23 of No. 47 of 2013 which it is proposed to amend—

23. The Wildlife Endowment Fund

(1) There is established a Wildlife Conservation Trust Fund that shall be vested in a governing body established in accordance with subsection (2).

(2) The governing body referred to in subsection (1) shall serve as a public-private partnership and comprise—

(a) a Chairperson being appointed the Cabinet Secretary;

(b) the Principal Secretary in the State Department for the time being responsible for matters relating to wildlife who shall be the Chairperson;

(c) the Principal Secretary in the State Department for the time being responsible for matters relating to finance;

(d) the Director-General of the Service who shall be the Secretary;

(e) four representatives from the private sector, who shall have technical experience in either philanthropy, law, natural resources, finance, business and investment matters; and

(f) a representative from the office of the Attorney-General.

(3) There shall be paid into the Wildlife Conservation Trust Fund—

- (a) moneys appropriated by Parliament;
- (b) a proportion of such moneys as may be levied for payment of environmental services by beneficiaries in productive and service sectors, and for biodiversity offset schemes that compensate for conservation impacts as a contribution towards the Wildlife Conservation Trust Fund as the Cabinet Secretary may, upon the recommendation of the governing board, determine;
- (c) moneys for payment of environmental services and biodiversity offset schemes in which entities make payments directly to the Wildlife Conservation Trust Fund;
- (d) moneys from debt-for-nature transactions;
- (e) income from investments made by the governing board;
- (f) such grants, donations, bequests or other gifts as may be made to the Fund.

(4) The purpose shall be to provide funds in order to—

- (a) develop wildlife conservation initiatives;
- (b) manage and restore protected areas and conservancies;
- (c) protect endangered species, habitats and ecosystems;
- (d) support wildlife security operations;
- (e) facilitate community based wildlife initiatives;
- (f) award wildlife conservation grants based on criteria to be established by the governing board; and
- (g) such other purposes as may be provided by the governing board.

(5) The Cabinet Secretary may, on recommendation of the Service, by notice in the *Gazette*, issue regulations and guidelines necessary and appropriate for the carrying out of the purposes of this section.

Section 9 of No. 17 of 2015 which it is proposed to amend—

9. Private companies

- (1) For the purposes of this Act, a company is a private company if—
 - (a) its articles—
 - (i) restrict a member's right to transfer shares;
 - (ii) limit the number of members to fifty; and
 - (iii) prohibit invitations to the public to subscribe for shares or debentures of the company;

- (b) it is not a company limited by guarantee; and
- (c) its certificate of incorporation states that it is a private company.

(2) In subsection (1)(a)(ii), “member” excludes—

- (a) a member who is an employee of the company; and
- (b) a person who was a member while being an employee of the company and who continues to be a member after ceasing to be such an employee.

(3) For the purposes of this section, two or more persons who hold shares in a company jointly are taken to be a single member.

Section 93 of No. 17 of 2015 which it is proposed to amend—

93. Company to keep register of members

(1) Every company shall keep a register of its members which shall include information relating to beneficial owners of the company, if any.

(2) A company shall enter in its register of members—

- (a) the names and addresses of the members;
- (b) the date on which each person was registered as a member; and
- (c) the date on which any person ceased to be a member;
- (d) the name and address of the beneficial owners, if any.

(3) If a company has a share capital, the company shall enter in its register of members, along with the name and address of each member, a statement of—

(a) the shares held by the member, distinguishing each share—

- (i) by its number if the share has a number; and
- (ii) if the company has more than one class of issued shares, by its class; and

(b) the amount paid or agreed to be considered as paid on the shares of the member.

(4) If the shares of a company are held jointly, the company shall ensure that the name of each joint holder is entered in its register of members.

(5) If a company does not have a share capital but has more than one class of members, it shall enter in its register of members, along with the names and address of each member, a statement of the class to which the member belongs.

(6) If a company purchases its own shares in circumstances in which section 526 applies—

- (a) the applicable requirements of this section need not be complied with if the company cancels all of the shares immediately after the purchase; and
- (b) if the company does not cancel all of the shares immediately after the purchase, any share that is so cancelled is to be disregarded for the purposes of this section.

(7) Subject to subsection (6), if a company holds shares as treasury shares, the company shall ensure that it is entered in its register of members as the member holding those shares.

(8) A company shall lodge with the Registrar a copy of its register of members including information relating to beneficial owners, if any, within thirty days after completing its preparation.

(9) A company other than a public limited company other than a public listed company shall lodge with the Registrar a copy of any amendment to its register of members within fourteen days after making the amendment.

(10) If a company fails to comply with a requirement of this section, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(11) If, after a company or any of its officers is convicted of an offence under subsection (10), the company continues to fail to comply with the relevant requirement, the company, and each officer of the company who is in default, commit a further offence on each day on which the failure continues and on conviction are each liable to a fine not exceeding fifty thousand shillings for each such offence.

Section 329 of No. 17 of 2015 which it is proposed to amend—

329. Power of directors to allot shares etc: authorisation by company

(1) The directors of a company may exercise a power of the company—

- (a) to allot shares in the company; or
- (b) to grant rights to subscribe for or to convert any security into shares in the company, only if they are authorised to do so by the company's articles or by a resolution of the company.

(2) An authorisation under subsection (1) may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(3) An authorisation under subsection (1) is not effective unless it—

(a) states the maximum amount of shares that may be allotted under it; and

(b) specifies the date on which it will expire, which may not be more than five years from—

(i) in the case of authorisation contained in the company's articles at the time of its original incorporation — the date of that incorporation; or

(ii) in any other case, the date on which the authorising resolution is passed.

(4) An authorisation may—

(a) be renewed or further renewed by resolution of the company for a further period not exceeding five years; and

(b) be revoked or varied at any time by resolution of the company.

(5) A resolution renewing an authorisation is not effective unless—

(a) states or restates the maximum amount of shares that may be allotted under the authorisation or, the amount remaining to be allotted under it; and

(b) specifies the date on which the renewed authorisation will expire.

(6) In relation to rights to subscribe for or to convert a security into shares in the company, a reference in this section to the maximum amount of shares that may be allotted under the authorization is to the maximum number of shares that may be allotted under the rights.

(7) The directors may allot shares, or grant rights to subscribe for or to convert any security into shares, after an authorization has expired if—

(a) the shares are allotted, or the rights are granted, in accordance with an offer or agreement made by the company before the authorization expired; and

(b) the authorization allowed the company to make an offer or agreement that would or might require shares to be allotted, or rights to be granted, after the authorization had expired.

(8) A resolution of a company to give, vary, revoke or renew an authorization may be by an ordinary resolution.

(9) If a resolution under subsection (8) purports to amend the articles of a company, the resolution is effective only if it is a special resolution.

Section 611 of No. 17 of 2015 which it is proposed to amend—

611. Right of offeror to buy out minority shareholder

(1) Subsection (2) applies to a takeover offer does not relate to shares of different classes.

(2) An offeror who has, as a result of acceptances of the offer, acquired or unconditionally contracted to acquire—

- (a) not less than ninety percent in value of the shares to which the offer relates; and
- (b) if the shares to which the offer relates are voting shares — not less than ninety percent of the voting rights conferred by those shares, may give notice to the holder of any shares to which the offer relates that the offeror has not acquired or unconditionally contracted to acquire that the offeror intends to acquire those shares.

(3) Subsection (4) applies even though the takeover offer relates to shares of different classes.

(4) An offeror who has, as a result of acceptances of the offer, acquired or unconditionally contracted to acquire—

- (a) not less than ninety percent in value of the shares to which the offer relates; and
- (b) if the shares of that class are voting shares —not less than ninety percent of the voting rights conferred by those shares, may give notice to the holder of any shares of that class to which the offer relates that the offeror has not acquired or unconditionally contracted to acquire that the offeror intends to acquire those shares.

(5) If a takeover offer that includes among the shares to which it relates shares that are allotted after the date of the offer, the offeror's entitlement to give a notice under subsection (2) or (4) on any particular date is to be determined as if the shares to which the offer relates did not include any shares allotted on or after that date.

(6) Subsection (7) applies if—

- (a) the requirements for the giving of a notice under subsection (2) or (4) are satisfied; and

- (b) there are shares in the company that the offeror, or an associate of the offeror, has contracted to acquire subject to conditions being satisfied, and in relation to which the contract has not become unconditional.
- (7) The offeror's entitlement to give a notice under subsection (2) or (4) is to be determined as if—
 - (a) the shares to which the offer relates included shares of the kind referred to in subsection (6)(b); and
 - (b) in relation to those shares the words “as a result of acceptances of the offer” in subsection (2) or (4) were omitted.
- (8) For the purposes of this section, shares are not excluded by section 588(4) from those to which the offer relates if—
 - (a) they are shares that the offeror acquired, or unconditionally contracted to acquire, during the offer period, but were not acquired or contracted to be acquired as a result of acceptances of the offer; and
 - (b) subsection (10) applies, and the offeror is taken to have acquired or to have contracted to acquire those shares as a result of acceptance of the offer.
- (9) For the purposes of this section, shares are not excluded by section 588(5) from those to which the offer relates if—
 - (a) during the offer period, an associate of the offeror acquired, or unconditionally contracted to acquire, any of the shares to which the offer relates; and,
 - (b) subsection (10) applies.
- (10) This subsection applies if—
 - (a) at, the time the shares were acquired or contracted to be acquired the value of the consideration for which they were acquired or contracted to be acquired does not exceed the value of the consideration specified in the terms of the offer; or
 - (b) those terms are subsequently revised so that when the revision is announced the value of the consideration for the acquisition, at the time referred to in, paragraph (a), no longer exceeds the value of the consideration specified in those terms.

Section 615 of No. 17 of 2015 which it is proposed to amend—

615. Right of minority shareholder to be bought out by offeror

- (1) Subsections (3) and (4) apply if a takeover offer relates to all the shares in a company.

(2) For the purposes of subsection (1), a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company.

(3) The holder of voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the offer period—

- (a) the offeror has as a result acceptances of the offer, acquired or unconditionally contracted to acquire some, but not all of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company that the offeror has acquired or contracted to acquire, whether unconditionally or subject to conditions being satisfied—
 - (i) amount to not less than ninety percent in value of all the voting shares in the company or would do so but for subsection (1) of section 590; and
 - (ii) confer not less than ninety percent of the voting rights in the company or would do so but for that subsection.

(4) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the offer period—

- (a) the offeror has, as a result of acceptances of the offer, acquired or unconditionally contracted to acquire some, but not all of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company that the offeror has acquired or contracted to acquire (whether unconditionally or subject to conditions being satisfied) amount to not less than ninety percent in value of all the shares in the company or would do so but for section 590(1).

(5) If a takeover offer relates to shares of one or more classes and at any time before the end of the offer period—

- (a) the offeror has, as a result of acceptances of the offer, acquired, or unconditionally contracted to acquire, some, but not all, of the shares of any class to which the offer relates; and
- (b) those shares, with or without any other shares of that class that the offeror has acquired or contracted to acquire, whether unconditionally or subject to conditions being satisfied—
 - (i) amount to not less than ninety percent in value of all the shares of that class; and

(ii) if the shares of that class are voting shares, confer not less than ninety percent of the voting rights carried by the shares of that class, the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.

(6) Subsection (7) applies if—

(a) a shareholder exercises rights conferred by subsection (2), (3) or (4)(b);

(b) at the time when the shareholder exercises the right, there are shares in the company that the offeror has contracted to acquire subject to conditions being satisfied, and in relation to which the contract has not become unconditional; and

(c) the requirement imposed by subsection (3)(b) or (4)(b) (whichever is appropriate) would not be satisfied if those shares were not taken into account.

(7) The shareholder is treated for the purposes of section 617 as not having exercised the rights conferred by this section unless the requirement imposed by paragraph (b) of subsection (3) or (4) (as appropriate) would be satisfied if—

(a) the reference in that paragraph to other shares in the company that the offeror has contracted to acquire unconditionally or subject to conditions being satisfied were a reference to those shares that the offeror has unconditionally contracted to acquire; and

(b) the reference in that subsection to the offer period were a reference to the period referred to in section 616(2).

(8) A reference in subsection (3)(b), (4)(b), (6) or (7) to shares that the offeror has acquired, or contracted to acquire, includes a reference to shares that an associate of the offeror has acquired or contracted to acquire.

Section 624 of No. 17 of 2015 which it is proposed to amend—

624. Companies qualifying as small: general rules

(1) A company qualifies as small in relation to its first financial year if the qualifying conditions are satisfied in that year.

(2) A company qualifies as small in relation to a subsequent financial year if the qualifying conditions—

- (a) are satisfied in that year and the preceding financial year;
 - (b) are satisfied in that year and the company qualified as small in relation to the preceding financial year; and
 - (c) were satisfied in the preceding financial year and the company qualified as small in relation to that year.
- (3) The qualifying conditions are satisfied by a company in a year in which it satisfies two or more of the following requirements—
- (a) it has a turnover of not more than fifty million shillings;
 - (b) the value of its net assets as shown in its balance sheet as at the end of the year is not more than twenty million shillings; and
 - (c) it does not have more than fifty employees.
- (4) For a period that is only part of a company's financial year, the maximum figures for turnover are to be adjusted proportionately.
- (5) In this section, "the number of employees" means the average number of persons employed by the company in the year, determined as follows—
- (a) ascertain for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not);
 - (b) add together the monthly totals; and
 - (c) divide the result obtained under paragraph (b) by the number of months in the financial year.
- (6) This section is subject to section 625.

Section 615 of No. 18 of 2015 which it is proposed to amend—

615. Former administrator's remuneration and expenses payable of company's property and to have priority over holders of floating charges

- (1) This section applies if a person's appointment as the administrator of a company has ended for whatever reason.
- (2) In this section—
- (a) "the former administrator" means the person referred to in subsection (1); and
 - (b) "termination" means the time when the person's appointment as the company's administrator ended.
- (3) The former administrator's remuneration and expenses is—

- (a) a charge on and payable out of property over which the person had control immediately before the termination; and
 - (b) payable in priority to any security to which section 587 applies.
- (4) An amount payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before the termination is—
- (a) a charge on and payable out of property over which the former administrator had control immediately before the termination; and
 - (b) payable in priority to any charge arising under subsection (3).
- (5) Subsection (4) applies to a liability arising under a contract of employment that was adopted by the former administrator or a predecessor before the termination; and for that purpose—
- (a) action taken within fourteen days after an administrator's appointment is not to be treated as action adopting or contributing to adopting the contract;
 - (b) no account is to be taken of a liability that arises, or in so far as it arises, by reference to anything that is done or that occurs before the adoption of the contract of employment; and
 - (c) no account is to be taken of a liability to make a payment other than wages or salary.
- (6) In subsection (5)(c), “wages or salary” includes—
- (a) amounts payable in respect of periods of holiday (for which purpose the amounts are to be treated as relating to the period by reference to which the entitlement to holiday accrued);
 - (b) amounts payable in respect of periods of absence through illness or other good cause;
 - (c) amounts payable instead of a period of holidays;
 - (d) in relation to a particular period—amounts that would be treated as earnings by any enactment prescribed by the insolvency regulations for the purposes of this section; and
 - (e) contributions to occupational pension schemes.

Section 26(1) of No. 28 of 2015 which it is proposed to amend—

26. Court recess

- (1) The Court shall go on recess annually as follows—
 - (a) from the Wednesday before Good Friday to the Wednesday after Easter Monday, inclusive;

(b) from 1st August to 15th August, inclusive; and

(c) from 21st December to 12th January, inclusive.

(2) The President of the Court shall, in consultation with the Chief Justice, determine the conduct of the business of the Court during the Court recess.