SPECIAL ISSUE

Kenya Gazette Supplement No. 195 (National Assembly Bills No. 49)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

NAIROBI, 1st November, 2024

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Business Laws (Amendment) Bill, 2024 1091

NATIONAL ASSEMBLY
RECEIVED
07 NOV 2024
DIRECTOR LEGAL SERVICES
P. O. Bo 41842-00100, NAIROBI

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

P. O. Box 41842-00100 NAIROBI
DIRECTOR LEGAL SERVICES
RECEIVED
NATIONAL ASSEMBLY
03 NOV 2024

KENYA GAZETTE SUPPLEMENT

SPECIAL ISSUE

THE BUSINESS LAWS (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend various laws and to make amendments to laws related to financial institutions; 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 section 55 of Cap. 488.

2. The Banking Act is amended—

(a) in section 55 by deleting subsection (2) and substituting therefor the following new subsection—

(2) Without prejudice to the generality of subsection (1), the Central Bank may, in regulations, prescribe penalties to be paid by institutions, credit reference bureaus or any other person that fails or refuses to comply with any provision of this Act, Prudential Guidelines or any direction issued by the Central Bank under the Act or Prudential Guidelines.

(b) by adding the following new subsections after subsection (2)—

(3) The penalties prescribed under subsection (2) shall not exceed twenty million shillings in the case of an institution or credit reference bureau, or three times the gross amount of the monetary gain made or loss avoided by the failure or refusal to comply whichever is higher; and three million shillings in the case of a corporate entity and one million shillings in the case of a natural person.

(4) The Central Bank may, in regulations, prescribe additional penalties not exceeding one hundred thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

Amendment of the Second Schedule to Cap. 488.

3. The Second Schedule to the Banking Act is amended by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) a core capital of at least ten billion Kenya shillings in the case of a bank or a mortgage finance company:

Provided that the provisions of this paragraph shall apply in accordance with the following table—

Compliance Date	Minimum Core Capital, Banks and Mortgage Finance Companies (KSh. Billion)
December 31, 2024	1.0
December 31, 2025	3.0
December 31, 2026	6.0
December 31, 2027	10.0

4. Section 2 of the Central Bank of Kenya Act is amended— Amendment of section 2 of Cap. 491.

(a) by—

(i) deleting the definition of "digital channel";

(ii) deleting the definition of "digital credit";

(iii) deleting the definition of "digital credit business";

(iv) deleting the definition of "digital credit provider";

(b) by inserting the following new definitions in proper alphabetical sequence—

"buy now pay later" means an arrangement whereby the consumer purchases goods or assets, whether or not secured on the goods or assets, and pays later in instalments with or without interest;

"credit provider" incudes a non-deposit taking provider;

"non-deposit taking credit business" means—

(a) granting of loans or credit facilities to members of the public or a section of it, with or without interest, and either secured or unsecured on the goods or assets purchased;

(b) asset financing whether directly or through a third-party financier;

(c) buy now pay later arrangements as determined by the Bank but does not include hire purchase agreements governed by the Hire-Purchase Act;

(d) credit guarantees;

(e) peer to peer lending under collective investment schemes regulated under the Capital Markets Act; and

(f) any other activity as the Bank may determine to be a non-deposit taking credit business for purposes of this Act;

"non-deposit-taking credit provider" means a person licensed by the Bank to carry on non-deposit taking credit business using own funds and assets but does not include the national government or county government;

"peer to peer lending" means a form of crowdfunding that uses online platforms to raise unsecured loans which are paid back with interest

"specified credit guarantee company" means a licensed credit guarantee company which is specified by the Bank under section 33W of the Act

Amendment of section 4A of Cap. 491.

5. Section 4A (1) of the Central Bank Act is amended—

(a) in paragraph (da), by deleting the word "digital" and substituting therefor the words "non-deposit-taking";

(b) by inserting the following new paragraph immediately after paragraph (da)—

(db) license and supervise credit guarantee companies not regulated under any other written law;

(c) in paragraph (h), by inserting the following new subparagraph immediately after subparagraph (viii)—

(viiia) credit guarantee companies.

Amendment of the heading to Part VIC of Cap. 491.

6. The heading to Part VIC of the Central Bank Act is amended by deleting the words "DIGITAL LENDERS" and substituting therefor the words "NON-DEPOSIT TAKING CREDIT PROVIDERS".

Amendment of section 33R of Cap. 491.

7. The Central Bank Act is amended by deleting section 33R and substituting therefor the following new section—

Regulation of non-deposit taking credit providers.

33R. (1) Without prejudice to the generality of section 4A(da), the Bank shall have power to—

(a) register, license and regulate non-deposit-taking credit providers which are not regulated under any other written law;

(b) approve channels through which non-deposit-taking credit business may be conducted;

(c) determine parameters for pricing of credit;

(d) supervise non-deposit taking credit providers in such manner as the Bank may prescribe; and

(e) prescribe an enforceable Code of Conduct binding all non-deposit-taking credit providers in their conduct of business.

(2) Non-deposit-taking credit providers registered by the Bank shall be subject to such supervision, oversight or monitoring as the Bank may determine.

Amendment of section 33S of Cap. 491.

8. Section 33S of the Central Bank Act is amended—

(d) in subsection (1) by deleting the word "digital" and substituting therefor the words "non-deposit-taking";

(e) by deleting subsection (4) and substituting therefor the following new subsection—

(4) Without prejudice to subsection (3)(e), a non-deposit-taking credit provider shall provide terms and conditions applicable to the credit which shall accepted by the borrower.

(f) in subsection (7)—

(i) by deleting the words "digital lending" appearing in paragraph (f) and substituting

therefor the words "non-deposit-taking credit business";

(ii) by inserting the following new paragraphs immediately after paragraph (f)—

(g) the licensee fails to conclusively address a customer's complaint within the time and in the manner prescribed by the Bank under this Act or as the Bank may direct;

(h) the licensee fails to comply with a directive of the Bank; or

(i) the licensee imposes unreasonable or unjustifiable charges on the loan.

(g) in subsection (9)—

(i) by deleting the words "digital lenders" appearing in paragraph (a) and substituting therefor the words "non-deposit-taking credit providers";

(ii) by deleting the words "digital lenders" appearing in paragraph (b) and substituting therefor the words "non-deposit-taking credit providers".

Insertion of new Part VID in Cap. 491.

9. The Central Bank Act is amended by inserting the following new Part immediately after section 33U—

PART VID—CREDIT GUARANTEE BUSINESS

Interpretation of Part.

33V. In this Part, unless the context otherwise requires—

"credit guarantee business" means the business of providing a guarantee to a lender through absorption of all or a portion of the lender's risk on a credit facility made to a borrower in case of default;

"credit guarantee company" means a company limited by shares incorporated or registered under the Companies Act and licensed by the Bank to carry on credit guarantee business.

Cap. 486.

Registration.

33W. (1) A person who intends to carry on credit guarantee business in Kenya shall apply to the Bank for registration.

(2) An application under subsection (1) shall be in the prescribed form and accompanied by the prescribed fee.

(3) The Bank shall prescribe, in Regulations, the requirements and procedure for registration under subsection (1).

(4) The Bank shall issue a successful applicant with a certificate of registration in the prescribed form.

(5) A person who carries on credit guarantee business without being registered by the Bank commits an offence and is liable, on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(6) Where the offence contemplated in subsection (5) is committed by a body corporate, that body corporate shall be liable, on conviction, to a fine not exceeding ten million shillings.

Licensing.

33X. (1) A person registered under section 33W who intends to carry on credit guarantee business in Kenya shall apply to the Bank for a licence in the prescribed form and on payment of the prescribed fee.

(2) A person carrying on credit guarantee business in Kenya shall not be required to apply for a licence under subsection (1) if that person—

(a) is a credit guarantee provider that is owned by a foreign government and has entered into an agreement with the Government for the purposes of supporting access to financial services in Kenya;

(b) is a credit guarantee provider that is owned or supported by international financial institutions and has entered into an agreement with the Government to provide credit guarantee services to targeted groups, sectors or regions for a specified period of time; or

(c) is a credit guarantee company registered outside Kenya and has entered into a partnership with a financial institution in Kenya to provide credit guarantee services.

(3) Each licenced credit guarantee company shall pay an annual licence fee.

(4) A person who carries on credit guarantee business commits an offence and is liable, on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(5) Where the offence contemplated in subsection (4) is committed by a body corporate, that body corporate shall be liable, on conviction, to a fine not exceeding ten million shillings.

(6) A person who provides false information for the purposes of obtaining a licence under this section commits an offence and shall, on conviction—

(a) in the case of natural person, be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both; and

(b) in the case of body corporate, to a fine not exceeding ten million shillings.

Powers of the Bank.

33Y. The Bank shall have the following powers with respect to the regulation of credit guarantee companies—

(a) to issue, suspend or revoke licenses to carry on credit guarantee business;

(b) to determine the capital adequacy standards and related requirements for credit guarantee companies;

(c) to prescribe the minimum liquidity requirements for credit guartantee companies;

(d) to prescribe permissible and prohibited activities for credit guarantee companies;

(e) to supervise credit guarantee companies, including by—

(i) conducting on-site and off-site supervision;

(ii) assessing professional and moral suitability of persons managing or controlling credit guarantee companies;

(iii) approving the Board and management of the credit guarantee companies;

(iv) approving the appointment of the external auditors;

(v) regularly collecting data from credit guarantee companies;

(vi) approving the annual audited accounts of credit guarantee companies before publication and presentation at annual general meetings;

(vii) certifying significant shareholders as fit and proper persons;

(f) to direct or require such changes as the Bank may consider necessary;

(g) to impose administrative or monetary sanctions;

(h) to prescribe, through Regulations, requirements relating to—

(i) licensing;

(ii) corporate governance;

(iii) risk management;

(iv) internal controls;

(v) shareholder obligations;

(vi) operational requirements;

(vii) supervisory reporting obligations;

(viii) market conduct;

(ix) information sharing;

(x) anti-money laundering, combating the financing of terrorism and countering proliferation financing purposes;

(xi) pricing parameters; and

(xii) reporting and oversight by the Bank; and

(i) exercise such other powers with respect to the regulation of credit guarantee companies and credit guarantee business as are consistent with the provisions of this Part.

Amendment of section 43 of Cap. 491.

10. Section 43 of the Central Bank Act is amended in subsection (1) by deleting the word "digital" and substituting therefor the words "non-deposit-taking".

Amendment of section 57 of Cap. 491.

11. Section 57(3) of the Central Bank Act is amended—

(h) in subsection (1), by inserting the following paragraph immediately after paragraph (a)—

(aa) the procedure for the registration of non-deposit-taking credit providers;

(i) in subsection (3)—

(i) in paragraph (a) by deleting the word "digital" and substituting therefor the words "non-deposit-taking";

(ii) in paragraph (g) by deleting the word "digital" and substituting therefor the words "non-deposit-taking";

(iii) in paragraph (j) by deleting the word "digital lending" and substituting therefor the words "non-deposit-taking credit business";

(j) by deleting subsection (4) and substituting therefor the following new subsection—

(4) Without prejudice to the generality of subsection (3)(h), the Bank may, in regulations, prescribe penalties to be paid by non-deposit-taking credit providers who fail or refuse to comply with the provisions of this Act, the regulations made thereunder, guidelines, Code of Conduct and directives issued by the Bank which penalties shall not exceed two million shillings, or three times the gross amount of the monetary gain made or loss avoided by the failure or refusal to comply, whichever is higher; and may prescribe additional penalties, not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues:

Provided that the Bank shall on a case-by-case basis assess the facts of each case and determine the reasonable penalty to impose, taking into account such factors as may be prescribed or as the Bank may consider necessary.

Amendment of section 59 of Cap. 491.

12. The Central Bank Act is amended in section 59, by inserting the following new subsections immediately after subsection (2)—

(3) Any person who, before the coming into force of sections 33V, 33W, 33X and 33Y was carrying on credit guarantee business and is not regulated under any other law, shall apply for registration and a licence in accordance with sections 33W and 33X, within five years after the commencement of sections 33V, 33W, 33X and 33Y.

(4) Despite subsection (3), any person who, before the coming into force of sections 33V, 33W, 33X and 33Y, was carrying on credit guarantee business and wishes to apply for registration and a licence under sections 33W and 33Y, may only do so after satisfying the Bank of compliance with the provisions of sections 33V, 33W, 33X and 33Y.

Amendment of section 2 of Cap. 493C.

13. The Microfinance Act is amended in section 2—

(a) by deleting the definition "non-deposit-taking microfinance business" and substituting therefor the following new definition—

"non-deposit-taking microfinance business" means a non-microfinance bank business which involves the provision of physical credit;

(b) by deleting the definition of the term "non-microfinance bank business";

(c) by inserting the following new definitions in proper alphabetical sequence—

"movable security" means a movable asset as defined under the Movable Property Security Rights Act; Cap. 499A.

"physical credit" means a credit facility or arrangement where money is lent or borrowed on the basis of the lender's acceptance of a movable or immovable security but does not include the lender's acceptance of a cash collateral;

Amendment to section 3 of Cap 493C.

14. Section 3 of the Microfinance Act is amended–

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

"(b) a non-deposit-taking microfinance business in the manner prescribed under subsection (2)(a) unless exempted under subsection (2)(b)";

(b) by deleting subsection (2) and substituting therefor the following new subsection—

"(2) For the purposes of subsection (1)(b), the Cabinet Secretary may make regulations—

(a) prescribing measures for the conduct of non-deposit-taking microfinance business; and

(b) exempting any non-deposit-taking microfinance business from application of this Act."

(c) by inserting the following new subsection immediately after subsection (2)—

"(2A) Despite subsection (2)(b), an exemption shall not be granted to a non-deposit-taking microfinance business whose annual revenue exceeds five hundred thousand shillings."

Amendment to section 4 of Cap 493C.

15. Section 4 of the Microfinance Act is amended by inserting the following new section immediately after section 4—

Qualifications for carrying out non-deposit-taking microfinance business.

4A. (1) A person shall not carry out any non-deposit taking microfinance business unless such person is—

(a) a company registered under the Companies Act whose main objective is to carry out a not deposit taking finance business; and

(b) licensed under this Act.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Amendment to section 5 of Cap 493C.

16. Section 5 of the Microfinance Act is amended in subsection (1) by inserting the words "or non-deposit-taking microfinance business" immediately after the words "deposit-taking business".

Amendment of section 9 of section 493C.

17. Section 9 of the Microfinance Act is amended in subsection (1) by inserting the words "or non-deposit-taking microfinance business" immediately after the words "deposit-taking business" appearing in paragraph (a).

Amendment to section 16 of Cap 493C.

18. Section 16 of the Microfinance Act is amended in subsection (1) by inserting the words "or non-deposit-taking microfinance business" immediately after the word "institution".

Insertion of new sections 53 and 54 into Cap. 493C.

19. The Microfinance Act is amended by inserting the following new sections immediately after section 52—

Consumer protection.

53. (1) A non-deposit-taking microfinance business shall exhibit transparency in dealing with the public and in particular shall—

(a) furnish borrowers with accurate information on the procedure and conditions for lending;

(b) inform borrowers, prior to the acquisition of a loan, of the financial costs associated with the procurement and servicing of that micro-loan to be met by the borrower;

(c) maintain confidentiality of information relating to borrowers; and

(d) inform borrowers of the rights and duties associated with the acquisition of loans.

(2) A non-deposit-taking microfinance business shall, in the course of debt collection or loan recovery—

(a) not harass, abuse or oppress a borrower, guarantor or any person in connection with collection or recovery of a debt;

(b) not threaten or use violence or illegal means in collection or recovery of a debt; or

(c) not use obscene or profane language to a borrower, guarantor or any person in connection with collection or recovery of a debt.

(3) A non-deposit-taking microfinance business shall not collect interest, fees, charges, penalties, levies or expenses unless such interest, fees, charges, penalties, levies or expenses are

prescribed in an agreement between the non-deposit taking microfinance business and the borrower.

Transitional provision.

54. (1) Within six months of the commencement of this Act, a person who was conducting non-deposit-taking microfinance business before the commencement of this Act shall apply for a license under this Act.

(2) An applicant under subsection (1) may continue to conduct non-deposit-taking microfinance business pending determination of the application subject to this Act, Regulations made under this Act and any conditions issued by the Central Bank.

(3) A license issued to a non-deposit taking microfinance business prior to the commencement of this Act shall continue in force until the expiry of such license.

(4) A person who contravenes the provisions of this section commits an offence and shall be liable upon conviction to imprisonment of a term of not more than 5 years or a fine of Kenya Shillings Two million or both.

Insertion of a new section 5A in Cap. 496.

20. The Standards Act is amended by inserting 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.

21. 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.

22. 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.

23. 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.

24. 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.

(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.

Cap. 496A.

(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—

(a) contravenes the conditions imposed by the Bureau;

(b) provides false or misleading information to the Bureau;

(c) is no longer fit to hold an accreditation granted under the Kenya Accreditation Service Act;

Cap. 496A.

(d) contravenes any provisions of this Act; or

(e) 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.

25. 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 be resident in Kenya for tax purpose.

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

26. 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

27. 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.

28. The Scrap Metal Act is amended in section 4(1)— Amendment of section 4 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. 517A

29. 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

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

(c) The Cabinet Secretary shall, on the recommendation of the Authority, set the minimum acreage of land, and minimum investment amount to be invested in that land, for the land to be considered for declaration as a special economic zone.

Amendment of section 8 of Cap. 517A

31. 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

32. 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

33. 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

34. 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

35. 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

36. Section 35 of the Special Economic Zones Act is amended by adding 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.

Amendment of section 6 of Cap. 511A

37. 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;

Repeal and replacement of section 11 of Cap. 485D

38. 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.

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 proposes to amend section 55(2) of the Banking Act to provide for penalties against institutions, credit reference bureaus or any other person who fails or refuses to comply with any provision of the Act, Prudential Guidelines and directions issued by the Central Bank under the Act or Prudential Guidelines.

Clause 3 of the Bill proposes to amend the Second Schedule to the Banking Act to provide for progressive increase of the minimum core capital requirements for banks and mortgage institutions to enhance banking sector stability to attract global players.

Clause 4 of the Bill proposes to amend section 2 of the Central Bank Act by deleting definitions relating to digital credit business and inserting new definitions which are broader, and which cover all kinds of non-deposit-taking credit providers thereby addressing the perceived limitation in the interpretation and coverage of the definitions "digital credit" and "digital credit provider". The new definitions also clarify that certain credit businesses such as buy now pay later credit services and peer to peer lending and asset financing are covered under the law, thereby addressing the uncertainty that has existed since the law came into force.

Clause 5 of the Bill proposes to amend section 4A of the Central Bank **Act** to widen the scope of credit providers to empower the Central Bank of Kenya to license and supervise non-deposit-taking credit providers not regulated under any written law.

Clause 6 of the Bill proposes to amend the heading to Part VIC of the Central Bank Act to expand the scope of the Part to regulation of non-deposit-taking credit providers.

Clause 7 of the Bill proposes to amend section 33R of the Central Bank Act to expand the scope of the provision to non-deposit-taking credit providers. Further, it seeks to empower the Central Bank of Kenya to issue an enforceable Code of Conduct to guide non-deposit-taking credit providers in conducting their business.

Clause 8 of the Bill proposes to amend section 33S of the Central Bank Act to require all non-deposit-taking credit providers to be licensed to carry on business and to prohibit people from carrying on non-deposit-taking credit business illegally.

Clause 9 of the Bill proposes to insert a new Part VID to make provisions on regulation by the Central Bank of credit guarantee companies.

Clause 10 of the Bill proposes to amend section 43 of the Central Bank Act to obligate non-deposit-taking credit providers to furnish the Central Bank of Kenya with any information as the Central Bank of Kenya may require for the proper discharge of its functions.

Clause 11 of the Bill proposes to amend section 57 of the Central Bank Act to empower the Central Bank of Kenya to make regulations prescribing licensing requirements for non-deposit-taking credit businesses.

Clause 12 of the Bill proposes to amend section 59 of the Central Bank Act to provide a transitional period of five years for the commencement of the registration and licensing of credit guarantee companies.

Clause 13 of the Bill proposes to amend section 2 of the Microfinance Act in the definition "non-deposit-taking microfinance business" to mean a non-microfinance bank business which involves the provision of physical credit to clarify the nature of the business.

Clause 14 of the Bill proposes to amend section 3 of the Microfinance Act to provide for the Cabinet Secretary to make regulations on exemption of any non-deposit-taking microfinance business from the application of the Act to take into cognizance special circumstances. Further, the Bill clarifies that the exemption shall not be granted to a non-deposit-taking microfinance business whose annual revenue exceeds five hundred thousand shillings.

Clause 15 of the Bill proposes to insert a new provision to provide for the qualifications for carrying out non-deposit-taking microfinance business to fill a lacuna in the Act.

Clause 16 of the Bill proposes to amend section 5 of the Microfinance Act to provide for the requirement of a non-deposit-taking microfinance business to apply for a license to carry out business in order to regulate it.

Clause 17 of the Bill proposes to amend section 9 of the Microfinance Act to provide for revocation of a license for non-deposit-taking microfinance business where the licensee ceases to carry on the business.

Clause 18 of the Bill proposes to amend section 16 of the Microfinance Act to provide for a person to apply to a non-deposit-taking

microfinance business for a loan or credit facility. The Act only provides this for an institution which means a microfinance bank licensed under the Act.

Clause 19 of the Bill proposes to insert new provisions to the Microfinance Act on consumer protection for borrowers from a non-deposit-taking microfinance business and transitional mechanisms. The consumer protection measures include furnishing borrowers with accurate information on the procedure and conditions for micro-lending; informing borrowers, prior to the acquisition of a micro-loan, of the financial costs associated with the procurement and servicing of that micro-loan to be met by the borrower; maintaining confidentiality of information relating to borrowers; and informing borrowers of the rights and duties associated with the acquisition of micro-loans. The measures seek to protect borrowers from predatory lending.

Clause 20 of the Bill seeks to amend the Standards Act by providing for the registration of manufacturers by the Kenya Bureau of Standards.

Clause 21 seeks to amend the Standards Act by providing for the payment and disbursement of the standard levy order from the Bureau account.

Clause 22 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 23 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 24 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 25 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 26 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 27 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 28 of the Bill seeks to amend section 4 of the Scrap Metal Act to amend the composition of the Scrap Metal Council.

Clause 29 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 30 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 31 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 32of 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 33 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 34 of the Bill proposes 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 35 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 36 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 37 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 38 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.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit any fundamental rights or freedoms.

Statement on whether the Bill concerns county governments

The Bill does not contain provisions concerning county governments within the meaning of Article 110 of the Constitution and the Fourth Schedule to the Constitution and is therefore not a Bill concerning county governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill may occasion additional expenditure of public funds and is therefore a money Bill within the meaning of Article 114 of the Constitution.

Dated the 31st October, 2024.

KIMANI ICHUNG'WAH,
Leader of Majority Party.

Section 55 of Cap. 488 which it is proposed to amend—

55. Regulations

(1) The Central Bank may make regulations generally for carrying out the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Central Bank may, in regulations, prescribe penalties to be paid by institutions, credit reference bureaus (or any other person) that fail or refuse to comply with any directions of the Central Bank under this Act or Prudential Guidelines, which shall not exceed twenty million shillings in the case of an institution or credit reference bureau, or one million shillings in the case of a natural person, and may prescribe additional penalties not exceeding one hundred thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

The Second Schedule to Cap. 488 which it is proposed to amend—

SECOND SCHEDULE

[s. 7]

MINIMUM CAPITAL REQUIREMENTS

Every institution shall, at all times, maintain—

(a) a core capital of not less than eight percent of total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the Central Bank;

(b) a core capital of not less than eight percent of its total deposit liabilities;

(c) a total capital of not less than twelve percent of its total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by Central Bank;

(d) a core capital of at least two hundred and fifty million Kenya shillings in the case of a bank or a mortgage finance company:

Provided that the provisions of this paragraph shall apply in accordance with the following table;

(e) a core capital of at least two hundred million Kenya shillings in the case of a financial institution.

Minimum Core Capital

Compliance date	*Banks and Mortgage Finance Companies (KSh. Millions)*	*Financial Institutions (KSh. Millions)*
31st December, 1999	200	150.00
31st December, 2000	250	187.50
31st December, 2001	300	225.00
31st December, 2002	350	262.50
31st December, 2003	400	300.00
31st December, 2004	450	337.50
31st December, 2005	500	375.00

Section 2 of Cap. 491 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

"digital channel" means the internet, mobile devices, computer devices, applications and any other digital systems as may be prescribed by The Bank;

"digital credit" means a credit facility or arrangement where money is lent or borrowed through a digital channel;

"digital credit business" means the business of providing credit facilities or loan services through a digital channel;

"digital credit provider" means a person licensed by The Bank to carry on digital credit business;

Section 4A of Cap. 491 which it is proposed to amend—

4A. Other objects of the Bank

(1) Without prejudice to the generality of section 4 the Bank shall—

(a) formulate and implement foreign exchange policy;

(b) hold and manage its foreign exchange reserves;

(c) license and supervise authorised dealers;

(d) formulate and implement such policies as best promote the establishment, regulation and supervision of efficient and effective payment, clearing and settlement systems;

(da) license and supervise digital credit providers not regulated under any other written law;

(e) act as banker and advisor to, and as fiscal agent of the Government;

(f) issue currency notes and coins; and

(g) license and supervise mortgage refinance companies.

(h) pursuant to sections 2A, 36A, 36B and 36C of the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A), regulate and supervise, for anti-money laundering and combating the financing of terrorism and countering proliferation financing purposes, the following institutions—

(i) banks and their agents;

(ii) mortgage finance companies and their agents;

(iii) mortgage refinance companies and their agents;

(iv) microfinance banks and their agents;

(v) money remittance providers and their agents;

(vi) foreign exchange bureaus and their agents;

(vii) digital credit providers and their agents;

(viii) payment service providers; and

(ix) any other entity licensed by the Central Bank under any written law

(2) In subsection (1)(d)—

"clearing" means the process of transmitting, reconciling and confirming payments prior to settlement, including the netting of payments and the establishment of net positions for settlement;

"payment system" means a system of instruments, procedures and rules for the transfer of funds among system participants;

"settlement" means an act that discharges financial obligations between two or more parties.

Heading to Part VIC of Cap. 491 which it is proposed to amend—

PART VIC — REGULATION OF DIGITAL LENDERS

Section 33R of Cap. 491 which it is proposed to amend—

33R. Regulation of digital lenders

Without prejudice to the generality of section 4A(da), The Bank shall have power to—

(a) license digital credit providers;

(b) approve digital channels through which digital credit business may be conducted;

(c) determine parameters for pricing of digital credit;

(d) supervise digital credit providers;

(e) suspend or revoke a license; and

(f) direct or require such changes as The Bank may consider necessary.

Section 33S of Cap. 491 which it is proposed to amend—

33S. Licensing

(1) A person shall not carry on any digital credit business unless that person has been licensed by The Bank under this Act or is permitted to do so under any other written law.

(2) An application for a license under subsection (1) shall be made to The Bank in such form and shall be accompanied by such information and fee as may be prescribed.

(3) An application under subsection (2) shall be accompanied by—

(a) a copy of the certificate of incorporation under the Companies Act;

(b) a certified copy of the applicant's memorandum and articles of association;

(c) a notification of the company's registered address;

(d) a certificate issued pursuant to section 19 of the Data Protection Act;

(e) a statement as to compliance with the provisions of Part VII of the Consumer Protection Act; and

(f) such other documents as may be prescribed by the Bank.

(4) Without prejudice to subsection (3)(e), an applicant shall provide the terms and conditions applicable to the digital credit and which must be accepted by the borrower before activation of a mobile loan account.

(5) The Bank may grant or reject an application for a licence by written notice addressed to the applicant within sixty days from the date of receipt of an application.

(6) A licence granted under this section shall remain valid unless suspended or revoked by The Bank in accordance with this Act, but upon expiry of the prescribed period may be renewed.

(7) The Bank may suspend or revoke a licence by written notice to the holder of the licence, if —

(a) the licensee does not meet the conditions prescribed by The Bank;

(b) the licensee is in breach of subsection (3) or the conditions of the Data Protection Act or the Consumer Protection Act;

(c) the licensee is found to have given false information during the application;

(d) the licensee goes into liquidation or an order for winding up is issued;

(e) the carries out activities outside the scope of the licensed activities;

(f) the licensee is in breach of any of the provisions of this Act and the regulations made thereto relating to digital lending.

(8) Without prejudice to subsection (6), an applicant may apply for renewal of the licence at least three months before expiry of the licence.

(9) The Bank shall cause to be published in the Gazette and The Bank's website—

(a) before the thirtieth day of March in each year, the names and addresses of all licenced digital lenders under this section;

(b) within thirty days of suspension or revocation of a license, the name and address of the digital lenders whose licences have been suspended or revoked.

(10) A person who contravenes the provisions of this section commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.

Section 33U of Cap. 491 which it is proposed to amend—

33U. Disclosure of credit information

Notwithstanding the provisions of this section, a digital lender shall disclose any positive or negative information of its customers to the licensed credit reference bureaus, where such information is reasonably required for the discharge of the functions of the digital lenders and the licensed credit reference bureaus.

Section 43 of Cap. 491 which it is proposed to amend—

43. Information to be furnished by specified banks, etc

(1) Every specified bank, specified financial institution, specified microfinance bank, specified mortgage refinance companies and specified digital credit providers shall furnish to the Bank, at such time and in such manner as the Bank may prescribe, any information and data the Bank may reasonably require for the proper discharge of its functions under this Act.

(2) The Bank may publish in whole or in part, at such times and in such manner as it may decide, any information or data furnished under this section:

Provided that no such information shall be published which would disclose the financial affairs of any person or undertaking unless the prior consent in writing of such person or undertaking has first been obtained by the Bank.

Section 57 of Cap. 491 which it is proposed to amend—

57. Regulations by the Bank

(1) The Bank may make regulations, issue guidelines, circulars and directives for the purpose of giving effect to the provisions of this Act and generally for the better carrying out of the objects of the Bank under this Act.

(2) Without prejudice to the generality of subsection (1), the Bank may, in regulations, prescribe penalties to be paid by authorised dealers who fail or refuse to comply with any guidelines or directions of the Central Bank under this Act, which penalties shall not exceed five hundred thousand shillings in the case of an authorised dealer, or two hundred thousand shillings in the case of a natural person and may prescribe additional penalties, not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

(3) Without prejudice to the generality of subsection (1), The Bank may make Regulations as are necessary or expedient to give full effect to the provisions of this Act including—

(a) the licensing requirements for digital credit businesses;

(b) permissible and prohibited activities;

(c) anti-money laundering and measures for countering financing terrorism;

(d) credit information sharing;

(e) data protection;

(f) consumer protection;

(g) reporting requirements for digital credit providers;

(h) offences and penalties;

(i) dispute resolution mechanisms; and

(j) such other measures necessary for regulation of digital lending.

(4) Without prejudice to the generality of subsection (3)(h), The Bank may, in regulations, prescribe penalties to be paid by digital lenders who fail or refuse to comply with the provisions of this Act and the regulations made thereunder relating to digital credit, which penalties shall not exceed five hundred thousand shillings, and may prescribe additional penalties, not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

Section 2 of Cap. 493C which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

"non-deposit-taking microfinance business" means non-microfinance bank business;

"non-microfinance bank business" means microfinance business, other than microfinance bank business as defined under this Act;

Section 3 of Cap. 493C which it is proposed to amend—

3. Application

(1) Subject to subsection (3), this Act shall apply to—

(a) every deposit-taking microfinance business;

(b) specified non-deposit-taking microfinance business, in the manner prescribed under subsection (2)(b).

(2) For the purposes of subsection (1)(b), the Cabinet Secretary may make regulations—

(a) specifying the non-deposit-taking microfinance business to which that subsection applies; and

(b) prescribing measures for the conduct of the specified business.

(3) Except as provided in section 4(1), this Act shall not apply to—

(a) a bank, a financial institution or a mortgage finance company licensed under the Banking Act, Cap. 488;

(b) a building society registered under the Building Societies Act Cap. 489;

(c) the Kenya Post Office Savings Bank established under the Kenya Post Office Savings Bank Act, Cap 493B.

Section 4 of Cap. 493C which it is proposed to amend—

4. Qualifications for carrying out deposit-taking microfinance business

(1) No person shall carry out any deposit-taking microfinance business, hereinafter referred to as "deposit-taking business", unless such person is—

(a) a company registered under the Companies Act, Cap 486 whose main objective is to carry out such business; or

(b) a wholly-owned subsidiary of a bank or a financial institution whose main objective is to carry out such business; and

(c) licensed under this Act.

(2) The provisions of subsection (1) shall not apply to a duly approved agency conducting deposit-taking business on behalf of an institution.

(3) Where an agency conducts deposit taking business on behalf of an institution in accordance with this Act, the institution shall be liable for the acts of the agency in so far as such acts relate to that business.

(4) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 5 of Cap. 493C which it is proposed to amend—

5. Application for licence

(1) An application for a licence to carry out deposit-taking business shall be made to the Central Bank, in the prescribed form.

(2) An application under subsection (1) shall be accompanied by—

(a) copy of the memorandum and articles of association or other instrument under which the company is incorporated;

(b) a verified official notification of the company's registered place of business;

(c) the prospective place of operation, indicating that of the head office and branches, if any;

(d) evidence that the company meets the minimum capital requirements prescribed in the Schedule;

(e) the prescribed fee; and

(f) a report of a feasibility study undertaken by the company covering the following—

(i) objectives of the business;

(ii) domestic economic situation;

(iii) financial sector environment;

(iv) legal framework;

(v) risk analysis;

(vi) economic and financial analysis;

(vii) organizational structure;

(viii) proposed management, detailing the professional qualifications, skills and relevant experience in deposit-taking business of the proposed managers;

(ix) equity and ownership of the business;

(x) such other requirement as the Central Bank may prescribe.

Section 9 of Cap. 493C which it is proposed to amend—

9. Revocation of licence

1. The Central Bank may, by notice to the licensee, revoke a licence where—

(a) the licensee ceases to carry on deposit-taking business;

(b) the institution is wound up, liquidated or otherwise dissolved;

(c) the Central Bank is reasonably satisfied that the business of the institution is being conducted in a manner detrimental to the interests of its depositors or customers;

(d) the institution has been amalgamated with another company or has been sold or its assets or liabilities have been transferred to another company without the approval of the Cabinet Secretary;

(e) the licensee has contravened any of the conditions in the licence; or

(f) the licensee has contravened any of the provisions of this Act or any regulations made thereunder.

2. The Central Bank shall cause the names of institutions whose licences have been revoked to be published in the *Gazette* within seven days of the revocation.

Section 16 of Cap. 493C which it is proposed to amend—

16. Application for loan or credit facility

(1) Any person may apply to an institution for a loan or credit facility.

(2) A person who applies for a loan or credit facility under subsection (1) shall provide evidence of his ability to repay the loan or credit facility.

Section 52 of Cap. 493C which it is proposed to amend—

52. False advertising

(1) Any entity, institution or other person who issues any advertisement, brochure, circular or other document inviting any person to make a deposit which—

(a) falsely represents that the entity, institution or person is authorized to accept deposits or is otherwise licensed under the provisions of this Act; or

(b) is issued contrary to any direction given by the Central Bank under the provisions of subsection (2),

commits an offence.

(2) The Central Bank may, at any time, direct an institution to withdraw, amend or refrain from issuing any document to which subsection (1) applies.

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 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. 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 transhipment, 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.

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.